

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2000 - 15

In the Matter of the Petition for Reconsideration
of Order WR 2000-12 Which Revised
The Declaration of Fully Appropriated Streams
To Allow Processing Specified Applications to
Appropriate Water From the Santa Ana River

SOURCE: Santa Ana River

COUNTIES: Riverside, San Bernardino, Orange

ORDER DENYING PETITION FOR RECONSIDERATION

1.0 INTRODUCTION

The State Water Resources Control Board (SWRCB) adopted Order WR 2000-12 on September 21, 2000, in response to two petitions to revise provisions of the Declaration of Fully Appropriated Streams (Declaration) applicable to the Santa Ana River.¹ Order WR 2000-12 revised the Declaration to allow for processing two specified applications to appropriate water from the Santa Ana River. The first application and an accompanying petition to revise the Declaration were submitted by San Bernardino Valley Water District and Western Municipal Water District of Riverside County. The second application and petition to revise the Declaration were submitted by Orange County Water District. Order WR 2000-12 found that the evidentiary record supported revising the Declaration to allow for processing the specified water right applications in accordance with the provisions of the Water Code. On October 20, 2000,

¹ An updated version of the Declaration of Fully Appropriated Streams was adopted in 1998 pursuant to the provisions of Water Code section 1205 et seq. (See SWRCB Order WR 98-05.)

the SWRCB received a petition for reconsideration of Order WR 2000-12, filed by the Chino Basin Water Conservation District. For the reasons discussed below, this order concludes that the petition for reconsideration should be denied.

2.0 SUBSTANCE OF PETITION

The petition for reconsideration refers to and is accompanied by a document titled the "Santa Ana River and Chino Basin Water Right Accord" (Accord). The petition is also accompanied by a declaration of Barrett Kehl, General Manager of the Chino Basin Water Conservation District. The declaration states Mr. Kehl has been advised that the accord has been executed by all listed parties and that Mr. Kehl intends to provide the SWRCB certified copies of the signature pages of the Accord.² The petition asks that the SWRCB take official notice of the Accord and amend Order WR 2000-12 to "incorporate" the Accord. The petition states that the Accord represents relevant new evidence which, in the exercise of reasonable diligence, could not have been produced prior to adoption of Order WR 2000-12. The petition states that it does not seek reconsideration of any substantive determinations of Order WR 2000-12, nor does it seek to have any conditions included in any permits that may be issued on the applications accepted for filing pursuant to Order WR 2000-12.

3.0 DISCUSSION

Section 768 of title 23 of the California Code of Regulations provides that the availability of relevant new evidence which, in the exercise of reasonable diligence, could not have been produced prior to adoption of an order of the SWRCB is grounds for requesting reconsideration of a decision or order of the SWRCB.

In this instance, the Accord submitted by the Petitioner addresses a number of issues regarding how the signatories view the existing rights of water users in the Santa Ana River Basin, the effect of prior court judgments on those rights, and commitments among the signatories regarding the future exercise of their respective rights. The Accord has detailed provisions

² The copy of the Accord attached to Mr. Kehl's declaration shows the signatures of representatives of one of several listed parties to the Accord. For purposes of this order, the SWRCB assumes that the Accord has been signed by representatives of all listed signatories.

regarding "recapture/export of unused imported water," "storage/recovery/export programs," reservation of rights to "export of native water," and various other provisions concerning the future exercise of water rights claimed by the various parties. Although Order WR 2000-12 and the Accord both address water rights in the Santa Ana River Basin, a number of the issues in the Accord go well beyond the narrow scope of the proceeding that led to adoption of Order WR 2000-12. Thus, it is neither necessary nor appropriate to revise Order WR 2000-12 to address the numerous issues covered by the Accord.

A second problem with the action requested by the Petitioner is the assumption that SWRCB orders should incorporate entire lengthy agreements that have been reached among other parties. Although the SWRCB often includes specific conditions in permits, licenses, or orders that are based on provisions of agreements between other parties, those conditions relate to matters over which the SWRCB has enforcement jurisdiction and which the SWRCB believes are in the public interest to address in an SWRCB order, permit, or license. A binding agreement remains binding among the parties irrespective of whether the SWRCB includes the agreement as a condition of a water right order. The SWRCB is not in the practice of incorporating entire lengthy agreements among other parties into SWRCB orders simply because one or more of the parties so requests.

In this instance, the petition states that it does not seek any substantive revisions of Order WR 2000-12. Order WR 2000-12 concludes that the Declaration should be revised to allow for processing two specified water right applications, but expressly provides that the order "makes no finding regarding the relative priority of any rights that may be acquired under the specified applications and other rights or applications for water rights in the Santa Ana River Basin." In contrast, the Accord submitted by Petitioner Chino Basin Water Conservation District contains numerous provisions that define or limit the rights of the listed signatories to water from various sources. To the extent that the Accord represents an attempt by the parties to define their respective water rights, it goes well beyond and is inconsistent with the narrow scope of Order WR 2000-12.

4.0 CONCLUSION

Approval of the Accord submitted by the Chino Basin Water Conservation District indicates that the signatories are working to resolve disputes over water rights and the use of water in the Santa Ana River Basin in a mutually agreeable manner. The provisions of the Accord may provide a way for the signatories to work out potential protests to the water right applications addressed in Order WR 2000-12. The SWRCB appreciates efforts of parties to resolve disagreements in a manner consistent with the public interest. However, it would not be in the public interest or within the scope of the proceeding that led to Order WR 2000-12 for the SWRCB to incorporate the lengthy Accord into Order WR 2000-12. The SWRCB concludes that the petition for reconsideration should be denied.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by the Chino Basin Water Conservation District is denied.

CERTIFICATION

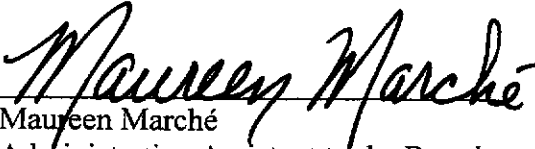
The undersigned, Administrative Assistant to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 16, 2000.

AYE: Arthur G. Baggett, Jr.
 Mary Jane Forster
 John W. Brown
 Peter S. Silva

NO: None

ABSTAIN: None

ABSENT: None


Maureen Marché
Administrative Assistant to the Board