

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

WATER RIGHTS ORDER 2006-0018-DWR )

In the Matter of Permit 10477 (Application )  
12842) Regarding Diversion by NORTH SAN )  
JOAQUIN WATER CONSERVATION )  
DISTRICT )

Source: Mokelumne River )

County: San Joaquin )

**TESTIMONY OF EDWARD M.  
STEFFANI**

1. I am General Manager of the NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT, a special district in San Joaquin County, California, hereinafter referred to as "District." I have been employed by the District since 1999. I have reviewed the District's files and can relay the following information concerning Permit 10477 Permit Term 15 and Permit Term 23. [NSJ-104]

2. On January 3, 1991, District filed a petition for extension of time to complete construction and to put the water to beneficial use under Permit 10477. DFG opposed District's application for time extension unless the District installed fish screens at the points where Mokelumne River water is diverted at the District pumps along the river and entered into an agreement address the needs for fish.

3. In order to obtain our 1991 petition for extension of time, the District agreed to install fish screens or, alternatively, enter into an operating agreement with the DFG. District engineer, James Sorensen, had a good relationship with the DFG and had worked with them on other occasions. On March 10, 1993, Sorensen reported during a District board meeting, that "after consultations with the Department, it was determined that no fish screens would be needed after June 15 of each year." [NSJ-105]

4. Between April 8, 1993 and April 19, 1993, James Sorensen and Ryan Broddrick, with the DFG, corresponded detailing the installation of temporary fish screens on the channels leading to the North and South pumping facilities. [NSJ-106] A stream bed alteration permit was executed on April 30, 1993. [NSJ-107] Sorensen and Conrad "Pete" Weinzheimer constructed temporary screens at the mouth of each channel leading to the District's pumping stations. The structures consisted of two poles with one-inch plywood decking to be approximately one foot above the existing high water (1,200 cfs); vertical steel pipes or beams to support the screens; and covering those structures with perforated plate borrowed from DFG.

5. Sorensen also told Ryan Broddrick during those exchanges that that the District would cooperate with the DFG to attempt to reach a permanent solution after the resolution of the myriad of issues now before the State Water Board in the Mokelumne River hearings, including "water entitlement..., fish screening responsibilities under the provision of the Fish and Game Code, and the obligation of the District, if any, to bear responsibility for the same." [See Sorensen letter dated April 15, 1993 – NSJ-106].

6. After fish screens were removed in 1993, and no further communication was made between the District and DFG, the District believed that it had entered into an oral operating agreement with the DFG upon which it was determined that fish screens were no longer necessary, based upon James Sorensen's report to the Board and the 14 year silence from the DFG on the issue of fish screens. I have no knowledge of DFG coming and requesting fish screens until the State Water Board began its investigation of the District.

7. With respect to the bypass flows, it is my understanding that the purpose of the 1992 Mokelumne River hearings were to determine interim and long-term measures that could be taken to protect fish and other public trust resources, and to determine if additional conditions should be included in the water right permits and licenses of East Bay Municipal Utility District, Woodbridge Irrigatin District and the District.

8. Accordingly, it was the District's understanding that the 1992 Mokelumne River hearings on the District's water rights permits superceded or stayed the need to enter into an agreement with DFG concerning bypass flows. The District waited for over eight years for a

decision. We were informed that as part of Decision 1641 [NSJ-131], and implementation of the Joint Settlement Agreement (JSA) flows [NSJ-108] that fishery concerns were addressed. [See October 16, 2000 [NSJ-109] and April 26, 2001 [NSJ-110] letters from the State Water Board.] The Chief, Division of Water Rights expressly stated that these flows were sufficient for fish and found "I believe that the actions currently being taken to protect the public trust resources are appropriate and that no further action need be take at this time." [NSJ -131] Since adoption of Decision 1641, the District has fully complied with Permitt Term 23.

9. Now the District is proposed to be fined \$66,400 in violation of our permit terms. That fine is calculated on an estimated "avoided cost" and total number of days the District diverted without fish screens in 2003, 2004 and 2005. Based on my review of the Districts file, including all of its communications with DFG, there is no evidence of fish kills as a result of our surface water pumps, nor is there evidence of even one salmon or steelhead in our channels. I have included in the exhibits, pictures of our two intake channels which clearly show the very shallow, nature of the channels which would trigger very warm temperatures in the summer time and not attractive to fish. [NSJ-111]

10. Moreover, how can the District be in violation or out of compliance with Permit Term 15 when it entered into an oral operating agreement in accordance with the alternate provision in Permit Term 15 in 1993. This is evidenced by the fact that the DFG never brought an objection to this agreement in front of the State Water Board. Instead, the DFG has remained silent for the past 14 years.

