

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2008-0016

In the Matter of the Petition for Reconsideration by the
**NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT OF
STATE WATER RESOURCES CONTROL BOARD ORDER
WR 2006-0018-DWR DENYING AN EXTENSION OF TIME**

Permit 10477 (Application 12842)

SOURCE: Mokelumne River

COUNTY: San Joaquin

**ORDER PARTIALLY SETTING ASIDE WR 2006-0018-DWR AND
CONDITIONALLY APPROVING AN EXTENSION OF TIME**

BY THE BOARD:

1.0 INTRODUCTION¹

The North San Joaquin Water Conservation District (District) holds Permit 10477 (Application 12842) for the diversion of water from the Mokelumne River in San Joaquin County. On November 30, 2006, the Deputy Director for Water Rights (Deputy Director)² issued Order WR 2006-0018-DWR denying the District's petition for extension of time to complete beneficial use under Permit 10477. The District petitioned for reconsideration of the Deputy Director's order. On February 20, 2007, the State Water Resources Control Board (State Water Board or Board) granted reconsideration, subject to further action of the Board after an evidentiary hearing. Based on the evidence in the record, and as discussed below, the State Water Board sets aside the portion of Order WR 2006-0018-DWR denying the time extension.³ The State

¹ This order is not a precedent decision and may not be expressly relied on as precedent. (Gov. Code § 11425.60, subd. (a); State Water Resources Control Board Order WR 96-1 at 17, fn. 11.)

² In November 2006, the Deputy Director for Water Rights was referred to as the Chief of the Division of Water Rights. For ease of reference, the title "Deputy Director" will be used irrespective of the date of the change in title.

³ In Order WR 2006-0018-DWR, the Deputy Director also conditionally approved changes in point of diversion and place of storage sought by the District. The District did not petition for reconsideration of the Deputy Director's conditional approval of those changes and those approvals are not considered in this order.

groundwater in dry years, and to build recharge basins and pumping facilities. (R.T., pp. 93-94; NSJ-7, ¶ 7.) Additionally, a portion of the revenue will be used to eliminate the current surface water charge for existing agriculture, thereby encouraging people to begin using surface water again. (R.T., p. 93.) Moreover, as discussed above, the District has annexed an adjoining 100,000 acres to its existing 50,000 acres to allow additional irrigation and groundwater recharge activities, and it has filed a petition with the State Water Board seeking the necessary approvals to implement this project. (NSJ-1, ¶ 20.)

According to the District, in the past, the District has not had sufficient infrastructure to convey surface water to landowners in the District. (NSJ-7, ¶ 4.) With revenues from the groundwater charge, the District can improve its infrastructure and provide a more dependable surface supply. (NSJ-7, ¶ 7; NSJ-8, ¶¶ 5-7.) The District's witnesses testified that if surface water could be made available on a consistent, reliable, basis, then the farmers would use the water. (NSJ-7, ¶ 4; NSJ-8, ¶ 3; NSJ-9, ¶¶ 4-7.) In addition, representatives from the City of Stockton and City of Lodi testified on behalf of the District in support of the District's petition for extension of time and stated that the Cities were interested in utilizing surface water from the District in the future. (NSJ-12, NSJ-13; R.T. pp. 109, 111-113.)

These measures provide some evidence that progress will be made, but do not fully address the obstacles that have resulted in the District's failure to comply with previous time limits. The variability of the District's water supply in drought years and the temporary nature of Permit 10477 will continue to make it difficult to retain and attract customers. Moreover, in the absence of pumping restrictions or pumping charges adequate to limit the use of groundwater as an alternative to surface water supplied by the District, it is questionable whether the District will make satisfactory progress. Accordingly, and as discussed further in the following section, this order is conditioned on a showing of progress towards effective groundwater management in the Eastern San Joaquin groundwater basin.

5.2.4 Public Interest

The requirement that an appropriation of water be completed within a reasonable time with the exercise of due diligence is a long-standing principle of California water law intended to protect the public interest by preventing the "cold storage" of water rights. (*California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, 618-619 [255 Cal.Rptr. 184].) Accordingly, the State Water Board takes seriously the requirement for a permittee to exercise

due diligence in pursuing a water right project. This case is a close one. In the fifty years since Permit 10477 was issued in 1956, the District has not put the full 20,000 afa of water under Permit 10477 to beneficial use. The maximum amount put to beneficial use was 9,487 afa in 1973, and its recent diversions have been much lower. Since the 1970s, many of the District's significant efforts, or proposed efforts, to complete the beneficial use of water under its permit have taken place since 2000. It is debatable whether recent diligence will suffice for the purposes of due diligence in putting water to beneficial use, and the State Water Board will make its determination on the unique facts of each case.

The State Water Board's decision in this proceeding principally rests on the public interest in addressing the critical overdraft condition in the Eastern San Joaquin groundwater basin.¹³ The record indicates that the groundwater basin is critically overdrafted by approximately 150,000 afa and that this amount is projected to increase to 175,000 afa. (NSJ-2, p. 1; NSJ-14.) Moreover, as a result of pumping in excess of recharge, chloride levels are increasing in water from wells in the subbasin. (NSJ-1, ¶ 29; NSJ-18.) The District asserts that the continued use of water under Permit 10477 is in the public interest because it is needed to remedy the critically overdrafted groundwater basin. (NSJ-1, ¶ 29.)

The State Water Board supports coordinated use of surface and groundwater supplies as a logical vehicle for meeting the Constitution's requirements that the waters of the State be put to their fullest beneficial use and not wasted or unreasonably used. (Cal. Const., art. X, § 2.) Accordingly, the State Water Board finds that the public interest in addressing the groundwater overdraft problem provides good cause for granting the District an extension of time to construct additional facilities and put additional water to beneficial use. While it is unclear to what extent the District's water right permit—a permit for the temporary appropriation of water under Water Code section 1462—can be part of a long-term solution to resolving the groundwater basin's critical overdraft, the District should be given an opportunity to reduce demands on the groundwater basin.

The State Water Board, however, must ensure its approval of the time extension will not lead to the exacerbation of critical overdraft or water quality conditions in the Eastern San Joaquin

¹³ This order is nonprecedential, in part, due to the State Water Board's public interest finding, which is limited to the unique circumstances of this case. The State Water Board will continue to rigorously apply the applicable law governing diligence, time extensions, and revocations in all other similar proceedings.