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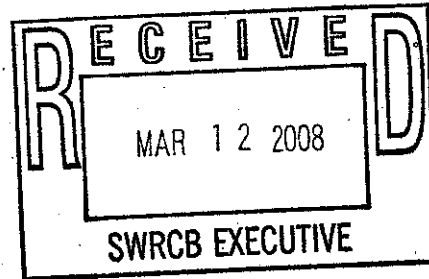
3/18/08 Bd. Mtg. Item 10
NSJWCD - CDO/ACL
Deadline: 3/13/08 by 5 p.m.



March 11, 2008

VIA ELECTRONIC MAIL

Ms. Tam M. Doduc, Chair
State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-2000



Re: COMMENT LETTER - 03/18/08 BOARD MEETING ITEM: NSJWCD
CDO_ACL ORDER

Dear Chair Doduc:

The California Department of Fish and Game (CDFG) has reviewed the Draft Order Adopting Cease and Desist Order and Assessing Civil Liability against the North San Joaquin Water Conservation District. CDFG appreciates the enormous amount of staff time and effort that has been dedicated to this matter by the State Water Resources Control Board (SWRCB). SWRCB staff have investigated the matter, conducted and participated in a hearing, and written a thoughtful draft order dated February 25, 2008 (Draft Order).

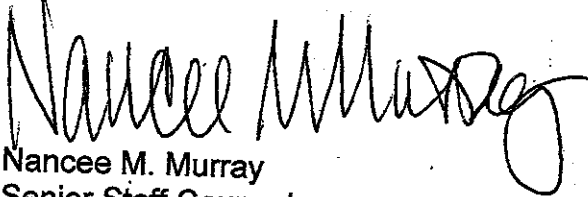
CDFG has only one comment on the Draft Order at this time. In Ordering Paragraph A.1. (pages 18-19 of the Draft Order), the Draft Order addresses the issue of fish screens. The second paragraph of A. 1. begins, "If DFG requires fish screens to be constructed, ...". This clause was not in the previous draft of the cease and desist order that was the subject of the hearing in June, 2007. This clause was added into the Draft Order.

At the June, 2007 hearing on this matter, CDFG presented George Heise, a DFG employee who is a licensed professional civil engineer who provides statewide consultation to DFG staff on technical and engineering aspects of projects that impact fish and wildlife. Mr. Heise provides design consultation and review of fish ladders, fish screens, and other structural fish facilities. (CDFG Exhibit 3, Paragraph 1). In his testimony, Mr. Heise, specifically recommended that the previous draft of the cease and desist order be changed to read, in part, "The NSJWCD shall construct a fish screen at each diversion authorized under Permit 10477. ...". (CDFG Exhibit 3, Paragraph 14). CDFG believes that the language in the Draft Order quoted above is unnecessary and confuses the matter. CDFG has testified

that a fish screen should be constructed at each diversion authorized under Permit 10477. Having language in the Draft Order and possibly in the Order that continues to give the NSJWCD the impression that it may not be necessary to construct a fish screen at each diversion authorized under Permit 10477 is problematic at best. The Draft Order should be simplified to eliminate this opening clause in the second paragraph of A. 1. which would instead begin by stating a clear and unequivocal requirement for the NSJWCD to construct an appropriate fish screen at each diversion authorized under Permit 10477.

Thank you again for your careful consideration of this matter.

Very truly yours,



Nancee M. Murray
Senior Staff Counsel

cc: Service List
Sandy Morey, CDFG
Kathy Hill, CDFG