11. Since 1999, I have developed an annual budget for the District. Revenues to the District depend on water availability and water sales. Total revenues to the District the past few years have ranged from \$235,000 to \$285,000. [See 2005-2006 and 2006-2007 Budgets [NSJ-112] and 2006 Audited Financial Statement NSJ-113] It would be fundamentally unfair, unjust and a miscarriage of justice to levy such a large fine on such a small District totally nearly 30% of the District's annual budget.

12. The District in good faith believed that it was in compliance with its permit terms, you are punishing a very small district that it has been trying to do the right thing for a long time,

while others that had admittedly significant violations (State Water Project/Central Valley Project) of permit terms and large fish kills, go undeterred. It is only because we asked for a change in our permit term to allow us to implement the new CALFED project are we here today facing this enormous fine.

13. We request that the State Water Board rescind the Administrative Liability Complaint (ACL). If the State Water Board insists on adopting an ACL, we request that you consider our financial situation [NSJ-112 and NSJ-113] and dramatically reduce the proposed fine.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the State Water Resources  
Control Board Hearing to Determine Whether  
to Adopt a Draft Cease and Desist Order No.  
262.31XX and Whether to Impose  
Administrative Liability Complaint No. 262.5-  
46 against NORTH SAN JOAQUIN WATER  
CONSERVATION DISTRICT

Source: Mokelumne River

County: San Joaquin

**TESTIMONY OF STEWART C. ADAMS,  
JR.**

1. My name is Stewart C. Adams, Jr. and I am the former attorney of the NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT, a special district in San Joaquin County, California, hereinafter referred to as "District." I represented the District from 1963 through 1999.

2. On January 3, 1991, District filed a petition for extension of time to complete construction and to put the surface water to beneficial use under Permit 10477 by December 31, 2000. California Sport Fishing Alliance ("CSPA) and the California Department of Fish and Game ("DFG") submitted protests. DFG opposed District's application for time extension unless the District installed fish screens at the points where Mokelumne River water is diverted at the District pumps along the river.

3. DFG's protest shocked the District. I do not recall the DFG ever communicating with the District concerning the necessity for fish screens at its point of diversion on the Mokelumne River prior to its protest. It is my recollection that between 1963 and 1972, DFG officials, upon their own investigation of District facilities, determined that "To date little information is available to document the loss of juvenile salmonids to this diversion." In fact, on

or about 1991, the DFG issued its “Lower Mokelumne River Fish Management Plan,” which stated that DFG had never had evidence of or recorded any fish kills at the District’s pumping stations. [NSJ-114]

4. In the Mokelumne River hearings in 1992, District Watermaster Conrad Weinzheimer stated that in 17 years tending to our pumping facilities on the Mokelumne River, he had never seen a salmon or steelhead in either of the Districts shallow water withdrawal channels because the water was too warm to attract salmon or steelhead. Therefore, as I recall, the District’s position in 1992 was that until DFG conducted a study confirming salmon or steelhead were being diverted into its channels, there should be no impediment to our diversion of Mokelumne River water. So it is still a mystery to me why DFG filed its protest if for 30 plus years it did not record any fish kills on the Mokelumne River.

5. However, in order to obtain our 1991 petition for extension of time and continue to provide water to our customers, the District was forced to agree to install fish screens or, alternatively, enter into an operating agreement with the DFG. District engineer James Sorensen communicated with Ryan Brodderick with DFG and they both agreed that it would be appropriate to install temporary fish screens for 1993.

6. Due to the District’s financial difficulties, it borrowed seven sheets of perforated plate to cover the structures it constructed at the mouth of its diversion points. Thereafter, Sorensen and Weinzheimer constructed fish barriers in channels leading to the District’s pumping stations using bridges consisting of two poles with one-inch plywood decking to be approximately one foot above the existing high water (1,200 cfs); vertical steel pipes or beams to support the screens; and covering those structures with perforated plate.

7. It is my understanding that Sorensen communicated to Ryan Broddrick in a letter that the District would cooperate with the DFG to attempt to reach a permanent solution after the resolution of the myriad of issues now before the State Water Board in the 1992 Mokelumne River hearings, including “water entitlement..., fish screening responsibilities under the provision of the Fish and Game Code, and the obligation of the District, if any, to bear responsibility for the same.” [NSJ-115] It is important to note that during my time as the

District's attorney, I never received anything from the State Water Board rendering a decision as part of the 1992 Mokelumne River hearings. In my opinion the Mokelumne River hearings were never resolved as related to the District pleading for a permanent water supply or with respect the District's obligation for fish screening.

