

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit)
14110 (Application 12092B))
UNITED WATER CONSERVATION)
DISTRICT)
Permittee)

ORDER: WR 82-8
Source: Sespe Creek
County: Ventura

ORDER DENYING PETITION FOR
RECONSIDERATION

BY THE BOARD:

The time to complete construction and application of water to the proposed use under Permit 14110 (Application 12092B) having expired; a hearing having been held by the State Water Resources Control Board on July 15, 1981 and September 21, 1981; permittee, United Water Conservation District, and other interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board having adopted Order 82-5 revoking Permit 14110 on June 17, 1982; and the permittee having filed a petition for reconsideration on July 16, 1982; the Board finds as follows:

Order WR 82-5 is Supported by Substantial Evidence

1. That an order of the Board is not supported by substantial evidence is a basis for seeking its reconsideration (23 CAC 737.1(b)). The permittee alleges that there is no substantial evidence in the record to support the conclusion in paragraph 19 of Order WR 82-5 that "there are issues of public interest that weigh against approval of the requested extension of time." The permittee further alleges that there is no evidence in the record and no finding was made by the Board that anyone would be harmed or prejudiced by granting the time extension. Whether a proposal is in the public interest is

a judgment the Board makes based on the particular facts regarding a proposal and applicable law and policy. Paragraph 17 in Order WR 82-5 describes the public interest concerns that weigh against granting the time extension. That the Board did not make other findings in the Order that the extension would harm or prejudice others does not reduce the primary findings of public interest and lack of diligence. There is substantial evidence in the record to support paragraph 19 of the Order.

Petition Does Not Include a Statement Showing Facts to be Proved

2. Reconsideration may be sought if "[t]here is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing (23 CAC 737.1(c)). The permittee has alleged there is new evidence and requests the Board to hold a hearing. Section 737.2(b) of the Board's regulations state the requirements for seeking reconsideration on this ground. It provides, in part:

"(b) If reconsideration is requested based...in part on Section 737.1(c), the petition shall include a statement that additional evidence is available that was not presented to the board and the reason it was not presented shall be explained.

A general statement of the nature of the evidence and of the facts to be proved shall also be included...." (emphasis added)

3. The nature of the evidence and the facts to be proved are set forth in the petition as follows:

- "(a) The relation of the Sespe Project to groundwater management on the Oxnard Plain and the necessity of the Sespe Project to a successful management plan for the lower aquifer system.
- (b) United's present ability to raise funds by imposition of a water extraction charge.
- (c) The effect of enactment of AB 2995 creating the Fox Canyon Groundwater Management Plan.

- "(d) Presentation of a plan for financing construction of the Sespe Project and the budgeting of United's share of the financing.
- (e) Presentation of the Plan of Study by the U. S. Bureau of Reclamation of the reformulation of the Sespe Project.
- (f) Presentation of an updated reconnaissance level plan and feasibility report for construction of the project.
- (g) Presentation of a plan and time schedule of preparation of a draft ES/EIR of the project."

4. Section 737.2(b) requires that "the facts to be proved" shall be submitted to the Board. The foregoing quotation does not provide the slightest hint of the facts to be proved. The permittee has alleged that the items identified in the foregoing quotation could not have been produced at the Board's hearing with reasonable diligence. With regard to item "(a)" which would address the relation of the Sespe Project to groundwater management in the Oxnard Plain, it is difficult to understand why such relation could not have been presented to the Board at the earlier hearings. Other proceedings of the Board tend to indicate that the permittee could in the exercise of reasonable diligence have brought such relationship to the Board's attention during the hearings. While the Board cannot guess what relationship the permittee would have the Board consider, the Board clearly is not presented with the necessary statement of facts to be proved to judge the validity of this request.

5. Permittee wishes to submit new evidence concerning AB 2995, an Assembly Bill that would create the Fox Canyon Groundwater Management Act. Before or after submission of a matter for decision, the Board may take official notice of such facts as may be judicially noticed (23 CAC 733(e)). Judicial notice may be taken of the official acts of the State Legislature (Evidence Code Section 452). AB 2995 has not been enacted into law (Assembly

Weekly History, June 30, 1982). A bill moving through the Legislature would have little or no evidentiary value. No statement identified the facts to be proven in regard to AB 2995.

6. Items "(d)" through "(g)" merely indicate the desire to make new presentations. No statement identifies the facts to be proven. Similarly, item "(b)" indicates only a general subject to be addressed without identifying the facts to be proven. We conclude, therefore, that the factual statement supporting the request to present alleged new evidence is insufficient.

The Petition for Reconsideration Should be Denied

7. To summarize, Order WR 82-5 is supported by substantial evidence and the petition does not include a statement showing the facts to be proved if the hearing were re-opened to receive evidence which could not have been produced at the Board's hearing of this matter. In view of the foregoing, we conclude that the petition for reconsideration should be denied.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of Order WR 82-5 by the permittee, United Water Conservation District, is denied.

Dated: August 19, 1982

ABSENT

Carla M. Bard, Chairwoman

L. L. Mitchell

L. L. Mitchell, Vice-Chairman

Jill D. Gojis

Jill D. Gojis, Member

F. K. Atjibury

F. K. Atjibury, Member