

21 East Carrillo Street
 Santa Barbara, CA 93101
 Telephone: (805) 963-7000
 Fax: (805) 965-4333



FROM: Scott S. Slater
PHONE: (805) 882-1420

DATE: June 12, 2003
CLIENT MATTER: 6774.110

PLEASE DELIVER AS SOON AS POSSIBLE TO:

RECIPIENT	COMPANY	FAX NO.	PHONE NO.
Edward C. Anton	State Water Resources Control Board	916-341-5400	

Total number of pages including this page: .
 If you do not receive all the pages, please call (805) 963-7000.

Attached please find a second copy of the Southern California Water Company's Comments to Draft Order WRO-2003-XXXX, as well as Exhibit A for filing. Please note that Page 8 of the Comments was inadvertently left out of the original copy. Additionally, a second .pdf copy of both are being emailed.

Pam Wilson
 Assistant to Scott S. Slater
 Hatch & Parent
 21 East Carrillo Street
 Santa Barbara, CA 93101
 805-882-1480
 805-965-4333 Fax
 pwilson@hatchparent.com

THIS TRANSMISSION IS INTENDED ONLY FOR THE PARTY TO WHOM IT IS ADDRESSED AND MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this transmission is prohibited. If you have received this transmission in error, please notify us immediately by telephone and return this transmission and any copies to us by mail. Thank you.

1 Scott S. Slater (State Bar No. 117317)
 Michael T. Fife (State Bar No. 203025)
 2 HATCH & PARENT, A LAW CORPORATION
 21 East Carrillo Street
 3 Santa Barbara, CA 93101
 (805) 963-7000
 4 (805) 965-4333

5 Attorneys For Petitioner
 SOUTHERN CALIFORNIA WATER COMPANY

6

7

8

BEFORE THE

9

STATE WATER RESOURCES CONTROL BOARD

10

STATE OF CALIFORNIA

11

12

In re Petition of Southern California Water
 Company to Revise the Declaration of Fully
 13 Appropriated Stream Systems Regarding the
 14 American River, Sacramento County

15

16

17

18

19

20

SCWC COMMENTS TO DRAFT ORDER WRO 2003-XXXX

21

22

23

24

25

26

27

28

HATCH & PARENT, A LAW CORPORATION

21 East Carrillo Street
Santa Barbara, CA 93101

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. NATURE OF THE PROCEEDINGS 3

A. The Draft Order Does Not Reasonably Conform to the Notice Provided by the SWRCB 3

B. Notice, Pre-Hearing Conference, April 26, 2002 Letter and Subsequent Proceedings 4

C. The Hearing Officer's Rulings Confirmed the Limited Scope of the Hearing: Testimony by SCWC Was Excluded That Would Have Been Relevant if the SWRCB Were to Compare the Relative Rights of the Parties to Non-Tributary Groundwater Discharged by Aerojet 7

II. THE DRAFT ORDER 11

A. Substantial and "Uncontroverted" Evidence Demonstrated a Change of Circumstances Sufficient to Warrant a Limited Revision of the FAS Declaration Justifying the Processing of Petitioner's Proposed Application 11

B. The Draft Order Makes the Incorrect Legal Conclusion That the Discharged Water Is "Abandoned" While All Evidence That May Have Informed Such a Determination Was Excluded From the Hearing 13

C. The Draft Order Arbitrarily Concludes That the Circumstances Under Which Aerojet Obtains Temporary Possession of the Discharged Groundwater Are Irrelevant to the Proceeding 14

D. The Draft Order's Requirement That Petitioner Satisfy a Two-Pronged Test is Inconsistent With the Statutory Scheme and the Proper Exercise of Board Discretion 15

E. If the Draft Order Should Be Read to Authorize Petitioner's Recapture of its Groundwater Discharged by Aerojet Without a Permit, Then the Order Should be Revised to Make This Clear 19

F. The Draft Order Constitutes a Windfall for Downstream Appropriators of Surface Water and is Contrary to the Stated Intent of the RWQCB to Provide a Replacement Water Supply for the Affected Communities 20

III. CONCLUSION 21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

Cache La Poudre Water Users Ass'n v. Glacier View Meadows (1976 Colo.) 550 P.2d 288 .. 20

Calistoga Civic Club v. Calistoga (1983) 143 Cal.App.3d 111, 116 14

Calistoga Civic Club v. City of Calistoga (1983) 143 Cal.App.3d 111, 117 15

Haskel Engineering & Supply Co. v. Hartford Acc. & Indem. Co. (1978) 78 Cal.App.3d 371, 378. 14

Heckman v. Ahmanson (1985) 168 Cal.App.3d 119 15

Martin v. Kehl (1983) 145 Cal.App.3d 228 14

Santa Clarita Water Company v. Lyons (1984) 161 Cal.App.3d 450, 462. 14, 15

Santa Clarita Water Company v. Lyons (1984) 161 Cal.App.3d 450, 451. 15

CODES

Cal. Code Reg. Title23 § 648(b) 3

Ca. Code Reg. § 871(b) 17, 18

Civil Code § 2224 14

Gov't. Code § 11425.50 4

Water Code Section 1206(a) emphasis added 17, 18

Water Code Section 7075 20

STATUTORY PROVISIONS

Colo. Rev. Stat. 37-92-103(9) 20

MISCELLANEOUS

Aerojet Objection:

Aerojet Objection dated May 30, 2001 7

Aerojet Objection 2:17-19 7

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 Aerojet Objection 4:5-20 7

2 **County Exhibit:**

3 County Exh. 1 at 1 12

4 County Exh. 2, at 12 12

5 **Draft Order** 8, 11, 12, 13, 16, 19, 21

6 **Letters:**

7 February 27, 2002 Letter p.5 20, 21

8 April 26, 2002 Letter p.2. 4, 5, 6, 10

9 Notice March 6, 2002 4, 5

10 **Reporter's Transcript** 5, 8, 9, 10, 11, 13, 14

11

12 In the Matter of Application 27554 of the Lost Hills Water District (1994)

13 WR 94-1 18

14 In re Matter of the Petitions to Revise Declaration of Fully Appropriated

15 Streams to Allow Processing Specified Applications to Appropriate Water

16 From the Santa Ana River 18

17

18

19

20

21

22

23

24

25

26

27

28

HATCH & PARENT, A LAW CORPORATION

21 East Carrillo Street
Santa Barbara, CA 93101

1 Scott S. Slater (State Bar No. 117317)
 2 Michael T. Fife (State Bar No. 203025)
 3 HATCH & PARENT, A LAW CORPORATION
 4 21 East Carrillo Street
 5 Santa Barbara, CA 93101
 6 (805) 963-7000
 7 (805) 965-4333