8. Sorensen reported during our March 10, 1993 board meeting, that "after consultations with the Department, it was determined that no fish screens would be needed after June 15 of each year." [NSJ-105] After Sorensen's report at the board meeting, I do not recall ever hearing from DFG about installing permanent fish screens. In fact, my understanding was that based on Sorensen's report, we had entered into an oral operating agreement in compliance with Permit 10477 – Permit Term 15.

9. My understanding was that James Sorensen had a good relationship with the DFG and had worked with them on other occasions. Thus because I felt, (and still feel) that James Sorensen was a brilliant engineer and had many conversations with DFG that the District was in good standing with DFG.

10. It is my recollection based on my conversation with James Sorensen is that DFG knew that it would cost us four years of tax revenue (approximately \$400,000 to \$500,000) to put permanent screens in which we clearly could not afford. Thus, because there was never any data supporting fish kills or even salmon or steelhead ever traveling through our channels, a temporary screen would be sufficient for one year and no fish screens were required thereafter.

11. DFG also protested the District's application for time extension unless the District reached an agreement with DFG regarding bypass flows or, alternatively, until the State Water Board entered an order regarding those flows. My recollection is that the District entered into a Stipulated Agreement agreeing to a condition concerning bypass flows to the District's permit in order for the pending Petition for Extension of Time to be granted. Accordingly, Permit Term 23 stated that the District would either reach an agreement with DFG regarding bypass flow, *or failing to reach agreement , until a further order of the Board with respect to those flows*. In November 1992 the State Water Board began the Mokelumne River hearings where it focused on the water rights of EBMUD, Woodbridge Irrigation District ("WID") and North San Joaquin

Water Conservation District. The purpose of that hearing was to evaluate both interim and long-term measures that could be taken to protect fish and other public trust resources, *and to determine if additional conditions should be included in the water right permits and licenses of EBMUD, WID and the District.* [NSJ-116 ] Accordingly, it was the District's understanding that the 1992 Mokelumne River hearings on the District's water rights permits superceded or stayed the need to enter into an agreement with DFG concerning bypass flows. The District, having made no agreement with DFG, awaited the State Water Board decision on the 1992 Mokelumne River concerning its water right permit and what fish flows, if any, would be necessary on the Mokelumne River. The State Water Board entered its order in 2000 when it adopted Decision 1641 [NSJ- 131] and the Joint Settlement Agreement (JSA) flows. [NSJ-108]. The Board expressly recognized that these flows were sufficient for fish and found "[t]he SWRCB finds that is would not be in the public interest to require more water from the Mokelumne River system than will be provided under the JSA. Additional releases could exacerbate the shortage experienced by NSJWCD." [NSJ-108, pg. 63]. Since adoption of Decision 1641, the District has fully complied with Permit Term 23.



STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the State Water Resources  
Control Board Hearing to Determine Whether  
to Adopt a Draft Cease and Desist Order No.  
262.31XX and Whether to Impose  
Administrative Liability Complaint No. 262.5-  
46 against NORTH SAN JOAQUIN WATER  
CONSERVATION DISTRICT

**TESTIMONY OF FRED WEYBRET**

Source: Mokelumne River

County: San Joaquin

1. My name is Fred Weybret and I am on the Board of Directors for the NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT, a special district in San Joaquin County, California, hereinafter referred to as "District." I have been a director on the Board of the District for 31 years. I was first appointed on April 6, 1976.

2. My recollection is that the Department of Fish and Game ("DFG") opposed our petition for extension of time in 1991 and, to settle the matter, the District agreed to install fish screens at the District's diversion points along the river and work with DFG on bypass flows for fish.

3. Sometime in the early 1990's, DFG loaned us a fish screen that the District installed. James Sorensen, the District's engineer, reported to our Board that he had consulted with the DFG, and fish screens would not be required after the diversion season. The fish screens were then given back to the DFG. It was my understanding that due to the fact that our intake was set so far back from our pumping stations, no salmon or steelhead entered into our channel. Therefore, no more screening was necessary. Since James Sorensen had a good working relationship with DFG, it was my recollection that the matter of fish screens was put to bed.

4. With regard to bypass flows, my understanding was that the District had fully complied with its permit terms and was waiting for the State Water Board to enter a decision from the Mokelumne River hearings concerning our water rights, licenses and permits.

