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October 8, 2002

VIA FACSIMILE and CALIFORNIA OVERNIGHT

Arthur G. Baggett, Chairman
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Re: Request for Additional Time and for Order Convening of Conference of Parties and Staff Regarding Clarification of Draft Order WRO 2002 - In the Matter of Petition to Change Place and Use et seq., Oroville-Wyandotte Irrigation District and Yuba County Water District.

Dear Chairman Baggett:

This letter is being written on behalf of Oroville-Wyandotte Irrigation District (OWID) and with the concurrence of Yuba County Water District (YCWD) and the City of Yuba City (Yuba City). I am authorized to state those parties support this request and letters of concurrence will follow.

Regarding the foregoing described draft order, which is scheduled for Board consideration on the 17th of October, we respectfully request the Board direct that the proposed order be held in abeyance until the first meeting in December or sixty (60) days, and that the Board direct its staff to convene a conference of the parties, including Staff and the Hearing Officer, to discuss the order and to clarify important questions about its implementation.

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This matter has been pending for over 20 years, and we suggest that 2 months will not prejudice any party. Indeed, the conference we request will assist all parties, including Staff, in minimizing the present questions and ambiguities within the draft order that are significant and could potentially lead to further litigation. Our mutual goal is to eliminate questions, reduce ambiguity, and hopefully, reduce the risk of litigation.

The order imposes requirements that are unique to this proceeding because of the manner in which the contract between OWID and YCWD is woven into the fabric of the water rights. Unless clarified, the questions will only force the parties to protect their interests by contesting the Board's final order in order to avoid future contentions that they have waived their rights. We submit that further litigation is not the optimal way to answer questions and to resolve disputes. We respect the fact that the draft order has chosen not to adopt most of the recommended actions by the parties suggested at the previous workshop. At this point, however, a conference may, potentially, eliminate the prospect of having to litigate issues that could be resolved by agreement, and still maintain consistency with the order as drafted. Since those issues are unprecedented in other proceedings, we believe a meeting to discuss them will benefit all parties, and the Board.

The issues that we would like to discuss are as follows:

1. What will be the criteria for the operating plan for transfer of water to Yuba City? The order is not clear in this regard. The nature of the operating plan will determine whether an additional agreement between OWID and YCWD is necessary or feasible. Clarification is needed on the elements of the plan discussed, but not defined, in the order. Of particular concern, is the question of whether the operating plan can show that the Project water going through Kelly Ridge for power generation is water that can be re-diverted by Yuba City for consumptive use under Permit 11518. If the order means that the water re-diverted by Yuba City must be available, under the Permit, over and above or distinct from the water being used to generate power under the hydro licenses, a very difficult and perhaps impossible situation is presented.

2. The parties need to discuss the CEQA documentation related to the extension of the permits until 2004. We understand that OWID and YCWD will be the lead agencies under the draft order, but we would like some clarification of what study elements the Board, in its order, deems to be necessary.

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3. We would like to discuss the relationship of the draft order to any petitions to extend the joint permits, and/or the OWID separate permits, in 2004. The draft order raises issues regarding growth in demand for domestic and municipal purveyors to be addressed in those proceedings that should be clarified now.

4. We would like to discuss the draft order's determination regarding the existing contract between the Districts, which is an element of the water rights, because the import of Ordering Paragraph No. 6, and its impact on the 1959 OWID/YCWD Agreement, is not clear.

5. We would like to review with the staff the accurate quantification of the rights held by the parties. Such quantification was not part of the hearing record (the only discussion was of maximum diversions at maximum rates, a number all agree is not attainable). It is important to ensure the parties are talking about the same quantities in order to determine the potential impact of the order.

6. YCWD and OWID have initiated serious discussions to merge themselves into a single entity. The future of those negotiations cannot be predicted, but the impact of the order on the reconstituted entity needs to be discussed.

7. The Parties desire to meet with Staff to discuss the Water Conservation Plan required by Paragraph 3, and its relationship to existing water conservation measures undertaken by OWID.

8. Although not as substantively crucial as the foregoing points, the undersigned will be out of the country on October 17, 2002, returning on the 23rd, and therefore is unable to attend the Board meeting on this matter in any event.

It is possible these issues are clear to the Board, but they are not clear to the parties and the draft order raises many questions of implementation. Unfortunately, the timing rules for challenges of Board decisions do not allow adequate time nor processes to resolve these issues before appeals must be filed. If we can mutually agree on these points, it may well be that the draft order can be adopted without the need for further proceedings, including reconsideration, and litigation. We do not believe such judicial proceedings are the best way to solve issues of interpretation and clarification.

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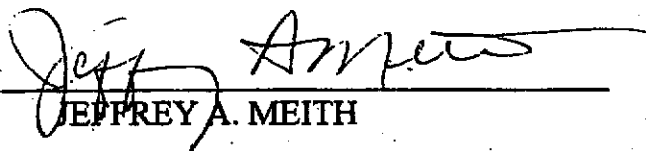
A noticed meeting, at the Board's offices with Staff, the Hearing Officer, and representatives of all parties who have appeared in the hearings, will not raise any problems regarding the Ex Parte Rules, and is fully in accord with your goals of expediting proceedings and avoiding needless litigation.

Thank you for your consideration.

Very truly yours,

MINASIAN, SPRUANCE, BABER,
MEITH, SOARES & SEXTON, LLP

By


JEFFREY A. MEITH

JAM/jg

cc: Oroville-Wyandotte Irrigation District (via facsimile and surface mail)
Yuba County Water District (via facsimile and surface mail)
Craig Wilson, Chief Counsel (SWRCB) (via facsimile and California Overnight)