



TULARE LAKE BASIN WATER STORAGE DISTRICT

ESTABLISHED SEPTEMBER 1926

1001 CHASE AVENUE, CORCORAN, CALIFORNIA 93212
PHONE (559) 992-4127 • FAX (559) 992-3891

May 31, 2019

VIA EMAIL ONLY

State Water Resources Control Board
Division of Water Rights
Attn: Mitchell Moody
PO BOX 2000
Sacramento, CA 95812-2000
Email: Mitchell.moody@waterboards.ca.gov

Re: Opposition to Petitions to Revoke/Revise Kings River FAS Declaration

Dear Chairman Esquivel and Honorable Board Members:

Tulare Lake Basin Water Storage District (TLBWS D), Southeast Lake Water Company (SLWC), and Tulare Lake Canal Company (TLCC) (hereafter collectively referred to as “Empire No. 2 units¹”) hereby submit their **opposition** to Semitropic Water Storage District’s (“Semitropic”) Petition and Alta Irrigation District, Consolidated Irrigation District, and Fresno Irrigation District’s Petition (hereafter collectively referred to as “Petitions”) to revoke and/or revise the Kings River Fully Appropriated Stream Declaration. No reasonable cause nor change of circumstance exists, to warrant conducting a hearing on the question of whether the fully appropriated status should be revoked or revised. As a result, the Empire No. 2 units respectfully request the Chief, Division of Water Rights, deny a hearing on the matter.

The Empire No. 2 units are member units of the Kings River Water Association and hold licensed and pre-1914 water rights on the Kings River. The Empire No. 2 units deliver water in the Tulare Lakebed, located within Kings and Tulare Counties, and hold the most southern diversion points within the Kings River Service Area. The Empire No. 2 units’ boundaries are located entirely within the Tulare Lake Subbasin (5-22.08). The Tulare Lake Subbasin has been declared by the Department of Water Resources (Department) as “critically overdrafted” and ranked “high” priority.

Semitropic argues there are flood waters available to appropriate on the Kings River despite Decision 1290 and the Kings River’s FAS Declarations subsequently

¹ Four units total comprise all the entities commonly referenced as the “Empire No. 2” units. This letter is not sent on behalf of, and is not intended to represent in anyway, the positions of the other remaining unit, Tulare Lake Reclamation District 761.

ordered by the State Board in 1989, 1991, and 1998. Semitropic's boundaries are located entirely within Kern County and also entirely within the Kern County Subbasin (5-22.14). The Kern County Subbasin has also been declared "critically overdrafted" and ranked "high" priority by the Department. Semitropic's boundaries are not hydraulically connected whatsoever to the Kings River watershed.

Kings River water must remain in the Kings River watershed to alleviate overdraft conditions.

Semitropic seeks simply to move surface water from one critically overdrafted area to another non-hydraulically connected and critically overdrafted basin. Based on Bulletin 118 alone, the demand for use of all of the waters of the Kings River has been objectively proven. Indeed, *Bulletin 118 demonstrates that not enough waters exist in the Tulare Lake Subbasin*. It is therefore patently false to suggest there are unappropriated waters available on the Kings River. (See Decision 906, where the Board found despite no attempt having been made to determine the quantity of Kings River water diverted to Tulare Lake Basin, none was necessary in view of the ground-water overdrafts as stated in Bulletin 2 and the importation of water to the area from the Friant-Kern Canal.)²

The only possible changed circumstance since Decision 1290 and the subsequent State Board Orders on the Kings River FAS Declaration is the passage of the Sustainable Groundwater Management Act which now necessitates Semitropic to attempt to correct its own overdraft conditions. *Moving water from one critically overdrafted area to another critically overdrafted and non-hydraulically connected subbasin is not an efficient use of resources and will only exacerbate conditions in the current Kings River Service Area*. The Empire No. 2 units encourage the State Board not to promote the transfer of surface waters from one critically overdrafted area to another.

Semitropic's proposal fails to consider capacity constraints of the South Fork and increases risk of flooding in the Lakebed.

Semitropic claims flood waters are available for appropriation on the *South Fork* because of the alleged existence of flood waters on the *North Fork* of the Kings River. However, the amount of water Semitropic claims as unappropriated on the North Fork cannot physically be moved down the South Fork at times when said waters are allegedly available to appropriate.

² "No attempt has been made here to determine the quantity of Kings River water diverted to Tulare Lake Basin. However, in view of the ground-water overdrafts as stated in Bulletin 2 and the importation of water to the area from the Friant-Kern Canal, it may be assumed that all Kings River water diverted southward toward Tulare Lake Basin is beneficially used." (P. 6, Decision 906)

During a flood release, water is first delivered to member units based upon demand. Once demand is satisfied, flood released water is initially directed out the North Fork up to the capacity of the North Fork. When the North Fork capacity is reached, damaging flood flows are then, as necessary, sent to the South Fork, which ends up in Tulare Lakebed. ***During these extreme events, damaging flood waters are initially directed out the North Fork, to avoid risk to life and property in the Tulare Lakebed.*** Semitropic's proposal, ironically under the auspice of a proposed "flood control project", ignores the long-established protocols that have been implemented to ensure that the risk of damaging flood waters in the Lakebed are reduced and instead *increases* the risks of flooding in the Lakebed. Most importantly, given the operational constraints of the system, Semitropic has failed to demonstrate the availability of unappropriated waters on the South Fork of the Kings River.

Decision 1290 clearly contemplated the inability to capture damaging flood waters in years of extreme flood.

Semitropic has failed to articulate any *changed* circumstances since the issuance of Decision 1290 which would necessitate the Board revoking or revising the FAS Declaration for the Kings River. Decision 1290 unquestionably contemplated water leaving the service area in conditions of extreme flood.

It is the intention of KRWA to utilize all of the runoff of the river. While **this is not possible in years of extreme flood**, the association members have planned their overall project to take maximum advantage of all storage facilities available to them. This includes recharge of ground water and underground storage as well as the storage of flood waters in Tulare Lake Basin and maximum retention in Pine Flat Reservoir. (Page 35 of Decision 1290.)

Semitropic claims it will need permission from TLBWSD, which permission shall not be granted.

Semitropic has also asserted in its application submitted with its petition to revoke or revise the FAS Declaration that in regards to Rights of Access, it believes TLBWSD owns or administers points of diversion upstream of the lands to which Semitropic holds easements and licenses and it is "confident it will obtain the necessary consent" needed from TLBWSD for its right of access necessary for the project. TLBWSD **opposes** the Semitropic project in its entirety and will not consent to any requests from Semitropic for the proposed project, including but not limited to improvements to the Empire No. 2 structure, based on the foregoing reasons.

Chairman Esquivel
May 31, 2019
Page 4

In conclusion, Semitropic has failed to set forth any facts to show changed circumstances or that reasonable cause exists to hold a hearing on the Kings River FAS Declaration. The Empire No. 2 units encourage the State Board to decline to promote the transfer of resources from critically overdrafted areas in an attempt to alleviate overdraft conditions in neighboring, non-hydraulically connected subbasins. To do so is not an effective or efficient use of water. As a result of the foregoing, the Empire No. 2 units respectfully request the Chief, Division of Water Rights, deny a hearing on the Kings River FAS Declaration.

Very truly yours,



Jacob J. Westra
Assistant General Manager