



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Ontario
(909) 989-8584

500 Capitol Mall, Suite 1700, Sacramento, CA 95814
Phone: (916) 325-4000 | Fax: (916) 325-4010 | www.bbklaw.com

Riverside
(951) 686-1450
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

William J. Thomas
(916) 551-2858
william.thomas@bbklaw.com

February 10, 2016



Via Email to: commentletters@waterboards.ca.gov

State Water Resources Control Board
Attn: Clerk to the Board
1001 I Street
Sacramento, CA 95814

Re: **2/16/16 BOARD MEETING, ITEM NO. 6: Comments on Revised Draft Resolution No. 2016-___, Titled: Adopting the Human Right To Water as a Core Value and Directing its Implementation in Water Board Programs and Activities (February 4, 2016)**

Dear Clerk, Board Chair, Board Members:

I. On behalf of the Southern San Joaquin Valley Water Quality Coalition (“SSJWQC”) (Tulare Lake Basin), we hereby respond to the State Water Board’s proposed Resolution No. 2016-_____ as initially circulated January 21, 2016, and subsequently modified February 4, 2016, dealing with the human right to water. This is a rather lengthy resolution, which is principally based on the recent California Water Code section 106.3 (AB 685, 2013) dealing with the Human Right to Drinking Water. This subject has also been the focus of the Governor’s Task Force on Drinking Water and also central to the State Board now having the statutory authority to administer the State’s drinking water program.

2. The Southern San Joaquin Valley Water Coalition and its member agencies have been extensively engaged in the drinking water issues both in Sacramento and throughout the South San Joaquin Valley. Dave Orth, then of the Kings Resource Conservation District and lead of the Southern San Joaquin Coalition, was co-chair of the Governor’s Drinking Water Task Force, along with Laurel Firestone of the E.J. Community. The coalition has thereby been at the forefront of addressing the valley’s drinking water issue. Moreover, Chris Kapheim of Alta Irrigation District and Dennis Keller of the Kaweah Sub-coalition have each been leading efforts, and working with the valley E.J. Community to develop regional alternative drinking water in the south valley. Other similar efforts are underway in Tulare and Kern Counties.

When the E.J. Community advanced the Human Right to Drinking Water bill in the legislature, the SSJWQC did not oppose this statement in law and we continue to support these local efforts to protect and supply drinking water to all valley citizens.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

State Water Resources Control Board
February 10, 2016
Page 2

3. This is an extensive resolution and perhaps would have been a proper subject for a workshop to discuss these many provisions. Because of the extent of the multiple provisions in the resolution it is somewhat difficult to predict how they may be interpreted by interested parties and the regions. Therefore, the staff report's assurance that this will not expand the legal scope or future obligations rings hollow.

4. It is important that this statutory right be considered along with the other statutory rights and protections set forth in the Water Code. Therefore, this resolution must assure consideration of drinking water as part of the Board's evaluation of all its other statutory responsibilities. The mission of this resolution is to effectuate the Board's balance of its statutory responsibilities.

5. We appreciate the several amendments, which were incorporated in the February 4th version of this draft resolution. Follows are additional considerations and suggestions.

6. Section 5 – Whereas Clause

The added provision states,

“Preventing and/or addressing discharges that could threaten human health by causing or contributing to pollution or contamination of drinking water sources, are among the Water Boards' highest priorities. Providing replacement water is an interim solution that may be used to address such discharges while long-term water quality solutions are developed.”

Further thought should be given to the newly added provision. It should be clarified so as to narrow its application to supplying temporary in-house drinking water, rather than addressing new system-wide programs, which permanently supply “replacement water.”

7. Section 13. – Whereas Clause

The affordability of water will continue to be a difficult consideration. This will be particularly so relative to supplying water to state small and even lesser systems, particularly if “isolated” or “out of district” jurisdictional situations prevail.

8. Paragraph 15.

At the March 3, 2015 State Water Board meeting, staff reported on the status of the implementation of the human right to water. Staff presented results of a survey concerning the wide range of activities and projects undertaken by the Water Boards that address the human



BEST BEST & KRIEGER
ATTORNEYS AT LAW

State Water Resources Control Board

February 10, 2016

Page 3

right to water through actions to protect any existing or potential MUN beneficial use, including but not limited to, basin planning, permitting actions, site remediation, monitoring, and water right administration. It is important for the Board to recognize the many efforts underway to address this issue.

9. Section 1

The specific language of this provision places the human right to water as the State Board's top priority. This is an unnecessary and unsupportable provision and creates a poor policy for the Board to administer. The Water Code codifies the human right to water to be among the top priorities recognizing the other important water quality and water rights provisions. Therefore, this provision should state that it is "one of the priorities" among the Board's top priorities (as stated in Section 5 above), but it is not supreme over all or to the exclusion of the Board's other important statutory duties.

As written, this would be a legally indefensible position, and this resolution should not propel this above the other major statutory provisions the Board must likewise consider.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Thomas', with a long horizontal line extending to the right.

William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg