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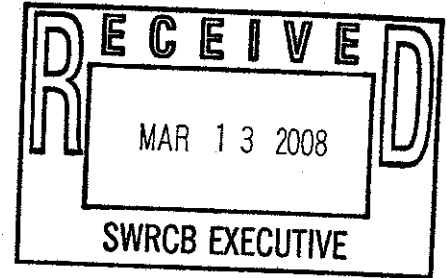
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FROM MODESTO:
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March 12, 2008

*Via E-Mail to commentletters@waterboards.ca.gov and
Overnight Mail to Jeanine Townsend, Clerk of the Board
OnTrac Tracking No. D10010164744588*

Chair Tam Doduc and Members of the State Water Board
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95814-2828



**Re: COMMENT LETTER - 03/18/08 BOARD MEETING ITEM:
NSJWCD TIME EXTENSION ORDER**

Dear Chair Doduc and Members of the State Water Board:

On behalf of the County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and Mokelumne River Water and Power Authority (collectively hereinafter the "County"), we submit the following comments on the Draft Order in the matter of Permit 10477, regarding the North San Joaquin Water Conservation District ("District") Extension of Time.

The County supports the State Water Board's Draft Order whereby it grants the District's request for time extension for the completion of construction necessary for the District's application of water to beneficial use under Permit 10477 until December 31, 2010. However, the County respectfully requests that several of the conditions imposed on the District by the Draft Order be eliminated or modified. This letter will identify the County's concerns and requests.

The County commends the State Water Board for recognizing the critical condition of overdraft in the Eastern San Joaquin Groundwater Basin ("Basin") and identifying that it is within the public interest to grant the District's time extension due to this condition. Any and all surface water that can be utilized within the Basin will assist in addressing the overdraft. The surface water that may be put to beneficial use within the Basin pursuant to the District's Permit 10477 plays a large part in the current and planned efforts within the County to address this condition. The County appreciates the State Water Board's recognition of the importance of the role the District's water right would play in addressing the critical condition of overdraft within the Basin.

Groundwater use within the County is essentially at a point of stasis, meaning the current rate of groundwater use should not increase in the future. This is because both the County and the City of Stockton have enacted policies that prohibit new development from increasing the over-all use of groundwater. Thus, groundwater demand within the Basin should remain constant. Therefore, any and all surface water that can be put to beneficial use within the County assists in the recovery of the groundwater basin because any amount of surface water so utilized equals that much less groundwater being pumped from the Basin. Placing surface water to use within the County results in "in-lieu recharge" due to the reduction in groundwater pumping, allowing the Basin to recover.

The Draft Order requests various plans and reports to be submitted to ensure that "the time extension will not lead to the exacerbation of critical overdraft or water quality conditions in the Eastern San Joaquin groundwater basin." (Draft Order p. 11.) The County is encouraged by the State Board's recognition that the Basin is overdrafted and commends the State Board for taking action to assist in recovery of the groundwater basin. However, the County is concerned that some of the conditions imposed in the Draft Order may prove to be so cumbersome and difficult, that the District may find it all but impossible to comply.

The most problematic of the conditions relate to the Draft Order's requirement that the District regulate or control groundwater use within the District. It is unclear what, if any, authority the District currently has to place "restrictions on groundwater pumping" within the District, other than placing groundwater pump charges on water users. The County hopes that the following comments will assist the State Water Board in formulating conditions which the District can feasibly adhere to, and which facilitate putting additional surface water to beneficial use within the County and address the overdrafted Basin.

1. Condition number 2 of the Draft Order provides that the District must submit a plan to the Deputy Director within 180 days from the date of the Order. Among other things, the plan must "identify the restrictions on groundwater pumping, pump charges or other measures necessary to address the problem of users relying on groundwater pumping instead of deliveries from the District, and identify how these requirements will be put in place." (Draft Order p. 14.) It is unclear what, if any, authority the District currently has to place "restrictions on groundwater pumping" within the District, other than placing groundwater pump charges on water users. Although the District encourages the use of surface water rather than groundwater, it is unclear how the District would or could legally impose other restrictions on users of groundwater within the District. The District has exercised its authority to impose groundwater pumping charges, and those charges are now the subject of pending litigation in the San Joaquin County

Superior Court. As to the authority to impose other measures, the County seeks additional information regarding the State Water Board's direction that the District regulate or restrict the use of groundwater.

In California, groundwater users are subject to the legal doctrine of "correlative rights and reasonable use," which gives each overlying property owner a common right to the reasonable, beneficial use of the water supply within the groundwater basin to be used on the overlying lands. (*Katz v. Walkinshaw* (1903) 141 Cal. 116, 134-136). All overlying users have equal rights to use of the groundwater within the basin on their overlying lands and if the supply is insufficient for all needs, each user is entitled to a fair and just proportion of the water (*Ibid*). The right to use groundwater is unlike the system of appropriative rights that governs the use of surface water, whereby water rights are determined by the maxim "first in time, first in right."

In overdrafted groundwater basins in which the supply is insufficient for all the needs of overlying users, the courts have applied the doctrine of mutual prescription. The effect of this rule is to produce a pro-rata reduction of pumping by all current users so as to balance withdrawals to the safe yield or supply within the basin. (*Pasadena v. Alhambra* (1949) 33 Cal.2d 908). As a result, by operation of law, all affected users of groundwater acquire prescriptive rights against each other and all uses merge into prescriptive rights without priorities. Absent an action to determine the rights of every groundwater user within the groundwater basin--that is, a groundwater adjudication--it is unclear how the District can regulate the use of groundwater within the District.

The Draft Order should be modified to delete the requirement in the first paragraph of condition 2 that requires the District to submit a plan to "identify the restrictions on groundwater pumping, pump charges or other measures necessary to address the problem of users relying on groundwater pumping instead of deliveries from the District, and identify how these requirements will be put in place."

2. Condition number 2 of the Draft Order also provides that the District must submit, within 180 days from the date of the Order, a Petition for Extension of Time if the District cannot put to beneficial use the full amount of water authorized by December 31, 2010. The County contends that this time period should be altered or removed completely, as it is impossible for the District to determine whether or not a time extension will be required in the 180 days allotted. It is entirely possible that the District may not know until 2010 of the unforeseen and unplanned circumstances that delay its ability to place its water to beneficial use. Although *at this time* the District may plan and intend to place the water to beneficial use by 2010, the facts and circumstances may preclude this from happening, despite the diligence of the District. The District should be afforded the opportunity pursuant to State water law to petition for an extension of time up until the expiration of its current permit. (Wat. Code § 1396, 23 Cal. Code of Regs. § 840 et seq.)

Therefore, the County requests that the Draft Order should be modified to delete the requirement in the second paragraph of condition 2 on page 15 that requires the District to file a Petition for Extension of Time "within 180 days from the date of [the] Order," and permit the District to apply for an extension of time, if needed, up to December 31, 2010.

3. Condition 3 of the Draft Order discussed a conjunctive use plan that addresses "whether and how placing water to underground storage, and subsequently withdrawing the water, under Permit 10477 will prevent additional overdraft in the eastern San Joaquin groundwater basin and include measures to avoid any such impacts." Again, the County is concerned that the Draft Order is placing conditions on the District to regulate the use of groundwater. The District and the State Water Board do not regulate groundwater within the District. Rather the District and the State Water Board's jurisdiction within the District relates to surface water permit 10477 only. As previously indicated, and as the hearing record on this matter indicates, the groundwater use within the County is nearly static, as the County is practically at full build-out. (Hearing Transcript p. 74.) Therefore any additional surface water supply used within the County will have a positive impact on the overdrafted groundwater Basin. This positive impact should satisfy the State Board's concern that the water received by the District pursuant to Permit 10477 is having a positive impact on the overdrafted groundwater Basin.

4. Condition 5 of the Draft Order requires the District to submit an annual report to the Deputy Director regarding progress on groundwater management by the District in the Eastern San Joaquin groundwater Basin, including any existing or proposed measures to address overpumping within the District's boundaries.

The Northeastern San Joaquin County Groundwater Banking Authority ("GBA"), a joint powers agency of which both the County and the District are members, has developed a groundwater management plan and a conjunctive use plan which addresses the groundwater overdraft within the Basin. The Mission of the GBA is to develop projects and programs to mitigate and prevent the impacts of long-term groundwater overdraft. The GBA also prepared an Integrated Regional Water Management Plan ("IRWMP") in July 2007 which developed Basin Management Framework to manage the groundwater Basin. The County welcomes the opportunity to annually provide information to State Water Board staff regarding the meaningful progress the County, the District, and the GBA are making on addressing the overdraft conditions within the Basin. The County anticipates that the District would rely on the GBA to assist with this required annual report.

5. Condition 6 of the Draft Order causes significant concern for the County and the County respectfully requests that this condition be deleted. Condition 6 provides that "[t]he District may not transfer water diverted to underground storage under Permit 10477 outside of the eastern San Joaquin groundwater basin,

as defined in the Department of Water Resources Bulletin 118.”

In an effort to manage water supply and water resources regionally, the County and other water interests within the County contemplate that addressing the overdrafted groundwater condition will require the assistance of regional partners. Relying on the Basin Management Framework developed by the GBA in its IRWMP, meaningful basin management criteria can be implemented to control the use of groundwater by users other than overlying users. In addition, the County's Export Ordinance (San Joaquin County Code Title 5, Division 8) regulates the export of groundwater by requiring a permit from the Board of Supervisors issued based on specific findings.