8 Attorneys For Petitioner
 9 SOUTHERN CALIFORNIA WATER COMPANY

10 BEFORE THE
 11 STATE WATER RESOURCES CONTROL BOARD
 12 STATE OF CALIFORNIA

13 In re Petition of Southern California Water
 14 Company to Revise the Declaration of Fully
 15 Appropriated Stream Systems Regarding the
 16 American River, Sacramento County

17 SCWC COMMENTS TO DRAFT
 18 ORDER WRO 2003-XXXX

HATCH & PARENT, A LAW CORPORATION
 21 East Carrillo Street
 Santa Barbara, CA 93101

19 The Draft Order WRO 2003-XXXX, issued in response to Southern California Water
 20 Company's ("SCWC" or "Petitioner") Petition for a Limited Revision of the Declaration of Fully
 21 Appropriated Stream Status of the Lower American River ("Petition"), is procedurally
 22 inconsistent with the SWRCB's own hearing notices regarding the scope of the underlying
 23 hearing, the representations and rulings of the Hearing Officer and the prior decisions of the
 24 SWRCB. The parties to the underlying proceeding were consistently admonished that their
 25 relative claims to the discharged groundwater would be addressed in the application phase, if
 26 any, in the event Petitioner could successfully demonstrate the existence of "new water." Despite
 27 these admonishments, the Draft Order turns on an initial legal conclusion which is based on
 28

HATCH & PARENT, A LAW CORPORATION
21 East Carillo Street
Santa Barbara, CA 93101

1 factual assumptions that were beyond the clearly articulated scope of hearing and otherwise
2 inconsistent with evidence that Petitioner was prevented from presenting.

3 In summary, after having denied Petitioners and others the opportunity to demonstrate
4 why the discharged groundwater neither belongs to Aerojet nor is "abandoned," the Draft Order
5 expresses the startling legal conclusion that the discharged water is "public water" precisely
6 because it has been abandoned by Aerojet. The Draft Order proclaims that the circumstances
7 under which Aerojet obtained its temporary custody of the groundwater are irrelevant, yet it
8 concludes that because of these circumstances the groundwater is "abandoned" and therefore
9 required to satisfy unmet needs of prior right holders.

10 Instead of allowing Petitioner the opportunity to establish a legal and equitable case for
11 priority over unmet vested rights, the Draft Order would blindly and arbitrarily countenance the
12 redistribution of the non-tributary groundwater for the benefit of the Bureau of Reclamation and
13 the City of Sacramento, among others. While the Draft Order acknowledges that SCWC met the
14 burden of demonstrating that the discharged water is in fact "new," it simply allocates the new
15 water to the unmet needs of senior right holders after time and again throughout the proceedings
16 having proclaimed that the question of whether the new water should be allocated to senior right
17 holders would be considered in a later phase of the process.

18 On the other hand, perhaps the Draft Order is an expression of the SWRCB's retreat from
19 a desire to manage water rights and water quality in a coordinated manner on the American
20 River. If unmodified, the Draft Order will allow Aerojet to divert the percolating groundwater it
21 contaminated and now discharges without the requirement of further permitting by the SWRCB.
22 Because under the terms of the Draft Order, if the discharged groundwater is not abandoned by
23 Aerojet, then it is not public water and it may be recaptured without regard to the unmet needs of
24 downstream vested rights.

25 The impact of this jurisdictional retreat does not end there. If the SWRCB wishes to
26 abdicate responsibility for setting terms and conditions for the diversion of the discharged
27 groundwater where it is not abandoned by Aerojet, then it necessarily follows that Petitioner,
28 who possesses a superior legal and equitable ownership interest in the treated groundwater in

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 comparison to Aerojet, may also simply recapture the discharged non-tributary groundwater from
2 the American River without the necessity of obtaining a permit from the SWRCB. This is so
3 because *Petitioner has not indicated any intention to abandon its rights to the discharged water.*
4 Consequently, if the Draft Order is holding that Aerojet, Petitioner and others are free to
5 recapture the discharged groundwater without regard for the fully appropriated stream status
6 under circumstances where they have not abandoned the supply, then Petitioner can promptly
7 initiate diversion and litigate questions of priority with any person or agency that contends
8 otherwise. Under this interpretation, Petitioner is happy to proceed forthwith, but respectfully
9 requests that the matter be clarified in the Final Order.

I.

NATURE OF THE PROCEEDINGS

13 Although Petitioner proved by overwhelming and uncontroverted evidence that "new
14 water" is being added to the American River by Aerojet's discharge of contaminated percolating
15 groundwater, the Draft Order concludes that Petitioner's request should be denied because
16 Petitioner failed to demonstrate that the needs of senior right holders would be satisfied by the
17 augmented supply. For the first time, the SWRCB announces a "two-prong test" for a successful
18 petition that is neither supported by statute, regulation, nor the SWRCB's prior decisions. At the
19 same time, the SWRCB denied Petitioner the ability to demonstrate its higher legal and equitable
20 claim to the groundwater discharged by Aerojet - the very demonstration which would have been
21 relevant to a determination under the new two-prong test - on the basis that such evidence would
22 be relevant only at the application phase.

24 **A. The Draft Order Does Not Reasonably Conform to the Notice Provided by**
25 **the SWRCB**

26 The SWRCB's regulations provide that hearings must be conducted according to the
27 provisions of the California Administrative Procedure Act ("APA"). (Cal. Code Reg. Title 23 §
28 648(b).) Under the California APA, "The statement of the factual basis for [a] decision shall be

1 based exclusively on the evidence of record in the proceeding and on matters officially noticed in
 2 the proceeding." (Gov't. Code § 11425.50.) The burden that was assigned to SCWC during the
 3 pre-hearing process, "... simply refers to whether there is new water" (April 26, 2002 Letter
 4 p.2.)

