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8 STATE WATER RESOURCES CONTROL BOARD

9
10 In the Matter of: The Proposed Revocation of
Permits 16209, 16210, 16211, and 16212 For the
11 Auburn Dam Project

CASE NO.
CLOSING BRIEF OF COUNTY OF
SACRAMENTO AND SACRAMENTO
COUNTY WATER AGENCY

12
13 **I. INTRODUCTION**

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15 The Lower American River has long been recognized as a resource of extraordinary value.
16 Few equivalents in the State of California or throughout the United States exist. Since at least
17 1959, Sacramento County has actively pursued a strategy aimed at protecting the Lower
18 American River.

19 It is the position of Sacramento County that in pursuing the proposed revocation of the
20 United States Bureau of Reclamation (Reclamation) Auburn Dam permits, the State Water
21 Resources Control Board (SWRCB) must consider and guard against any unintended
22 consequences of its decision. Whether Reclamation's permits are revoked or not, the SWRCB
23 must ensure that water currently held by Reclamation is preserved for use in implementing
24 protective, durable and enforceable flow standards on the Lower American River and for the
25 protection of other public trust and beneficial uses within the American River watershed.
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1 **II. THE SWRCB DECISION'S SHOULD NOT IMPAIR IMPLEMENTATION**
2 **OF THE WATER FORUM AGREEMENT**
3 **AND MUST BE GUIDED BY SACRAMENTO COUNTY'S**
4 **AMERICAN RIVER PARKWAY PLAN**

5 As Tom Gohring, Executive Director of the Water Forum, explained in his testimony to
6 the SWRCB, the Water Forum Agreement was executed in 2000, and establishes two co-equal
7 objectives: providing a reliable and safe water supply for the region's economic health and
8 planned development to the year 2030; and preserving the fishery, wildlife, recreational and
9 aesthetic values of the Lower American River. (Sacramento County Exh. 2.)

10 The co-equal objectives of the Water Forum Agreement are also embedded into the
11 American River Parkway Plan (Parkway Plan). (See Testimony of Keith DeVore, Sacramento
12 County Exhibit 1; see also Sacramento County Exh. 3 at p. 77.) Water Flow Policy 4.1 of the
13 draft final Parkway Plan is aimed at protecting the fishery, wildlife, recreational, and aesthetic
14 values of the Lower American River. It states the intent of the Parkway Plan that "available
15 water flows protect the Lower American River" resources. The Water Flow Policy specifically
16 incorporates the minimum flow regime agreed to by Reclamation and the Water Forum in 2006,
17 known as the Flow Management Standards for the Lower American River. (Sacramento County
18 Exh. 3 at p. 77.)

19 The Parkway Plan additionally seeks to protect the region's surface water supplies. Water
20 Flow Policy 4.3 expressly states: "New surface water diversions that deplete flows in the Lower
21 American river, whether by execution of a new contract or new water right to serve entities
22 outside the American River watershed are inconsistent with this American River Parkway Plan."
23 (Sacramento County Exh. 3 at p. 77.)

24 The Urban American River Parkway Preservation Act requires State Departments, when
25 carrying out their respective responsibilities involving or impacting the Lower American River,
26 be directed by the American River Parkway Plan. (Pub. Resources Code, § 5842.) Accordingly,
27 28

1 the SWRCB must be guided by the Parkway Plan's Water Flow policies as it decides the question
2 before it revokes Reclamation's permits.

3 **III. THE SWRCB'S DECISION SHOULD NOT BE**
4 **AN OBSTACLE TO DECLARING THE**
5 **AMERICAN RIVER FULLY APPROPRIATED**

6 The Water Forum Agreement identifies the need to modify the SWRCB's Declaration of
7 Fully Appropriated Streams as it currently pertains to the American River as an important
8 component of meeting its overall objectives. The Water Forum Agreement states:

9 The State Water Resources Control Board has already declared the American
10 River to be fully appropriated during certain times of the year. In recognition
11 of the additional diversions and fishery flows agreed to in the *Water Forum*
12 *Agreement*, the Declaration of Full Appropriation needs to be amended.
13 Because there are significant remaining issues including area of origin
14 protections, this will require additional negotiation. Signatories agree to
15 negotiate with all affected stakeholders and the Water Forum Successor Effort
16 will recommend an amendment to the Declaration of Full Appropriation for
17 the American River consistent with the *Water Forum Agreement*. Timing of
18 this assurance: A recommended amendment to the Declaration of Full
19 Appropriation for the Lower American River will be developed so that the
20 amended Declaration can be recommended as soon as the Lower American
21 River flow standard is updated. (Sacramento County Exh. 4 at p. 138.)

22 While Sacramento County agrees with testimony of Kathy Mrowka, that revocation of
23 Reclamation's Auburn Dam permits will not itself change the existing Declaration of Fully
24 Appropriated Stream Order for the American River, it will, at least on paper, make additional
25 water available for appropriation during other months of the year. (Transcript at pp. 258-259.)
26 This would potentially serve as an obstacle to the Water Forum in its efforts to modify the scope
27 of the Declaration.

28 The Declaration of Fully Appropriated Stream Order provides that the American River is
fully appropriated during the period of July 1 through October 31. Other months, however, are
also critical to the operation and management of the American River for the protection of the
fisheries. As part of the improved flow standards for the Lower American River, the Water

1 Forum will seek to modify the Declaration of Fully Appropriated Streams Order for the American
2 River.

3
4 **IV. CONCLUSION**

5 As it makes its decision regarding revocation of Reclamation's permits, the SWRCB
6 should guard against creating an impediment to the Water Forum's implementation of the Water
7 Form Agreement. Thus, whatever the SWRCB's decision regarding Auburn Dam, Sacramento
8 County requests that the SWRCB expressly preserve the water under the permits to facilitate the
9 implementation of flow standards on the Lower American River and for other public trust and
10 beneficial uses within the American River watershed.

11 Respectfully submitted,

12 SOMACH SIMMONS & DUNN

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15 Dated: September 3, 2008

16 By 

Sandra K. Dunn

17 Attorneys for County of Sacramento and
18 Sacramento County Water Agency
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1 PROOF OF SERVICE

2 I am employed in the County of Sacramento; my business address is Hall of Justice
3 Building, 813 Sixth Street, Third Floor, Sacramento, California; I am over the age of 18 years
4 and not a party to the foregoing action.

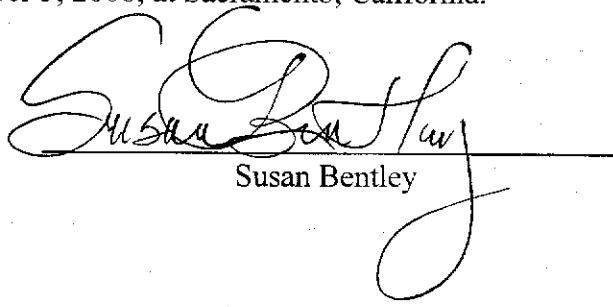
5 On September 3, 2008, I served a true and correct copy of

6 **CLOSING BRIEF OF COUNTY OF SACRAMENTO
AND SACRAMENTO COUNTY WATER AGENCY**

7 X (by electronic service) I hereby certify that a true and correct copy of the foregoing will
8 be e-served on September 3, 2008 as listed below:

9	Michael B. Jackson	mjatty@sbcglobal.net
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21 I declare under penalty of perjury that the foregoing is true and correct under the laws of the
22 State of California. Executed on September 3, 2008, at Sacramento, California.

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Susan Bentley

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