

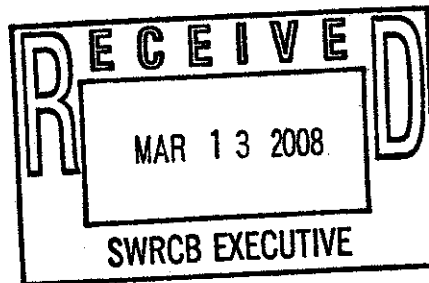
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March 13, 2008

VIA ELECTRONIC MAIL

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
Post Office Box 100
Sacramento, California 95812-0100



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

Dear Ms. Townsend:

On behalf of North San Joaquin Water Conservation District (North San Joaquin or District) we have the following comments to the Draft Order in the Matter of the Petition for Reconsideration by the North San Joaquin Water Conservation District of WR 2006-0018-DWR Denying an Extension of Time of Water Right Permit 10477 (Application 12842).

At the outset, North San Joaquin would like to extend the District's sincere appreciation and gratitude for the enormous amount of time the State Water Board members, especially the two hearing officers, and staff undertook regarding the District's Petition for Reconsideration. We believe the Draft Order is a well written and thorough analysis of the issues presented during the hearing. The District supports adoption of this Draft Order.

Additionally, the District has reviewed the comments submitted by the County of San Joaquin, San Joaquin County Flood Control and Water Conservation District and Mokelumne River Water and Power Authority (collectively "County") and would like to acknowledge and endorse these comments, and inform the State Water Board that we are in agreement with these comments. Much of what the District was intending to address has been covered by the County, so the District's comments will be of a more limited nature.

We have the following comments, questions or request for clarification to the Draft Order:

1. **Page 8, Section 5.2.2, Obstacles Not Reasonably Avoided**

In the third paragraph of this Section, the State Water Board finds that the "variability of the District's water supply in drought years and the temporary nature of Permit 10477 have impaired the District's ability to retain and attract customers, which in turn has caused delays in complying with previous time requirements.... While lack of finances, or an inability to invest in infrastructure due to concerns regarding the reliability of a water supply that is unrelated to hydrologic conditions, will not generally be accepted as good cause for delay, the State Water Board finds in this case that the District has committed to actions that will avoid these obstacles in the future." The District would appreciate additional direction from the State Water Board on the nature and use of the temporary right. What happens if we are successful in utilizing the full 20,000 acre feet? Will this permit be licensed? If this water is licensed, what does that mean? Can East Bay Municipal Utility District take it away - is the license temporary?

2. **Page 10, Section 5.2.3, Satisfactory Progress**

The third sentence in the first paragraph on page 10 states "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....this order is conditioned on a showing of progress towards effective groundwater management in the Eastern San Joaquin groundwater basin." What does this mean? To the District's knowledge, the only legal authority the District has over groundwater pumping is to levy a groundwater charge on water producing facilities within the District [See Water Code Section 75500-75642]. Pursuant to the legislative authorization of the District, it has done everything authorized by law. What additional authority, aside for proceeding with an adjudication pursuant to Water Code Section 2100, does the District have to regulate groundwater pumping? The District would appreciate any input from the State Water Board on the "additional tools" available to the District to restrict groundwater pumping.

3. **Page 12, Section 5.2.4, Public Interest**

The first paragraph on page 12 discusses the requirement to submit an annual report to the Deputy Director. It states that "regarding progress on groundwater management by the District in the Eastern San Joaquin groundwater basin and any existing or proposed measures to address overpumping within the District's boundaries." Here again, the District is concerned about its legal authority to impose measures, beyond the groundwater charge, to address overpumping. The District would appreciate any insight into the District's legal authority to restrict groundwater pumping with the District.

4. Page 14, Order No. 2

Order No. 2 provides that the District must submit a plan to the Deputy Director within 180 days from the date of the order. As was discussed above, the District is unsure what, if any, authority the District has to place "restrictions on groundwater pumping" within the District, other than placing groundwater pumping 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 respectfully requests clarification and guidance on how the District may impose groundwater pumping restrictions.

Further, the District requests that the Draft Order be modified to allow submission of a petition for extension of time beyond 2010 to be completed either prior to the expiration of the existing term or at a minimum one year from the date of adoption of the Order.

5. Page 15, Order No. 3

Order No. 3 discusses 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." The District and the State Water Board do not regulate groundwater within the District. The State Water Board's jurisdiction within the District relates to the appropriation of water from the Mokelumne River (Water Right Permit 10477) and the District's jurisdiction over groundwater is limited to the imposition of a groundwater charge on water producing facilities. Fundamental to any effort to reverse the critical overdraft in the Eastern San Joaquin groundwater basin is the use of additional surface water supply which will result in a reduction in groundwater usage. Beyond that, the District is unclear on what additional measures it can take to prevent additional overdraft.

Additionally, the District seeks clarification regarding the extent of placing water into underground storage. Is the District limited to placing 1,000 acre feet annually into the underground basin? Or, if we have the "conjunctive use" plan in place, can we place any water appropriated pursuant to Water Right Permit 10477 into the underground for storage?

6. Page 15, Order No. 5

The District is agreeable to submitting an annual report regarding groundwater management by the District in the Eastern San Joaquin groundwater basin and looks forward to further instruction, as requested above, from the State Water Board on the tools available to assist the District in the management of the basin.

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7. Page 16, Order No. 6

For the reasons set forth in the County's comment letter, the District requests that Order No. 6 prohibiting the transfer of water diverted to underground storage under Permit 10477 outside of the Eastern San Joaquin County groundwater basin be deleted.

We appreciate the opportunity to provide these comments and look forward to working with the State Water Board to finalize the requested language changes. Should you have any questions prior to the hearing, please feel free to contact me.

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

KEH:md