5 The Notice of the hearing established a standard against which SCWC's Petition was to
 6 be judged. The Draft Order acknowledges that SCWC met this standard, but then evaluated the
 7 Petition based upon an entirely different standard. This is a direct violation of Government Code
 8 § 11425.50. As a result of the procedural irregularities, the Draft Order denies Petitioner its due
 9 process rights and violates any notion of fundamental fairness associated with an administrative
 10 hearing. This has caused Petitioner prejudicial harm because under the standard that was
 11 articulated to Petitioner in the Notice, the Pre-Hearing Conference, the April 26, 2002 Letter
 12 from the Hearing Officer and in all of the subsequent discussions about the scope of the hearing,
 13 the Petition should have been granted.

14 **B. Notice, Pre-Hearing Conference, April 26, 2002 Letter and Subsequent**
 15 **Proceedings**

16 On March 6, 2002, the SWRCB issued a *Notice of Pre-Hearing Conference, Public*
 17 *Hearing and Petition to Revise Declaration of Fully Appropriated Stream Systems Regarding the*
 18 *American River, Sacramento County* ("Notice"). The Notice described a phased process
 19 according to which the SWRCB would first determine whether water is available that could serve
 20 as the subject for an application, and then, in a separate proceeding, would determine the merits
 21 of such an application as compared to the needs of competing complainants and environmental
 22 requirements. The Notice for the pre-hearing conference said that:

23 The hearing on the petition to revise the Declaration is not a hearing on the
 24 merits of SCWC's water right application, nor would approval of the petition
 25 require a finding that water is available in the quantity or during the entire
 26 season of diversion specified in the application. (March 6, 2002 Notice p.4.)

27 The general question to be answered by the proceeding was to be whether the SWRCB
 28 should revise the Declaration to allow the Division of Water Rights to accept and process water

1 right applications to appropriate treated groundwater discharged into the American River. (March
2 6, 2002 Notice p.4.) Toward this end, the Notice defined four specific issues to be resolved:

- 3 • Has adequate information been provided to demonstrate that there is a change in circumstances
4 since the American River system was included in the FAS Declaration?
- 5 • How much, if any, of the water discharged by the groundwater treatment operations is water that
6 was not considered at the time the American River system was included in the FAS Declaration?
- 7 • To what extent, if any, have flows in the American River been affected by groundwater treatment
8 operations, including both pumping and discharging, since the American River system was
9 included in the FAS Declaration?
- 10 • Has the petitioner provided sufficient hydrologic data, water usage data, or other relevant
11 information to support a determination that there is unappropriated water in the American River
12 system during the season applied for to justify revising the Declaration for the purpose of
13 accepting and processing water right applications related to the discharges of treated groundwater
14 into the American River?

15 A pre-hearing conference was held on April 25, 2002, and a number of parties made
16 appearances. Some indicated confusion on the intended scope of the hearing. (Pre-Hearing
17 Conference RT, 11:11-20:14.) The Hearing Officer and staff counsel provided verbal
18 clarification that the hearing would be limited to hydrologic conditions. (Pre-Hearing Conference
19 RT, 12:12-15; 15:12-13.) In other words, the expressed guidance was that the SWRCB was to
20 reserve for the second, or application, phase the question of who should get any water that is
21 available, and in what quantities and when.

22 Following the pre-hearing conference, the requested clarification on the scope of the
23 hearing was formally provided by the Hearing Officer in a letter dated April 26, 2002.

24
25 For purposes of this proceeding, a finding that water is available simply refers to
26 whether there is new water, different from the water understood to be available
27 when the orders that are the basis for listing the stream on the Declaration were
28 issued. Put another way, it means only that water is available that was not taken

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

into consideration when it was originally determined that the river was fully appropriated.

...
A conclusion in this proceeding that water is available does not amount to a determination that water is "available for appropriation," consistent with Water Code sections 1243 and 1375, subsection (d)

...
This proceeding does not reach the merits of an application, including whether any "new" water identified in this proceeding is required to go to senior water users, or for environmental purposes.

(April 26, 2002 Letter p.2, emphasis added.)

In reliance on this letter of clarification, Petitioner reasonably assumed that its priority right to the groundwater contaminated by Aerojet and being treated and discharged into the American River as against the requirements of senior appropriators of native water would be addressed in the application phase. The entire emphasis of Petitioner's claim to priority over the unmet senior appropriations turns on the circumstances under which the groundwater is being discharged by Aerojet under a Regional Board clean-up order.

Based upon the Notice, the pre-hearing conference and the subsequent letter of April 26, 2002, Petitioner generally confined its case to the admonition of the SWRCB as to what was relevant at this purely procedural stage. Taken collectively, the SWRCB direction was that the question for the hearing would be whether there is "new" water in the river that is "different" from the water that was in the river when the river was declared to be fully appropriated.

Nowhere in any of the communication from the SWRCB to the parties did the SWRCB suggest that Petitioner was obligated to demonstrate that its priority right to the discharged non-tributary groundwater should be satisfied before the needs of senior appropriators of native water. The letter does not indicate that the purpose of the hearing would be to determine how the new water would have been allocated had it been in the river in 1958-1964, and, in fact, the letter

HATCH & PARENT, A LAW CORPORATION
21 East Cañillo Street
Santa Barbara, CA 93101

1 explicitly excludes from consideration the question of whether the water is required to go to
 2 senior water users.

3 Indeed, Petitioners reasonably concluded based upon the Notice, that in order to be
 4 consistent with the Notice, the hearing on the Petition would be required to exclude consideration
 5 of senior water users. If the hearing were to result in a finding that the water at issue should go to
 6 senior water users, then it would necessarily need to find that SCWC does not have any claims to
 7 that water that might give it a greater priority. These are precisely the claims that would be
 8 presented through SCWC's Application. In other words, any finding concerning senior water
 9 users would necessarily involve a decision on SCWC's Application. Such a finding is in direct
 10 conflict with the phased process announced in the Notice.

11 **C. The Hearing Officer's Rulings Confirmed the Limited Scope of the Hearing:**
 12 **Testimony by SCWC Was Excluded That Would Have Been Relevant if the**
 13 **SWRCB Were to Compare the Relative Rights of the Parties to Non-**
 14 **Tributary Groundwater Discharged by Aerojet**

15 SCWC attempted to establish background and context for the conditions under which
 16 the discharged groundwater was being added to the American River. However, based upon the
 17 understood scope of the hearing, Aerojet filed an objection to portions of SCWC and the
 18 County's proffered testimony. (Aerojet Objection dated May 30, 2001.) Aerojet noted that, "[t]he
 19 SWRCB has defined the objective of this proceeding to be the determination of whether there is
 20 "new water" justifying a revision to the declaration . . ." (Aerojet Objection 2:17-19.) The
 21 evidence that Aerojet objected to was testimony the County offered, "asserting the County's
 22 claim of a senior water right . . ." and testimony offered by SCWC about Aerojet's impairment of
 23 its water rights. (Aerojet Objection 4:5-20.)

