

- "a. Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- "b. The decision or order is not supported by substantial evidence;
- "c. There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- "d. Error in law."

The District alleges that the dismissal of its protest by the Chief of the Division of Water Rights is an abuse of discretion and is based upon an error in law. The District asks that the SWRCB delay action on the petition to allow the Authority time to negotiate an agreement with the District, Torson Pacific Investments (Torson), and Capistrano Beach Water District (CBWD) regarding diversion of water in the San Juan Basin. The District agrees to abide by whatever agreement the Authority negotiates with Torson and CBWD. The District agrees to withdraw its protests to the applications filed by the Authority, Torson, and CBWD upon execution of final agreements. The Authority joins in the District's request for the SWRCB to delay action on the petition.

In acting on a petition for reconsideration, the SWRCB may take any of the following actions in accordance with Section 770 of Title 23 of the California Code of Regulations:

- a. Refuse to reconsider the decision;
- b. Deny the petition upon a finding that the decision was appropriate and proper;
- c. Set aside or modify the decision; or
- d. Take other appropriate action.

Other appropriate action might include ordering reconsideration to accommodate the District's request for additional time before

the SWRCB acts on the merits of the petition. The SWRCB concludes that it is appropriate to grant reconsideration to allow the Authority time to negotiate an agreement regarding diversion of water in the San Juan Basin. The SWRCB takes this action based on the Authority having joined in the District's request for a delay and the District's agreement to withdraw its protests to the applications of the Authority, Torson, and CBWD when agreement is reached. For each of the applications, the District's protest is based on interference with an alleged pueblo right. In granting reconsideration, the SWRCB expresses no opinion on the merits of the District's petition. In accordance with Section 770(2)(c) of Title 23 of the California Code of Regulations, action on the merits of the petition will be suspended until December 31, 1995, to allow the Authority time to negotiate the water diversion agreement. If no agreement is reached by December 31, 1995, the SWRCB will proceed to dispose of the petition on its merits.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for reconsideration of the rejection of the protest to Application 30123 of the San Juan Basin Authority which was filed by the Capistrano Valley Water District is granted. By December 31, 1995, the Capistrano Valley Water District shall inform the State Water Resources Control Board whether an agreement has been reached. If agreement is reached between the San Juan Basin Authority and the Capistrano Valley Water District, between the San Juan Basin Authority and Torson Pacific Investments, and between the San Juan Basin Authority and Capistrano Beach Water District, the Capistrano Valley Water District shall withdraw its protests to Application 30123 of the San Juan Basin Authority, Application 30171 of Torson

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Pacific Investments, and Application 30337 of the Capistrano Beach Water District. If no agreement has been reached by December 31, 1995, the State Water Resources Control Board will dispose of the petition on its merits.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 22, 1995.

AYE: John Caffrey
Mary Jane Forster
James M. Stubchaer
John W. Brown

NO: None

ABSENT: Marc Del Piero

ABSTAIN: None



Maureen Marché
Administrative Assistant to the Board