

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0063-EXEC

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In the Matter of the Petitions of the United States Bureau of Reclamation,  
Fallbrook Public Utility District and the California Department of Water Resources for  
Reconsideration of Order WR 2009-0028-DWR, which denied the  
United States Bureau of Reclamation's Petitions for Extension of Time for  
Water Right Permits 8511, 11357 and 15000B  
(Applications 11587, 12179 and 21471B, respectively)

**UNITED STATES BUREAU OF RECLAMATION**  
Petitioner and Permittee

**FALLBROOK PUBLIC UTILITY DISTRICT**  
Petitioner

**CALIFORNIA DEPARTMENT OF WATER RESOURCES**  
Petitioner<sup>1</sup>

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SOURCE: Santa Margarita River

COUNTY: San Diego

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**ORDER GRANTING PETITIONS FOR RECONSIDERATION**

BY THE EXECUTIVE DIRECTOR:

By Order WR 2009-0028-DWR, the State Water Resources Control Board (State Water Board or Board) Division of Water Rights (Division) denied time extension petitions for development of water diversion and use under United States Bureau of Reclamation (Reclamation) Permits 8511, 11357 and 15000B, which authorize construction of a two-dam project, diverting

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<sup>1</sup> The term "Petitioner" is used for ease of reference, and does not confer upon the California Department of Water Resources the legal status of petitioner.

185,000 acre-feet per annum (afa) from the Santa Margarita River.<sup>2</sup> The time extension petitions described plans for a conjunctive use project in the Santa Margarita River watershed for use by the Fallbrook Public Utility District (Fallbrook) and Camp Pendleton Marine Corps Base (Camp Pendleton), as well as supplying water for export to the San Diego region.

Reclamation and Fallbrook requested reconsideration of the Division's order, and the Department of Water Resources (DWR) also submitted a memorandum in support of reconsideration. DWR's memorandum failed to meet the requirements for petition submittal described in California Code of Regulations, title 23, section 769, and failed to raise substantial issues related to the causes for reconsideration set out in California Code of Regulations, title 23, section 768, and is therefore dismissed.

When Order WR 2009-0028-DWR was issued on June 15, 2009, the permittee had not filed change petitions: the change petitions were filed on September 14, 2009. On September 22, 2009, the change petitions were rejected by the Division because they failed to comply with Water Code section 1701.1(d) and California Code of Regulations, title 23, section 794. However, the State Water Board anticipates that the petitions will be re-filed and the deficiencies corrected. The State Water Board, in its discretion, would prefer to consider the petitions for time extension and the petitions for change in the same proceeding.

The environmental documentation required under the California Environmental Quality Act (CEQA) has not yet been completed for the project: a final environmental impact report is anticipated in spring of 2010. Without a CEQA document, the State Water Board cannot approve either the time extension request or the recently submitted change petitions. As the CEQA review required for a decision has not yet been completed, it would be inappropriate to pass judgment at this time on whether the findings necessary to support an extension have been met, or what conditions should be imposed in the public interest.

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<sup>2</sup> Order WR 2009-0028-DWR was issued on June 15, 2009. The Water Code directs the State Water Board to act on a petition for reconsideration within 90 days from the date on which the State Water Board adopts the decision or order that is the subject of the petition. (Wat. Code, § 1122.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the State Water Board is not divested of jurisdiction to act upon the petition simply because the State Water Board failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass'n. v. State Personnel Bd.* (1995) 10 Cal.4<sup>th</sup> 1133, 1147-48, 1150-51 [43 Cal.Rptr.2d 681]; State Water Board Order WQ 98-05-UST at pp. 3-4.)

This order is based on the unique circumstances of this case: (1) where a change petition was filed after the initial denial for a project that only recently obtained Congressional authorization, (2) where the Board anticipates that CEQA documentation will be completed promptly, and (3) where the change petition furthers the state policy favoring conjunctive use projects. Staff shall continue to fully apply due diligence requirements to other pending and future requests for extensions of time, and to deny extensions without waiting for preparation of a CEQA document where the causes for an extension have not been satisfied.

### ORDER

**IT IS HEREBY ORDERED** that the petitions for reconsideration of the United States Bureau of Reclamation and of Fallbrook Public Utility District are granted. Order WR 2009-0028-DWR is vacated, and the time extension petitions are remanded to the Division of Water Rights for consideration in tandem with the change petitions.

Dated: **DEC 07 2009**

  
Dorothy Rice  
Executive Director