24 At the May 31, 2002 Hearing, the Hearing Officer *sustained* Aerojet's objection as to
 25 SCWC. That portion of SCWC's proffered written testimony that was relevant to the question of
 26 whether Aerojet had wrongfully obtained possession of the Petitioner's groundwater by trespass
 27 (and thus whether the treated water could be considered abandoned) was stricken, except for
 28

1 those portions relating to general physical facts concerning the locations in question in the
2 hearing. (RT: 14:17-15:9.) The Hearing Officer stated that:

3 I am prepared to allow some of this testimony as to the number, status of wells as general background
4 information. (RT, 14:20-22.)

5 ...
6 [M]uch of the underlying facts in Exhibit 8 speak to the general physical location situation at the location
7 and will be allowed. (RT, 15:7-9.)

8
9 In other words, SCWC's testimony was allowed in the hearing only to the extent that it
10 pertained to physical facts. Issues that may have been relevant to determining the relative priority
11 of the competing claimants and the potential success of an Application filed by SCWC based,
12 upon the superiority of its right to the discharged groundwater over appropriators of native water,
13 were specifically excluded from the hearing.

14 The Hearing Officer addressed the objection to the County's evidence in a consistent
15 manner by letter to the parties dated June 12, 2002. The Hearing Officer excluded evidence
16 offered by the County regarding the ultimate disposition of the discharged water, including
17 whether any new water identified would be required to go to senior water right users.

18 Similar treatment was accorded the United States Bureau of Reclamation ("USBR")
19 which introduced testimony the sole purpose of which was to argue that the FAS Declaration
20 should not be revised based upon impacts to senior right holders. The Draft Decision relies
21 heavily upon this testimony and, in fact, Figure 2 from the Draft Order is merely a modified
22 version of USBR's Exhibit 1. (See Draft Order p.19.) However, at the hearing after the USBR
23 provided a description of its intended testimony, the Hearing Officer explicitly acknowledged
24 that this material was outside the noticed scope of the hearing.

25
26 H.O. Silva: For the benefit of the other parties, I think we agree this sort of goes beyond the original intent
27 of [this] hearing, but we are allowing it in at this time.

28

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

HATCH & PARENT, A LAW CORPORATION
21 East Carrille Street
Santa Barbara, CA 93101

1 Mr. Turner: As you mentioned, Mr. Silva, at the prehearing conference, what we were trying to - you were
2 looking at the question as to whether this water is new water and, therefore, should be subject to
3 appropriation or whether it is water that was taken into account when the stream was declared fully
4 appropriated. I recognize that. . . (RT, 101:4-12.)

5
6 Identical expressions of the limited scope of the hearing are replete throughout the record.
7 For example, in its opening statement at the hearing, Aerojet described the purpose of the hearing
8 as follows:

9
10 The issue before this Board is whether water that Aerojet is discharging or may discharge into the
11 American River is water that was taken into account when the Board adopted this Declaration of Fully
12 Appropriated Stream System. (RT, 151:6-10.)

13
14 . . . Aerojet is participating in this hearing to offer its evidence concerning the nature of the groundwater
15 extracted by its wells and urges the Board to continue on the path it has set out, determining in this hearing
16 whether there is new water available in the American River . . . (RT, 152:16-21.)

17
18 In a letter submitted by the Friends of the River to the SWRCB on May 9, 2002, Friends
19 of the River based its decision to withdraw from the proceedings on the limited scope:

20
21 After reviewing the focus of issues to be considered at the upcoming hearing on revising the fully
22 appropriated stream status of the American River, it appears that the scope of the Board's inquiry
23 (whether "non-native" water has been introduced into the river since the initial declaration) is
24 quite narrow. . . Clearly, providing the petitioners with guidance on whether they can claim
25 "priority" on such "abandoned" groundwater discharges over senior water rights holders and
26 public trust values is fundamental to their understanding of the wisdom of the approach on which
27 they appear to be embarking . . . The scope of this proceeding will not clarify these issues.

28

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 The County of Sacramento similarly criticized the limited nature of the proceedings and
2 urged the SWRCB to look beyond what the County perceived to be the noticed scope of the
3 hearing, though as indicated above, the SWRCB denied this request.

4
5 ... as we take a look at whether this is "new water" or not we are being told that we can't take a look at the
6 context or the history of how the water was developed and the whole story what's being done here. So it is
7 a very difficult situation to deal with. (RT, 258:19-23.)

8 ...
9 So treating it as new water without any of that context really ignores a very fundamental aspect of what the
10 Board needs to dwell on and look at as it analyzes this question. It is not purely just simply a physical
11 hydrologic question of is this water that would or wouldn't be in the river. (RT, 259:15-19.)

12
13 Finally, the City of Sacramento presented two witnesses at the hearing: Mr. Gary Reents
14 and Mr. Robert Wagner. The purpose of Mr. Wagner's testimony was to offer an opinion on
15 whether the petitioner had met the burden that was established for it.

16
17 [I will] briefly summarize the issue that I focused on, which I think was set forth by the Board in a letter
18 dated ... April 26th, 2002, which sort of defined, I think, the issue before us, which is whether the water
19 sought by the petitioner, Southern California Water Company, is new water. And new water is defined in
20 that direction from the Board, water that was not previously considered at the time the Lower American
21 River became fully appropriated or was declared fully appropriated by the decisions that led to its listing in
22 1989. (RT, 285:10-20.)

23
24 The City, in fact, seems to have anticipated the very problem which now confronts
25 Petitioner and the SWRCB:

26
27 While the Board has narrowly scoped this proceeding, as we just saw in the discussion that preceded this
28 and otherwise, you are allowing considerable testimony that goes outside the scope that you defined. And

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

in addition, a number of written submittals that we have seen contain statements which either go beyond the scope or mischaracterize the scope. So we would just like to strongly recommend that this will not be a problem, provided that the Board is very careful in the findings and determination it makes and avoids compromising the due process of this proceeding but limiting itself as articulated by you during the prehearing conference and, of course, the correspondence that preceded that prehearing conference. (RT, 279:20-280:8 emphasis added.)