5. That is why I am shocked and astounded at the penalty the State Water Board seeks to levy against the District for violating Permit terms. Not only was I unaware that the District ever violated a permit term, I cannot fathom how the District could pay for such an exorbitant penalty based on our current financial situation. The District annual revenue varies depending on water sales and our ability to raise our assessment based on water use. Over the past two years annual revenues have ranged from \$235,000 to \$285,000. [NSJ-] The District has only been able to deliver about 2,000 to 3,000 acre feet of surface water to our customers (when it has been available) and a limited amount to recharge for our test projects. System maintenance continues to cut into a big option of our revenue, so much so that this year the District had to borrow \$25,000 from the County against this year's revenue.

6. A penalty of this size would seriously limit our ability to deliver water. Repairs to our system would have to be delayed, and all of our recharge projects would be put on hold. More importantly, if this penalty is levied, the District's focus would turn away from our critically overdrafted groundwater basin, which I fear would cause irreversible damage within the District.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the State Water Resources  
Control Board Hearing to Determine Whether  
to Adopt a Draft Cease and Desist Order No.  
262.31XX and Whether to Impose  
Administrative Liability Complaint No. 262.5-  
46 against NORTH SAN JOAQUIN WATER  
CONSERVATION DISTRICT

Source: Mokelumne River

County: San Joaquin

**TESTIMONY OF CONRAD  
WEINZHEIMER.**

1. My name is Conrad Weinzheimer and I am the Watermaster for the NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT, a special district in San Joaquin County, California, hereinafter referred to as "District." I have been an employee of the District since 1976.

2. In my duties as Watermaster, during irrigation season I make daily observations and inspections of the District pumps, pipelines and channels. The District has two separate channels leading to each of the two pumping stations from the Mokelumne River. [NSJ-111] The channel on the south side of the river, west of Tretheway Road, is approximately 1,000 feet long from the point of diversion on the Mokelumne River to the pump station. At low flows, the width of the channel is 10 to 12 feet, with the entire channel bottom and sides being sand and /or blue clay.

3. The channel on the north side of the river is located about one-half mile south of Acampo road. It is approximately 700 feet long and 18 to 20 feet wide, at the bottom. The channel bottom and side composite is all sand.

4. During the irrigation season, the velocity in the District's inlet channels is very low because of the size of the channels compared to the quantity of water flowing to the pumps.

[NSJ-111] These low velocities create a ponding effect, which causes the water temperatures to rise to that temperature which will support the growth of moss, which I regularly observe in the inlet channels.

5. During most of the irrigation season throughout my tenure with the District, I have observed moss growing in both the inlet channels on the north and south side. It is in my knowledge and belief that there would be no moss growing if the water was as cold as the water in the main channel of the river where no moss is observable.

6. Accordingly, I believe that this warmer water is an inhospitable environment for salmon or steelhead and discourages them from entering into the channels. In fact, during my 31 year tenure as Watermaster, I have never observed salmon or steelhead in either of the District's channel or pump facilities much less any fish kills. In fact, the channels are angled in such a way that any fish would have to swim upstream in order to reach them. Not to mention any fish would have to swim for 1,000 feet in shallow, warm water to reach the south pumping station from the mouth of the channel.

7. That is why I was very surprised when the Department of Fish and Game ("DFG") demanded that the District install fish screen on the inlet of its two channels in 1992. Based on my conversations with Emil Bender, the former Watermaster, the DFG had only installed one fish screen on the Tretheway pump in the early 1970's and after one year determined that it was unnecessary and basically abandoned it within one year. In fact, Emil Bender told me that he bought the screen from DFG for \$1.00 and used it as a debris screen.

8. From 1976 to 1992, I do not recall anyone from DFG discussing the necessity of fish screens for the north and south pumping stations. Once DFG demanded that we screen in 1992, James Sorensen, the District's engineer, and I designed a cost efficient temporary screen using perforated plate we borrowed from DFG. These fish screens were located on the mouth of each channel and consisted of two poles with one-inch plywood decking to be approximately one foot above the existing high water (1,200 cfs); vertical steel pipes or beams to support the screens; and seven sheets of perforated plate that we borrowed from DFG to cover the structures. Since the bottom of the channel bed is sandy, Dave Rose, with the DFG's screen shop, came out with

another DFG employee and placed sandbags at the base of the fish screens to anchor them in place and prevent gaps underneath the screen.