The County contends that these local restrictions and management tools on the use of the groundwater within the County by users other than overlying users, adequately regulates and protects the groundwater basin within the County. The County is greatly concerned that its precious groundwater is not exported out of the County in a manner that would exacerbate the overdraft condition; however, if a meaningful regional plan was developed with entities outside of the County, which provide significant long-term benefit to the County, then it may be permissible for the County's groundwater to be used outside of the County and groundwater basin. (Currently, the Mokelumne Forum, in which the County and the District participates, is considering a regional project that would allow storage within the groundwater basin and future use of basin groundwater to benefit Amador and Calaveras Counties, and East Bay Municipal Utilities District.) The County respectfully requests that the State Water Board delete Condition 6 of the Draft Order so that the State Water Board does not preclude these meaningful projects to be pursued—projects which would assist in addressing the critical condition of overdraft within the County.

6. Condition 7 of the Draft Order modifies language from Order WR 2006-0018-DWR and requires the District to report the “quantity of water placed into, and recovered from, underground storage under permit 10477” with the annual progress reports by permittee. A similar provision of Condition 3 requires the District to submit a plan that identifies “the location of pumps used for withdrawal of groundwater.” The County contends that it is difficult to determine and quantify the potential withdrawals of groundwater from the conjunctive use projects proposed by the District, as the District is not intending to withdraw the water. Rather the Basin benefits from the additional groundwater that is placed in the Basin. The additional water placed into the Basin by the District will be subject to withdrawal through ordinary pumping of groundwater users within the District and the Basin. Therefore, the provisions of Condition 7 and Condition 3 are not appropriate provisions for the District's permit.

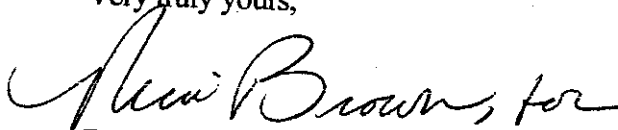
State Water Resources Control Board

March 12, 2008

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The County appreciates this opportunity to comment on the Draft Order approving North San Joaquin Water Conservation District's Time Extension for Permit 10477. The County again commends the State Water Board for recognizing the critical condition of overdraft within Eastern San Joaquin County, and for allowing a District within the County additional time to put its surface water to beneficial use. The County looks forward to working with the State Water Board in the future to place additional surface water supply to beneficial use within San Joaquin County as a means of addressing the critical groundwater overdraft within the Eastern San Joaquin Groundwater Basin.

Very truly yours,



DeeAnne Gillick
Attorney at Law

DMG/cmp

PROOF OF SERVICE BY E-MAIL

I declare as follows:

I am over eighteen years of age and not a party to the within entitled action. My business address is 509 W. Weber Avenue, Stockton, California 95203. I am employed in San Joaquin County, California. Based on an agreement of the parties to accept service by e-mail or electronic transmission, on March 13, 2008 at approximately 4:55 p.m., I caused the COMMENT LETTER REGARDING THE MARCH 18, 2008 BOARD MEETING ITEM: NSJWCD TIME EXTENSION ORDER regarding the Petition for Reconsideration of Order WR 2006-0018-DWR to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Jeanine Townsend, Clerk of the Board
Karna Harrigfeld, NSJWCD
Nancee Murray, DF&G
City of Stockton, c/o Arthur F. Godwin
Central Delta Water Agency, c/o Dante Nomellini
John Herrick, Esq., SDWA
Jeanne Zolezzi, SEWD
EBMUD
Bryan Pilkington

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

Executed this 13th day of March, 2008, at Stockton, California.


CINDY PIASECKI

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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 509 W. Weber Avenue, Stockton, California 95203. On March 13, 2008, I served the within document:

**COMMENT LETTER REGARDING THE MARCH 18, 2008 BOARD MEETING ITEM:
NSJWCD TIME EXTENSION ORDER regarding the Petition for Reconsideration of Order
WR 2006-0018-DWR**

(BY MAIL) 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 on day after the date of deposit for mailing in affidavit.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the address(es) shown below.

(BY FACSIMILE MACHINE) I sent such document from facsimile machine (209) 948-4910 on _____. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (209) 948-4910 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelop(s) addressed to the parties listed below

(BY FEDERAL EXPRESS) Having placed the document in an envelope(s) or package(s) designated by Federal Express with delivery fees paid or provided for, addressed as stated below, I deposited the envelope(s) or package(s) in a box or other facility regularly maintained by Federal Express or delivered the envelope(s) or package(s) to a courier or driver authorized by Federal Express to receive documents.

Bill Fuhs
11360 E. Jahant Road
Acampo, CA 95220

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

Executed this 13th day of March 2008, at Stockton, California.


CINDY PIASECKI