**II.
THE DRAFT ORDER**

A. Substantial and "Uncontroverted" Evidence Demonstrated a Change of Circumstances Sufficient to Warrant a Limited Revision of the FAS Declaration Justifying the Processing of Petitioner's Proposed Application

The record is replete with uncontroverted substantial evidence that the non-tributary groundwater that Aerojet is and will discharge into the river is "new" water. In fact, the SWRCB correctly found that substantially all of the water discharged by Aerojet constitutes new water.

We find that groundwater in Layers B through E beneath the WGSA is new water, and that groundwater in Aquifers C through E beneath the ARGET is new water. (Draft Order section 7.1 (p. 16).)

The decision to include the Lower American River in the FAS Declaration was based upon SWRCB decisions adopted between 1958 and 1965. This time frame provides the baseline from which to decide whether there has been a change in circumstances resulting in additional water entering the Lower American River. Aerojet did not begin its groundwater treatment operations until August of 1998 – *more than thirty years after* any of the possible baselines suggested by any party. (RT, at 51:5-9; RT, at 111:21-24.) It is not possible that the groundwater treatment operations at issue in this hearing were considered by the SWRCB when it included the Lower American River in the FAS Declaration.

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 Mr. Keith DeVore, the Director of the Department of Water Resources for the County of
2 Sacramento and Sacramento County Water Agency further testified that the "discharge
3 constitutes new water that was not considered in [the] FAS Declaration." (County Exh. 1 at 1.)

4 The treated groundwater . . . discharged by Aerojet into Buffalo Creek, and subsequently
5 discharged into the American River, is water not considered in any of the FAS Declarations
6 previously certified. Moreover, to the knowledge of the authors of this testimony, this water has
7 not been included in any hydrologic modeling conducted by the resource agencies for CEQA,
8 NEPA and ESA compliance documents . . . In addition, the subject water has not been
9 incorporated in any hydrologic modeling conducted in recent environmental documents prepared
10 by SWRI [Surface Water Resources, Inc.] on behalf of various resource agencies. (County Exh.
11 2, at 12.)

12 The discharges were physically observed by Petitioner's expert Anthony Brown and Alex
13 McDonald of the RWQCB and the volume was estimated in amounts up to 30,000 acre-feet per
14 year. (Draft Order, pp.6-8.) The hydrologic conditions that governed the American River were
15 surveyed, modeled and analyzed by experts for Petitioners, the County, and Aerojet. Virtually all
16 the credible evidence corroborates the fact that the water is both non-tributary groundwater and
17 was not considered during the prior fully appropriated stream determinations. Collectively, the
18 substantial administrative record cited in Petitioner's closing brief, and not repeated here for
19 purposes of brevity, demonstrates that a very large volume of non-tributary groundwater is being
20 discharged into the American River and that this is a change in the hydrologic condition.

21 With the underlying record in this proceeding, the limited scope of the hearing, and the
22 prior decisions of this SWRCB, a revised FAS Declaration was clearly proper. However, despite
23 the relatively uncontested physical evidence and expert reports, the Draft Order would deny
24 Petitioners the requested relief solely based upon two legally incorrect procedures: (1) declaring
25 the circumstances under which Aerojet is discharging the non-tributary groundwater to be
26 irrelevant to the proceeding while simultaneously considering the issue of abandonment and the
27 needs of unmet appropriators, and (2) establishing a new unnoticed two-pronged test for
28 establishing a "change of circumstances."

1 **B. The Draft Order Makes the Incorrect Legal Conclusion That the Discharged**
2 **Water Is "Abandoned" While All Evidence That May Have Informed Such a**
3 **Determination Was Excluded From the Hearing**

4 The importance of whether the groundwater discharged by Aerojet is abandoned is of
5 critical importance to the proposed decision to deny Petitioner's request. The Draft Order
6 actually turns on the Draft Order's legal conclusion that the discharged water is "abandoned."
7 (Draft Order § 6, pp.14-15.) Based upon the classification of the water as "abandoned," the Draft
8 Order concludes that the discharged non-tributary groundwater is public water, and thus would
9 have been available to senior right holders, and not to SCWC, had it been discharged to the river
10 in 1958-1964.

11 However, as noted above, the Draft Order does not consider whether its ultimate
12 conclusion that the groundwater is "abandoned" is appropriate in this context. In other words, the
13 Draft Order does not consider whether it is possible for a wrong-doer to possess rights in the
14 water such that it can "abandon" it as that term is used in the law. The analysis essentially
15 depends on the assumption that Aerojet has a full ownership interest in the water which it has
16 contaminated and then been ordered to pump and treat. This assumption, however, has no
17 grounding in any of the evidence in the record, precisely because all such relevant evidence was
18 explicitly excluded.

19 This issue of whether the water that is being discharged by Aerojet is properly classified
20 as "abandoned" was a subject that SCWC actually attempted to address at the hearing. As seen
21 above, the position of the USBR during its testimony was that the discharged water should be
22 made available to satisfy existing right holders. For example, on cross-examination, Petitioner
23 presented a series of hypotheticals to the USBR witness that tested the opinion concerning
24 whether these new flows should be made available to senior right holders. (RT, 115:6-117:10.)
25 The primary issue upon which the USBR's opinion rested was that the water should be made
26 available to senior right holders because it is "abandoned." (RT, 116:4-7.)

27 Petitioner then offered a hypothetical which purpose was to challenge the appropriateness
28 of the assumption of the water as "abandoned." (RT, 116:19-21.) Aerojet objected to such

HATCH & PARENT, A LAW CORPORATION

21 East Camino Street

Santa Barbara, CA 93101

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 questioning. (RT, 117:3-5.) The Hearing Officer sustained the objection stating that, "I think we
2 are getting too far into the next phase." (RT, 117:6-8.)

3 **C. The Draft Order Arbitrarily Concludes That the Circumstances Under**
4 **Which Aerojet Obtains Temporary Possession of the Discharged**
5 **Groundwater Are Irrelevant to the Proceeding**

6 The Draft Order incorrectly, arbitrarily and contrary to law determines that the
7 circumstances under which Aerojet makes the discharge are not relevant to the question of
8 whether the groundwater was abandoned. Had Petitioner been allowed, it would have offered
9 evidence that Petitioner has continuously produced groundwater from the Sacramento Basin for
10 almost 50 years to serve to its municipal customers and that it now must seek replacement water
11 due to contamination of the groundwater supply. Had Petitioner been permitted, it would have
12 presented evidence on the extensive perchlorate contamination of the Sacramento Groundwater
13 Basin caused by Aerojet, and therefore the record would reflect that Aerojet's possession of the
14 treated groundwater is solely as a consequence of its wrongful conduct. Petitioner has both a
15 legal and equitable interest in the discharged supply because, having trespassed against
16 Petitioner's groundwater rights by contamination, Aerojet's interest is merely that of an
17 involuntary trustee of the water for the benefit of Petitioner and other parties injured by the
18 contamination under the legal doctrine of "constructive trust."