9. It was my understanding that this screen was temporary and we were to return it to the DFG at the end of the diversion season. Dave Rose communicated to me that the screens would only be necessary until the end of June because small salmon would have already past through that area by that time. The District kept the screens in until October of that year and I removed them and returned them to the DFG offices in Elk Grove thereafter.

10. I have not heard any other discussions by DFG regarding a long- term plan for fish screening at the District's two diversion points. It was only until this year that DFG came to inspect our pumping facilities and make screening recommendations. After inspecting both channels and the pumps, Ian Drury, told me that he recommended that screens be put near the pumping stations after I showed him how slowly the water flowed into the channel. However, it is my understanding that we later received word that Mr. Drury's recommendation was not accepted and the District was told that it would have to screen at the mouth of each channel.

11. In my tenure at the District I have never seen salmon or steelhead. I have never witnessed any fish kills. To my knowledge, DFG never discussed fish screening until 1992. We complied with their request and were told that screens were not necessary after June. Now we are being penalized for violating a permit term. It is a mystery to me why the District is being fined when, the DFG was silent on the subject of fish screens for over 14 years, discussed them in 1992 and fell silent again for another 14 years.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

## ORDER

APPLICATION 12842PERMIT 10477

LICENSE \_\_\_\_\_

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,  
AND THE ISSUANCE OF AN AMENDED PERMIT

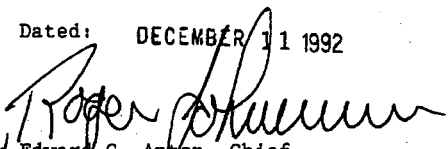
## WHEREAS:

1. Permit 10477 was issued to North San Joaquin Water Conservation District, on July 3, 1956, pursuant to Application 12842.
2. A petition for an extension of time has been filed with the State Water Resources Control Board (Board). The petition was protested by the Department of Fish and Game, the California Sportfishing Protection Alliance, and the East Bay Municipal Utility District.
3. A June 30, 1992 Board hearing led to the development of a stipulated agreement between the permittee and the protestants. Certain conditions of the stipulated agreement should be incorporated into Permit 10477.
4. Permit conditions should be amended to conform to the Board's current Standard Permit Terms.

## NOW, THEREFORE, IT IS ORDERED THAT:

1. The Board shall issue Amended Permit 10477. The amended permit shall reflect the current status of Permit 10477, the new development schedule, pertinent aspects of the permittee's June 30, 1992 stipulation, and updated version of standard Board permit terms.

Dated: DECEMBER 11 1992

  
Edward C. Anyon, Chief  
Division of Water Rights

STATE OF CALIFORNIA  
 WATER RESOURCES CONTROL BOARD  
 DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

**AMENDED PERMIT 10477**

Application 12842 of North San Joaquin Water Conservation District

filed on December 2, 1948, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this amended Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Mokelumne River

San Joaquin River

2. Location of point of diversion:

	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
<u>Camanche Reservoir</u> South 41° 33' West, 1,824 feet from E $\frac{1}{4}$ corner of Section 6	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	6	4N	9E	MD
<u>Direct Diversion and Rediversion</u> North 2,800 feet and West 1,000 feet from SE $\frac{1}{4}$ corner of Section 26	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	26	4N	7E	MD
South 75 feet and East 850 feet from W $\frac{1}{4}$ corner of Section 35	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	35	4W	7E	MD

County of San Joaquin

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Recreational	Camanche Reservoir in SE $\frac{1}{4}$ of SE $\frac{1}{4}$	6	4N	9E	MD	
Domestic	45,000 net acres within gross area of 52,000 acres being within the service					
Municipal	area of the North					
Industrial	San Joaquin Water					
Irrigation	Conservation District, including					45,000
	Township 3 North, Ranges 6, 7, 8 East, and 4N, Ranges 6, 7, and 8 East. MDB&M					

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a combined total of 80 cubic feet per second by direct diversion. Direct diversion shall be limited to no more than 40 cubic feet per second at any one pumping facility to be diverted from December 1 of each year to July 1 of the succeeding year and 20,000 acre-feet per annum by storage to be collected from December 1 of each year to July 1 of the succeeding year. The total amount of water to be taken from the source shall not exceed 20,000 acre-feet per water year of October 1 to September 30. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Complete application of the water to the authorized use shall be made by December 31, 2000. (0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)



12. This permit shall not be construed as conferring upon permittee right of access to the point of diversion. (0000022)

13. The equivalent of the authorized continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed. (0000027)

14. Permittee shall consult with the Division of Water Rights and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the State Water Resources Control Board for approval within one year from the date of this permit or such further time as, for good cause shown, may be allowed by the Board. A progress report on the development of a water conservation program may be required by the Board at any time within this period.

