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JEANNE M. ZOLEZZI

September 21, 1998

Mr. Whalen Toy
State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, California 95812-2000

Re: West Side Irrigation District/Water Rights General
Our File No. 1077-015

Dear Whalen:

This letter is a follow-up to our telephone conversation of August 4, 1998 regarding License 1381 (Application 301) held by The West Side Irrigation District ("WSID"). As you know, for the past 10 years or so, correspondence has been exchanged between the district and the State Water Resources Control Board regarding the license. As I told you on the phone, I am somewhat confused by the correspondence and the requests made by the board. We thought that perhaps a letter regarding the issues which have been the subject of correspondence would be helpful to put these issues to rest. This letter is my attempt to provide the necessary information to the Board.

It appears that some of the confusion stems from the fact that the WSID Board was under the impression that it was required by law to file an amended place of use petition if its boundaries changed. Consequently, in 1986 it indicated that it would comply with that "requirement" and prepare the necessary maps. After that indication, your office appeared to expect that action, and as late as 1992 stated that: "The matter of updating this license and maps has lingered since 1986 without any results and you should submit petition for the necessary changes now. . . ." (July 27, 1992 letter from Larry Attaway).

It appears to me to be very clear that there are no necessary changes, and no action is required to be undertaken by the district.

Place of Use Issues

On October 8, 1986, the Board wrote to WSID that:

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An engineer from our office inspected your project last summer and found that the place of use has been reduced to 9,413 acres. Therefore, a change petition is required to conform the licensed place of use accordingly.

As I mentioned to you on the phone, the above statement is confusing. It is true that the boundaries of the WSID have been reduced over time. As land is annexed into the City of Tracy for municipal development, it is routinely detached from WSID. However, it is beneficial for the district to retain those lands within the place of use for its license, for various reasons.

I am aware of no legal requirement that a place of use be reduced, and the district does not wish to change its place of use.

Use of Licensed Amount

Also in its 1986 letter, the Board wrote that it appeared that WSID had diverted in excess of the amount of license in 1982. This conclusion was not based upon pumping reports, but solely upon the acreage the district reported to have been irrigated in 1982.

The district responded by providing information that it has additional water supplies from other sources that supplied the excess water. Consequently, to our knowledge, there were not, nor are there currently, any diversions made in violation of the water right license.

The district obtains a substantial amount of water through recycled tail water from district irrigation, and from neighboring districts. This water is returned to the district within its manmade system of canals; it is not appropriated, and no water right is needed from the SWRCB for its use. Secondly, the district has obtained water by contract from other sources, and through historic pumping of groundwater wells. While this information may illustrate that WSID needs to more clearly identify its sources of water in its Report of License, it does not evidence violation of any of its license provisions.

In its October 15, 1987 letter, the Board indicated that "some of these sources appear to be new surface water which may require the District to file one or more new water right applications or establish some other basis of right to use." This is incorrect. None of these waters is appropriated, and no new right from the SWRCB is needed.

Service to Lands Outside Place of Use

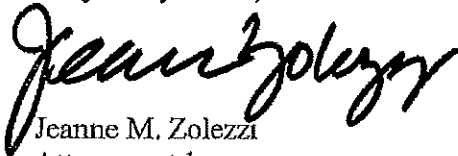
An April 9, 1992 letter from the Board also indicated that 166 acres had been added to the Place of Use. My inquiry to the district confirms that one landholding currently receives water from the district that is located outside of the Place of Use for License 1381. However, there are sufficient alternative sources of water to serve this land, and no water appropriated pursuant to License 1381 is used on this land.

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Conclusion

From my review of the correspondence between 1986 and the present, I did not discover any additional issues. Based upon these three issues, it does not appear that WSID is required to undertake any action on its License with the SWRCB. I look forward to your response.

Very Truly Yours,



Jeanne M. Zolezzi
Attorney-at-law
JMZ:des

cc: Ms. Barbara Kleinert, The West Side Irrigation District