19 The constructive trust doctrine is an equitable remedy that requires a person who has
20 wrongfully acquired property to return the property to its rightful owner. (See Civil Code § 2224;
21 *Haskel Engineering & Supply Co. v. Hartford Acc. & Indem. Co.* (1978) 78 Cal.App.3d 371,
22 378.) "[T]he wrongful act giving rise to a constructive trust need not amount to fraud or
23 intentional misrepresentation. All that must be shown is that the acquisition of the property was
24 wrongful and that the keeping of the property by the defendant would constitute unjust
25 enrichment." (*Calistoga Civic Club v. Calistoga* (1983) 143 Cal.App.3d 111, 116; see also
26 *Martin v. Kehl* (1983) 145 Cal.App.3d 228; *Santa Clarita Water Company v. Lyons* (1984) 161
27 Cal.App.3d 450, 462.)

28

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 In the instant case, the only reason that Aerojet is allowed to produce, treat and discharge
 2 the treated groundwater is that it does so pursuant to a cleanup order issued by the Regional
 3 Quality Control Board whereby it is remediating the groundwater basin that it polluted.
 4 Aerojet's unlawful interference with Petitioner's perennial right to appropriate groundwater is a
 5 trespass and therefore, wrongful. (*Santa Clarita Water Company v. Lyons* (1984) 161 Cal.App.3d
 6 450, 451.) Accordingly, Aerojet's unlawful acquisition of the groundwater unequivocally
 7 supports the imposition of a constructive trust against Aerojet. (*Santa Clarita Water Company v.*
 8 *Lyons* (1984) 161 Cal.App.3d 450, 462; *See Heckman v. Ahmanson* (1985) 168 Cal.App.3d 119
 9 (requiring the return of the property to the rightful owner).) The only duty of a constructive
 10 trustee is to convey the property to its rightful owner. (*Calistoga Civic Club v. City of Calistoga*
 11 (1983) 143 Cal.App.3d 111, 117.)

12 Such evidence is undoubtedly relevant to the question of whether the water at issue is
 13 "abandoned." However, this is precisely the evidence that was excluded when Aerojet's
 14 evidentiary objection was sustained. Such evidence was declared to be outside the noticed scope
 15 of the hearing, and consequently, no conclusions made by the Draft Order concerning whether
 16 the water at issue is abandoned can be made based upon evidence in the record.

17 The Draft Order should be revised to indicate that it is the intention of Petitioner and the
 18 injured parties that is relevant to the determination of whether the discharged groundwater has
 19 been abandoned and that, pursuant to the noticed scope of the hearing, such a determination will
 20 be made in the second phase of these proceedings. For the benefit of this second phase it is worth
 21 noting here that *SCWC has no intention of abandoning its interest in the discharged*
 22 *groundwater.*

23 **D. The Draft Order's Requirement That Petitioner Satisfy a Two-Pronged Test**
 24 **is Inconsistent With the Statutory Scheme and the Proper Exercise of Board**
 25 **Discretion**

26 Despite all the admonitions and assurances regarding the scope of the proceeding, the
 27 Draft Order announces that to demonstrate a "change of circumstances" and thereby prevail on
 28 the merits, a petitioner must now prove that not only are there substantial quantities of new water

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 but that the new water is of sufficient magnitude to satisfy the unmet needs of downstream
2 appropriators. Of course, the very first time that the second part of the Draft Order's two-part test
3 was ever mentioned by any party or the SWRCB itself, was in the Draft Order itself when it
4 became the sole basis for the denial of the Petition.

5 The "change in circumstances" refers to a change in circumstances from those
6 considered in previous water right decisions . . . this consists of two elements.
7 First, the petitioner must show that the water at issue is "new water" . . . Second,
8 the petitioner must show that if the water is new water, circumstances have
9 changed so that it would have been available for appropriation by new users
10 during the relevant time period. (Draft Order p.16.)

11 By definition, the statement of the test presumes the resolution of the express issue the
12 April 26, 2002 Letter indicated would be reserved for the Application phase: Whether the unmet
13 needs of senior appropriators would prevail over the needs of the injured groundwater user.

14 [Denial of the Petition] is based on a finding that the water at issue would not
15 have been available for new appropriation if the water had been discharged into
16 the American River at the time the decisions were issued that provide the basis
17 for listing the River on the Declaration. Rather, the water would be allocated in
18 order of priority to surface water right holders in the Basin at that time. (Draft
19 Order p.2.)

20
21 We find that even if the treated groundwater at issue in the proceeding was not
22 tributary to the river during the relevant time period (i.e. it is "new" water), if it
23 had been discharged to the river at the time, it would have been dedicated to
24 satisfying unmet demands with a higher priority than any permit SCWC might
25 acquire. (Draft Order p.22.)

26
27 Thus, even though SCWC met its burden to establish that a portion of the
28 discharged water is water that would not otherwise have reached the River in

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 1958 to 1964, SCWC did not demonstrate that the circumstances have changed
 2 so that this "new water" would have been available in 1958 to 1964. (Draft
 3 Order p.28.)
 4 Petitioner's request to revise the FAS Declaration and the Draft Order's introduction of
 5 the new *sine qua non* for establishing a change in circumstances must be evaluated in the
 6 prevailing statutory context. In summary, applicable statutes and regulations provide that a
 7 petitioner must demonstrate good cause for the Declaration to be revised for the filing of an
 8 application under specified circumstances and that the application be tested on the merits against
 9 competing claims and the subsequent exercise of SWRCB discretion.