All cost-effective measures identified in the water conservation program shall be implemented in accordance with the schedule for implementation found therein. (000029B)

15. No water shall be diverted under this permit during the 1992 or subsequent water years, until the permittee has constructed screening facilities adequate to protect fishlife and/or has entered into an operating agreement with the Department of Fish and Game that will protect fishlife.

If fish screens are constructed to meet the requirements of this permit condition, the Department of Fish and Game shall review the construction plans and determine whether the facilities are adequate to protect fishlife. The Department of Fish and Game shall notify the Division of Water Rights of its approval of the plans in writing. Construction, operation, and maintenance costs of any required facilities are the responsibility of the permittee.

In the event the permittee and the Department of Fish and Game cannot reach agreement with respect to this condition, either party may petition the State Water Resources Control Board to hold a hearing to determine the appropriate conditions. (0000063)

16. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing. (0000080)

17. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Mokelumne River are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

18. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Resources Control Board shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators. (0000091)

19. If, during the scheduled Mokelumne River hearing, it is determined that water is available to serve Permit 10477, the time extension to December 31, 2000 authorized by this amended permit, shall remain in effect. If it is determined that there is no further water available to serve this permit, then the face value of the permit may be adjusted after hearing. (3400600)
20. No additional pumping capacity or storage facilities shall be constructed under Permit 10477. (0340900)
21. This permit is issued to accordance with the provisions of the Section 1462 of the Water Code for the temporary appropriation of the excess of the permitted appropriation over and above the quantity applied to beneficial use from time to time by the East Bay Municipal Utility District under its Application 13156 and permit issued thereon provided that the project of the North San Joaquin Water Conservation District shall be so constructed that it may be feasibly integrated at a later date with the project of East Bay Municipal Utility District under Application 13156 as may be determined by the State Water Resources Control Board. (0000999)
22. The North San Joaquin Water Conservation District shall allow any water bypassed or released from Camanche Reservoir by the East Bay Municipal Utility District under permitted Application 13156 for the protection and/or enhancement of fish and wildlife to continue downstream. Nothing in this permit shall be construed as authorizing the North San Joaquin Water Conservation District to appropriate said flows. (0140800)
23. No diversion shall be made under this permit until an agreement has been reached between the permittee and the State Department of Fish and Game with respect to flows to be bypassed for aquatic life; or failing to reach such agreement, until a further order is entered by the State Water Resources Control Board or its successor with respect to said flows. (0360400)

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**


Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: DECEMBER 11 1992

STATE WATER RESOURCES CONTROL BOARD

  
for Chief, Division of Water Rights

PORTION OF NSJWCD  
MINUTES 5/10/93

Department of Fish & Game concerning fish protection and/or fish screens to allow this District to receive irrigation water during this calendar year. Mr. Sorensen advised that after consultations with representatives of the Department, it was determined that no fish screens would be needed after June 15th of each year. He further stated that the Department was in a transitional period and that perhaps Jerry Mensch, the leading proponent of fish screens, may be transferred. He was informed that Roger Ganaye, previously with the Department and the representative who inspected the sites at the District's pumps, has left the Department and is now in the employ of the U. S. Fish & Wildlife Service. Further investigation determined that Mr. Donald Nelson was the man from the Department with whom we must negotiate. It was hoped that we could secure some type of an interim agreement with minimal cost and expense to the District to allow receipt of water for irrigation purposes during this calendar year. One of the practical considerations that would be presented was the fact that there are high flows in the river and by definition no velocity into the District's channels. Further, in view of the high water levels, screening would be exceedingly difficult to install and maintain. Upon motion of Director Hoffman, seconded by Director Mettler, motion carried, Messrs. Sorensen and Adams were authorized to negotiate and execute on behalf of the District an interim agreement with the Department of Fish & Game to enable this District to secure water deliveries during this calendar year, keeping in mind that at this late date, resort to the State Water Resources Control Board for a further hearing would be costly to the District and too late to render a timely decision for the District to promptly make water deliveries.

