

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING – DIVISION OF WATER RIGHTS
February 20, 2007**

ITEM 9

SUBJECT

CONSIDERATION OF A PROPOSED ORDER GRANTING
RECONSIDERATION OF THE DENIAL OF NORTH SAN JOAQUIN WATER
CONSERVATION DISTRICT'S TIME EXTENSION PETITION (WATER RIGHT
APPLICATION 12842)

DISCUSSION

On July 3, 1956, the State Water Resources Control Board's (State Water Board) predecessor, the State Engineer, approved Decision 858, granting water right Permit 10477 (Application 12842) to the North San Joaquin Water Conservation District (District) for diversion of water from the Mokelumne River. Permit 10477 allows the direct diversion of 80 cubic feet per second and storage of 20,000 acre feet per annum from about December 1 of each year to July 1 of the succeeding year. Beneficial uses include irrigation, domestic, municipal, recreational and industrial uses. The permit initially required the District to complete construction by December 1, 1960, and to put water to beneficial use by December 1, 1970. The District has previously requested and received three extensions of time from the State Water Board.

On December 29, 2000, the District filed a fourth petition for an extension of time. The District sought an extension until 2010 to complete both construction and use of the water under Permit 10477. The District claimed that it has not been able to put the water to full beneficial use and that it will continue to attempt to utilize its full water allotment under Permit 10477.

On November 30, 2006, the Chief of the Division of Water Rights (Division) issued Order WR 2006-0018-DWR approving certain changes to Permit 10477 and denying the District's petition for extension of time to complete beneficial use of water under Permit 10477. The District timely filed a petition for reconsideration of the Division's order denying the time extension and requested a hearing before the State Water Board.

The proposed order grants reconsideration of Order WR 2006-0018-DWR subject to further action after a public hearing on the time extension. The proposed order does not reflect a judgment on the merits of the issues raised in the District's petition for reconsideration. Pending issuance of an order after the hearing, the portion of Order 2006-0018-DWR that denies an extension of time is suspended.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends adoption of the proposed order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2007 – 00XX

In the Matter of the
Petition for Reconsideration by the North San Joaquin Water Conservation District
(Water Right Application 12842) of an Order Denying a Time Extension

ORDER GRANTING RECONSIDERATION

BY THE BOARD:

The North San Joaquin Water Conservation District (District) holds Permit 10477 (Application 12842) for the diversion of water from the Mokelumne River in San Joaquin County. On November 30, 2006, the Chief of the Division of Water Rights (Division) issued Order WR 2006-0018-DWR denying the District's petition for extension of time to complete beneficial use of water under Permit 10477. The District timely filed a petition for reconsideration of the Division's order denying the time extension.¹

An interested person may petition the State Water Resources Control Board (State Water Board) for reconsideration of a decision or order on any of the following grounds: (1) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (2) the decision or order is not supported by substantial evidence; (3) there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced; (4) error in law. (Cal. Code Regs., tit. 23, § 768.)²

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¹ In its order, the Division also conditionally approved changes in the place of use and place of storage sought by the District. The District has not petitioned for reconsideration of the Division's conditional approval of those changes and those approvals will not be considered in this proceeding.

² Unless otherwise indicated, all further regulatory references are to the State Water Board's regulations located in title 23 of the California Code of Regulations.

After review of the record, the State Water Board may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C); see also subd. (a)(1) [providing that State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues].) Before taking final action, the State Water Board has the discretion to hold a hearing for the purpose of oral argument, the receipt of additional evidence, or both. (*Id.*, § 770; Wat. Code, § 1123.)

The District alleges that Order WR 2006-0018-DWR is not supported by substantial evidence and is based on error in law. The District also contends that the State Water Board should consider additional relevant evidence that could not have been produced when the District filed its petition for extension of time in 2000. The District requests a hearing before the State Water Board “should the decision on [the District’s] Petition for Reconsideration affirm denial of the District’s” time extension petition.³ As explained above, however, the State Water Board has the discretion to hold a hearing only before taking final action.

In light of the evidentiary issues raised in the District’s petition, the State Water Board will conduct a public hearing on the time extension before taking final action on the District’s petition for reconsideration. This grant of reconsideration does not reflect a determination as to whether the issues raised in the District’s petition for reconsideration are substantial and should not be construed as a judgment on the merits of those issues.

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³ It is not entirely clear whether the District first seeks reconsideration by the Division instead of the State Water Board. The timely filing of a petition for reconsideration, however, makes available a higher level of review (i.e., by the State Water Board) of an action taken by State Water Board staff.

D R A F T

January 22, 2007

ORDER

IT IS ORDERED that the District's petition for reconsideration of Order WR 2006-0018-DWR, which denies the time extension, is granted, subject to further action of the State Water Board after a hearing to receive evidence on whether the Division's order should be set aside, modified, or upheld, or other appropriate action should be taken. The portion of Order WR 2006-0018-DWR that denies an extension of time is suspended pending the State Water Board's issuance of an order after the hearing.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 20, 2007.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Song Her
Clerk to the Board