10 Water Code § 1205 authorizes the SWRCB to declare a stream system fully appropriated
 11 where previous water rights decisions have determined that "no water remains available for
 12 appropriation." In the instant case, the SWRCB initially exercised its discretion to designate the
 13 American River as fully appropriated in WR 89-25, and it has chosen to maintain that
 14 designation in subsequent orders. (See WR 90-2; WR 91-07; WR 98-08.) However,
 15 notwithstanding the designation, the Water Code § 1206 invests the SWRCB with *discretion* to
 16 establish conditions for the future processing of applications. In relevant part, § 1206(a)
 17 authorizes the SWRCB to:

18 [P]rovide, in any declaration that a stream is fully appropriated, for acceptance for filing of
 19 applications to appropriate water under specified conditions. Any provision to that effect shall
 20 specify the conditions and may contain application limitations, including but not limited to,
 21 limitations on the purpose of use, the instantaneous rate of diversion, or the season of diversion,
 22 and on the amount of water that may be diverted annually. The board may make the limitations
 23 applicable to individual applications to appropriate water or to the aggregate of the applications or
 24 to both. (Water Code Section 1206(a) emphasis added.)

25 Under the plain meaning of Section 1206(a), the SWRCB has authority to authorize the
 26 filing and processing of specific applications under specified conditions and to make those
 27 conditions applicable to individual applications. California Code of Regulations § 871 further
 28

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 supports the notion that the SWRCB has discretion to revise the FAS Declaration for good cause.

2 The SWRCB's revision of the FAS Declaration

3 ... may be based upon any relevant factor, including but not limited to a change of circumstances
4 from those considered in a previous water right decision determining that no water remains
5 available for appropriation, or upon reasonable cause derived from hydrologic data, water usage
6 data, or other relevant information acquired by the Division of Water Rights in the course of the
7 investigation conducted by it. (Ca. Code Reg. § 871(b).)

8 The Draft Order's articulation of a requirement that Petitioner satisfy both prongs of its
9 two-pronged test to establish a change of circumstances constitutes an impermissible limitation
10 on Petitioner's ability to request and the SWRCB discretion to grant a Petition. By their express
11 wording, neither Water Code § 1206 nor CCR § 871(b) constrain the SWRCB from revising the
12 fully appropriated stream status solely upon Petitioner's demonstration of a "change of
13 circumstances." In fact, CCR § 871(b) expressly states that the reasonable cause may be based
14 on other factors; for example, the SWRCB may elect to issue a revision on good cause based
15 upon hydrologic data or other relevant information. (Cal. Code Reg. § 871(b).)

16 Moreover, there is no requirement that Petitioner establish that the new water is adequate
17 to satisfy the requirements of all unmet appropriations of *native* water as a precondition to the
18 SWRCB revising the FAS Declaration. No such standard is ever made the predicate of a
19 successful application in either statute or regulation. Our research has not disclosed a single
20 instance in which such an interpretation has ever been raised, considered or applied by the
21 SWRCB in the context of a fully appropriated stream designation. The SWRCB's most recent
22 decision regarding the standard to be applied to a petition filed for the revision of a fully
23 appropriated stream in WR Order 2000-12, *In re Matter of the Petitions to Revise Declaration of*
24 *Fully Appropriated Streams to Allow Processing Specified Applications to Appropriate Water*
25 *From the Santa Ana River*, makes no mention of this two-pronged test. (See further *In the Matter*
26 *of Application 27554 of the Lost Hills Water District (1994) WR 94-1.*)

27 As a result, the Draft Order is not based on whether there is actually "new water"
28 available or whether the "new water" was not taken into consideration when it was originally

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 determined that the river was fully appropriated. Rather, the Draft Order is based upon a
2 counterfactual situation which postulates what would have happened had this water been
3 available in the American River in 1958-1964!¹

4 Furthermore, the Draft Order applies its new two-pronged test in an arbitrary manner. The
5 Draft Order postulates what would have happened had the water been available in the relevant
6 time period, but fails entirely to include in that scenario the issue of why the water is available.
7 That is, it considers the availability of the water in the counterfactual situation, but does not
8 consider the facts and circumstances surrounding why the water is available. But if the water had
9 been discharged to the river during the relevant time period, such considerations would have
10 been relevant to an application filed by SCWC and, "any permit that SCWC might acquire."
11 (Draft Order p.22.) Additionally, the Draft Order does not provide any description of the factors
12 were used in the hypothetical consideration of what would have happened had the water been
13 available in 1958-1964. For example, in its consideration of "any permit that SCWC might
14 acquire," did the Draft Order consider the availability of the water under the Water Code and
15 precedents as they existed in 1958-1964, or did it apply the current state of the law to the
16 hypothetical 1958-1964 scenario?

17 **E. If the Draft Order Should Be Read to Authorize Petitioner's Recapture of its**
18 **Groundwater Discharged by Aerojet Without a Permit, Then the Order**
19 **Should be Revised to Make This Clear**

20 As some potential consolation to Petitioner, the Draft Order suggests that the producer of
21 foreign water can stop abandoning the water and instead dispose of the water pursuant to a
22

23 ¹ It is worth noting in this regard that no party who participated in the hearing process
24 offered any evidence concerning whether an application to appropriate non-tributary groundwater
25 if it had been filed by SCWC in the time period 1958-1964 would have been processed. (See
26 Draft Order Section 5.2 "Positions of the Parties.") In fact, a careful reading of the SWRCB's
27 substantive consideration of testimony provided by any party. The reason why the SWRCB does
28 not provide such an analysis is because it has nothing to analyze: no party submitted evidence
concerning how the water at issue in the Petition would have been allocated in the time period
1958-1964. And the reason for this omission is similarly simple: no party thought this was to be
an issue in the hearing and it tests rational thinking to believe that the SWRCB would
intentionally make it so.

HATCH & PARENT, A LAW CORPORATION
21 East Camino Street
Santa Barbara, CA 93101

1 contract or otherwise. (Draft Order p.15.) In this way, the unmet needs of downstream surface
2 water right holders would not preclude the discharge and recapture of the non-tributary
3 groundwater.

4 Apparently, the Draft Order would countenance the use of the American River to convey
5 and recapture groundwater without the requirement of a permit from the SWRCB so long as the
6 water has not been abandoned. (Draft Order p.15; *Water Code Section 7075*; *See also RWQCB*
7 *February 27, 2002 Letter p.2 (Issue No. 1).*) Petitioner believes that such a construction is
8 anathema to the SWRCB's dual role of managing water quantity and water quality and will push
9 the parties to further litigation in the courts to determine the relative rights to the discharged
10 groundwater.