Thereafter, Mr. Richard Best, Agricultural Marketing



## DEPARTMENT OF FISH AND GAME

ROOM 2  
101 NIMBUS ROAD, SUITE A  
SAN JOAQUIN, CA 95670

(916) 355-7020

April 8, 1993

North San Joaquin Water  
Conservation District  
121 West Pine Street  
Lodi, CA

Gentlemen:

This is a follow-up to our meeting with Mr. James Soranson, and at his request, are providing information on the Department of Fish and Game's (Department) position regarding a fish screen at your diversion on the lower Mokelumne River. It is our understanding that the District would like to begin water diversion May 1, 1993 and continue through the summer. The maximum diversion would be 30 cfs. In the past, diversions have not occurred every year and, in fact, have not occurred in most years. Let me assure you that we want to work with you to develop a mutual acceptable way for you to get the water you need while providing protection to the salmon and steelhead resources in the Mokelumne River.

As you know, it is the Department's position that a fish screening device is necessary on your diversion for the protection of anadromous fish. Perhaps it would be beneficial to take this opportunity to express the Department's reasons for this position. Our recommendations to protect aquatic resources are based on legal mandates and policies which dictate Department operations. State law mandates the Department to protect and increase anadromous resources (Fish and Game Code Sections 1700 et seq., 2600 et seq., 2760 et seq., and 6900 et seq.). Also, it is the policy of the Fish and Game Commission, pursuant to Section 703 of the Fish and Game Code, that the Department shall protect, restore or improve populations of salmon and steelhead.

Additionally, the recent Appellate Court decision involving Anderson-Cottonwood Irrigation District has clarified and broadened the definition of take. The essence of the Appellate Court Decision is that the California Endangered Species Act (CESA), which prohibits "take" of listed threatened and endangered species, is not confined to hunting or fishing activities, but also prohibits the killing of fish as a result of lawful irrigation activity. This decision provides enormous enforcement powers under CESA and potentially to other non-listed

not been tried to date, as we both know there are many groups waiting to instigate such an action.

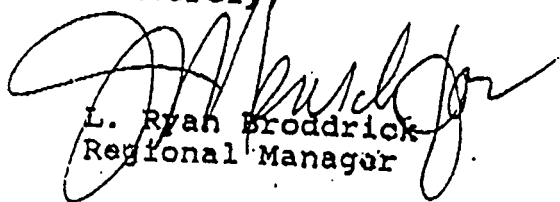
Mr. Soranson has provided a general plan to screen the intake and with some modification, we believe that his plan would be acceptable. Realize that the proposal does not meet established Department criteria for salmonids and on a permanent basis would be unacceptable. However, on a one time (year) basis with the conditions we have in the Mokelumne River this year (high flows, cool water temperatures, etc.) and with the understanding you will be developing a long-term solution, we believe that the plan would be tolerable provided the structure be covered with perforated plate (3/16 opening).

The Department has approximately seven sheets (3 ft x 10ft.) of perforated plate that we are not presently using. We are willing to loan these to the District with the understanding that they be returned in original condition or, if damaged, replaced. Also, Mr. Dave Rose of our Screen Shop has a wealth of practical experience in construction of fish screens, and we have discussed the situation with him. We would recommend that Mr. Soranson contact him regarding this construction and to arrange to pick up the perforated plate. Mr. Rose may be contacted at (916) 685-9733.

Thank you for your concerns and efforts in resolving this issue. I believe that this will meet your needs and also protect the fishery resources this year. I look forward to working with you to develop a long-term solution.

If you have any questions, please contact Mr. Jerry Mensch, Environmental Services Supervisor, at (916) 355-7030.

Sincerely,



L. Ryan Broddrick  
Regional Manager

FELLOW  
AMERICAN SOCIETY  
OF CIVIL ENGINEERS

**JAMES F. SORENSEN**

CONSULTING CIVIL ENGINEER

209 SOUTH LOCUST STREET  
P. O. BOX 509  
VISALIA, CALIFORNIA 93279  
PHONE 209/732-7938

April 15, 1993

Mr. L. Ryan Broddrick,  
Regional Manager  
California Department of Fish & Game  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

Attention: Mr. Jerry Mensch,  
Environmental Services Supervisor

Dear Mr. Broddrick:

This letter is being written at the request of North San Joaquin Water Conservation District in response to your letter dated April 8, 1993 received by facsimile transmission on April 14, 1993.

The District appreciates your letter and proposes to proceed to construct fish barriers in the channels leading to the District's pump stations using the following:

1. Bridges consisting of two poles with one-inch plywood decking to be approximately one foot above the existing high water (1,200 cfs).
2. Vertical steel pipes or beams to support screens.
3. Screens which will be loaned by DFG consisting of perforated aluminum plate framed by wooden 2 x 4's and fastened to the vertical steel members.

The District proposes to take this action since it appears to be the only expeditious and economical approach given the time constraints and the important and primary need for the District to deliver urgently needed irrigation water in a timely fashion.

The District will cooperate with the Department of Fish and Game to attempt to reach a permanent solution to adequately protect fish life after the resolution of the myriad of issues now before the State Water Resources Control Board in the Mokelumne River hearings, including, but not limited

Mr. L. Ryan Brodderick

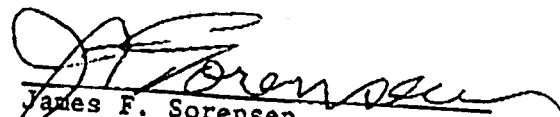
Page -2-

April 15, 1993

to, water entitlement of this District, fish screening responsibilities under the provisions of the Fish and Game Code, and the obligation of the District, if any, to bear financial responsibility for same.

If the foregoing properly memorializes our understanding, kindly acknowledge approval and acceptance on a copy of this transmission and return same to this office by facsimile transmission to (209) 732-7937.

Yours very truly,

  
James F. Sorensen  
Consulting Engineer

Approved and Accepted  
this \_\_\_\_\_ day of April, 1993.

CALIFORNIA DEPARTMENT OF FISH & GAME

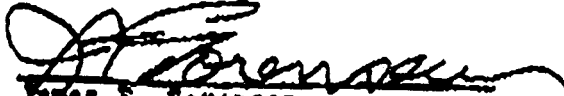
By: \_\_\_\_\_

Mr. L. Ryan Brodderick  
Page -2-  
April 15, 1993

to, water entitlement of this District, fish screening responsibilities under the provisions of the Fish and Game Code, and the obligation of the District, if any, to bear financial responsibility for same.

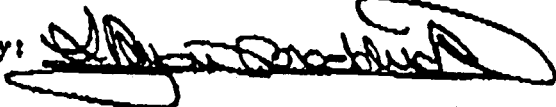
If the foregoing properly memorializes our understanding, kindly acknowledge approval and acceptance on a copy of this transmission and return same to this office by facsimile transmission to (209) 732-7937.

Yours very truly,

  
James F. Sorensen  
Consulting Engineer

Approved and Accepted  
this 15th day of April, 1993.

CALIFORNIA DEPARTMENT OF FISH & GAME

By: 



DEPARTMENT OF FISH AND GAME

PETE WILSON, Governor

REGION 3  
701 NIMBUS ROAD, SUITE A  
ANCHO CORDOYA, CA 93670



(916) 355-7020

April 19, 1993

Mr. James F. Sorensen  
P.O. Box 509  
Visalia, California 93279

Dear Mr. Sorensen:

This is to clarify Item 3 of your letter, dated April 15, 1993. We agree to loan the North San Joaquin Water Conservation District (District) the perforated aluminum plate but the reference to the plate being "framed on wooden 2 x 4's and fasten to the vertical steel members" would need to be completed by the District. I believe that framing was a suggestions to the District by Mr. Dave Rose of our Screen Shop, during a phone conversation.

If you have any questions, please contact Mr. Jerry Mensch, Environmental Services Supervisor, telephone (916) 355-7030.

Sincerely,

L. Ryan Broddrick  
Regional Manager



Notification No. II-187-93

1. The operator shall return in original condition (as determined by Dave Rose, Elk Grove Screen Shop), all perforated plate (24-3'x10' full size sheets and 4-3'x5' sheets) borrowed from the Department.
2. Sand for sand bags shall not be taken from the banks or flood plain.
3. The bottom of the screen shall be sand bagged to prevent "leakage" around the screen. Should the screen structure be determined by the department to "leak" (pass water through locations other than the perforations in the plate), diversion shall cease until corrective measures are approved by the Department.
4. Water diversion shall not occur until the screen is in place. The screen structure shall remain in place until June 30, 1993.
5. Riparian/wetland vegetation shall not be removed. Disturbed areas shall be stabilized to prevent soil, silt, turbidity, or other pollutants from entering the river.
6. All conditions in this agreement apply to the 100 year flood plain.
7. Equipment shall not be operated in the water. The applicant has indicated that placement of the perforate plate shall be by hand.
8. This agreement is not intended as the Department's approval of the project or of specific project features.
10. This agreement applies to both the north and south diversions and pertains only to work indicated in the notification and in the submitted plans. Any deviation from the plans shall require a new notification and completion of a new agreement.

Operator NETWCD John L. Nelson  
 Title James D. Foreman Department Representative  
Cous, Eng'g ASSOC. FISH. BIO  
 Date 4-30-93 4/30/93