11 Other western states maintain control over surface water while routinely allowing the
12 appropriation of foreign or developed water outside of the priorities governing native water
13 through an order that the native supply has been augmented. For example, Colorado allows
14 parties to develop augmentation plans under which developed water, such as non-tributary
15 groundwater, can be added to a surface water body and then diverted outside of the surface water
16 priority system. (Colo. Rev. Stat. 37-92-103(9); *Cache La Poudre Water Users Ass'n v. Glacier*
17 *View Meadows (1976 Colo.) 550 P.2d 288.*) However, such augmentation plans require
18 recognition by the State Engineer and the Water Courts. In this way traditional priorities are
19 respected as is the integrity of the water rights administration system.

20 However, if the SWRCB is committed to the approach presented in the Draft Order,
21 Petitioner respectfully requests that the Draft Order be amended so as to expressly acknowledge
22 the right of Petitioner and other parties injured by the contamination to assert their legal and
23 equitable right, title and interest in the discharged groundwater and their co-extensive right to
24 recapture the groundwater from the American River without filing an Application to Appropriate
25 with the SWRCB on a basis superior to Aerojet.

26 **F. The Draft Order Constitutes a Windfall for Downstream Appropriators of**
27 **Surface Water and is Contrary to the Stated Intent of the RWQCB to**
28 **Provide a Replacement Water Supply for the Affected Communities**

HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101

1 If the Draft Order is not modified, the citizens of Rancho Cordova will suffer the loss of a
2 declining groundwater supply as a result of pervasive perchlorate contamination of groundwater
3 that is literally sucked from beneath their feet, treated and discharged by Aerojet to the American
4 River. The initial beneficiary of the activity will be the USBR who will benefit by acquiring a
5 new water supply of up to 30,000 acre-feet a year. The USBR will acquire this windfall, not by
6 merit, but simply by virtue of the location the RWQCB selected for the discharge of the non-
7 tributary water.

8 Yet, immediately prior to the SWRCB's issuance of the Notice, the RWQCB, Central
9 Valley Region sent a letter to the SWRCB recommending that certain issues be part of the
10 SWRCB's consideration of SCWC's Petition. (February 27, 2002 Letter.) This letter was quite
11 clear that the RWQCB intends that the water at issue in the hearing should be used to provide
12 replacement water for the communities affected by the Aerojet groundwater contamination.

13 The ROD contemplates that this treated groundwater be discharged to surface
14 water and would be made available for reuse in the affected area to compensate
15 for impacts to the groundwater basin caused by the contamination. (February 27,
16 2002 Letter p.5.)

17 The SWRCB's decision however, eviscerates this intention. If the Draft Order is adopted
18 as written, then none of the water suppliers for the communities adversely impacted by the
19 contamination will have any realistic opportunity to make use of the discharged water. Yet the
20 Draft Order turns a blind eye, apparently because this does not constitute reasonable cause for a
21 limited revision of the FAS Declaration.

24 III.

25 CONCLUSION

26 The SWRCB should reconsider the Draft Order and revise it to grant SCWC's Petition. A
27 proposed revised version of the Order is attached to these Comments as Exhibit "A." To do
28 otherwise would be a violation of SCWC's basic procedural due process rights. Perhaps more


1 importantly, however, adoption of the Draft Order would turn on its head the groundwater
 2 cleanup operation which is intended to help provide a replacement water supply for the affected
 3 communities. The Draft Order in its current form will prevent the affected communities from
 4 having access to the treated groundwater, and instead will make the water available to other
 5 parties who have not been harmed by the contamination of the groundwater basin. As was noted
 6 at the hearing, this result is a double penalty to the purveyors in this area. They were once
 7 penalized by the perchlorate contamination, and now they would be penalized a second time by
 8 the Draft Order that would dedicate the discharged groundwater to the Bureau. As such, the
 9 Draft Order is arbitrary, unreasonable, bad public policy and manifestly unfair.

HATCH & PARENT, A LAW CORPORATION
 21 East Carrillo Street
 Santa Barbara, CA 93101

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 11, 2003

HATCH & PARENT, A LAW CORPORATION

By: 
 SCOTT S. SLATER
 MICHAEL T. FIFE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is HATCH AND PARENT, 21 East Carrillo, Santa Barbara, California 93101. On June 12, 2003, I served the within document:

SCWC COMMENTS TO DRAFT ORDER WRO 2003-XXXX

(by electronic submission) on the following parties, at their email addresses provided:

State Water Resources Control Board
Division of Water Rights
1001 I Street, 14th Floor
Sacramento, CA 95814
WrHearing@waterrights.swrcb.ca.gov

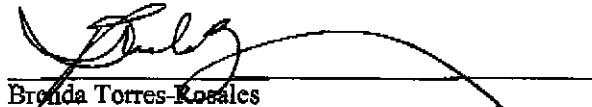
by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Barbara, California, addressed as set forth below.

SEE SERVICE LIST BELOW

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 12, 2003, at Santa Barbara, California.


Brenda Torres-Rosales

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

HATCH AND PARENT

21 East Carrillo Street
Sacramento, CA 95814

1	<u>ADDRESS</u>	<u>FACSIMILE</u>	
2	Ronald M. Stork 915 20 th Street Sacramento, CA 95814	916-442-3396	
4	Jan Driscoll 501 W. Broadway, Ninth Floor San Diego, CA 92101	619-233-1158	
6	Stuart L. Somach/William E. Hvidsten 400 Capitol Mall, Suite 1900 Sacramento, CA 95814	916-446-8199	
8	Janet K. Goldsmith 400 Capitol Mall, 27 th Floor Sacramento, CA 95814-4417	916-321-4555	
10	Martha H. Lennihan Lennihan Law APC 2311 Capitol Avenue Sacramento, CA 95816	916-321-4422	
13	Jennifer Decker Department of Fish and Game 1416 Ninth Street, 12 th Floor Sacramento, CA 95814	916-654-3805	
15	M. Catherine George, Staff Counsel State Water Resources Control Board 1001 "T" Street P.O. Box 100 Sacramento, CA 95812	916-341-5199	
18	Timothy V.P. Gallagher Gallagher and Gallagher 1950 Century Park East Suite 950 Los Angeles, California 90067	310-203-2610	
21	James E. Turner Office of the Regional Solicitor PSW Region 2800 Cottage Way, E-1712 Sacramento, CA 95825	916-978-5694	
24	Jean McCue State Water Resources Control Board 1001 "T" Street Sacramento, CA 95812	916-341-5400	by Electronic Submission
27	Alexander MacDonald Regional Water Quality Control Board 3443 Rontier Road, Suite A Sacramento, California 95827	707-523-0135	