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The Resources Agency of California
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DIVISION OF WATER RIGHTS

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INFORMATION PERTAINING TO "STATE FILINGS"

June 1976

INFORMATION PERTAINING TO "STATE FILINGS"

Chapter 989, Statutes of 1965, became effective on September 17, 1965, transferring to the State Water Rights Board all of the applications held by the California Water Commission (usually called State Filings); jurisdiction is now with the State Water Resources Control Board. The bill adds, amends and repeals a number of sections of the Water Code starting at Section 10504.

The information in this pamphlet is published for the guidance of those who are interested in the State Filings either from the viewpoint of having a State Filing made, obtaining an assignment or partial assignment, or obtaining a release from priority of a State Filing.

General Information

A State Filing is an application for appropriation of water which, in the judgement of the Department of Water Resources, is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the State. Such applications are prepared by the Department on the standard application forms of the State Water Resources Control Board (hereinafter referred to as the Board) and are filed with the Board the same as any other application to appropriate water. State filings are usually made by the Department on its own initiative, but are sometimes made by the Department at the request of local, State or Federal agencies.

The applicant must conform to the provisions of the law and the regulations of the Board insofar as applicable. This means that a bona fide attempt must be made to fulfill the requirements of the Section 1260 of the Water Code, except in regards to dates for commencement of construction work, completion of construction work and completion of the use of water, which are not applicable. This is for the reason that these three dates refer to the diligence required of all other applicants. State Filings are specifically exempt from diligence by periodic acts of the Legislature, until they are assigned. A State Filing has priority over all subsequent applications.

Immediately upon it's filing, the application is transferred to the Board by operation of the law (see W.C. Section 10504). The application then remains in the files of the Board exempt from diligence as provided by the Legislature from time to time until assigned.

Anyone proposing to build a project which is (a) in whole or in part specifically covered by a State Filing or which would (b) serve a purpose of development not in conflict with the general or coordinated plan may do either of two things: (1) If the project or a portion thereof is substantially the same as that described by the State Filing or a portion thereof, the proposed constructor of the project may petition the Board for assignment or partial assignment of the State Filings; (2) if the project is substantially different from the project described in the State Filing, but will nevertheless serve a purpose not in

conflict with the general or coordinated plan, the proposed constructor should file his own application describing the project to be build and petition the Board for a release from the priority of the State Filing.

An assignment or partial assignment is defined as a transfer of ownership of all or part of the inchoate right initiated by the State Filing. The assignment or partial assignment carries with it the priority of the State Filing.

A release from priority is defined as a waiver by the State of the priority of the inchoate right initiated by the State Filing. The release from priority is made specifically in favor of an application which will serve a purpose not in conflict with the general or coordinated plan. An application favored by the release from priority does not acquire the priority of the State Filing and bears only the priority as of its date of filing with respect to applications filed by other persons. The legal effect of a release from priority is to prevent the State or sub-sequent holder of the State Filing from objecting to the application in favor of which the release was made.

Assignments of State Filings

A person wishing to build a project substantially described by a State Filing or a portion thereof, may petition the Board for the assignment of all or any part of the State Filing. There is no pre-scribed form for such a petition but the Board recommends use of a form proposed by it that will be supplied upon request. A proposed completed application which fully describes the project to be constructed must be attached to the petition. Complete maps in conformity with the Board's regulations must be submitted with the proposed application. No fee is required. The proposed application may be amended by the applicant and will be handled in most respects the same as an application to appropriate water under the Board's rules. The requirement for diligence starts at time of assignment.

Competitors for assignment of a State Filing will each be required to follow the foregoing procedure. No priority of right to assignment of a State Filing may be gained by merely filing the first petition. As soon as practicable after receiving a petition and pro-posed completed application the Board will issue notice thereof in the manner prescribed in Section 1300 et seq. of the Water Code. The notice will describe all the matters to be considered by the Board.

It will first outline the petition for assignment and state the conditions which are prerequisite for approval of the petition. These are (a) a showing that the project to be constructed is for the purpose of development not in conflict with the general or coordinated plan for development of the waters of the State or with water quality objectives established pursuant to the law (Section 10504); (b) a showing that the requested assignment will not deprive the counties of origin of any waters which may be required for their development (Section 10505).

The notice will then describe the project proposed to be constructed and will describe the amendments proposed to be made to the State Filing. The notice will provide a period of 60 days during which time anyone may file a protest if (1) he believes the project would cause injury to his existing rights; (2) he has objections to the proposed amendments to the State Filing; (3) he believes the assignment would be invalid because it proposes a development in conflict a general or coordinated plan or that it would deprive a county of origin of water required for its future development; (4) he believes the proposed appropriation would not be within the Board's jurisdiction, would not best conserve the public interest, would have an adverse environmental impact, or would be contrary to law.

The hearing will be for the purpose of determining whether the application should be assigned and whether the proposed completed application should be approved in whole or in part.

Two or more petitions for assignment of the same or related applications may be consolidated for the purposes of hearing and determination with other applications, in the discretion of the Board. At least 45 days advance notice of the hearing will be provided.

At the hearing, testimony in regard to the foregoing matters will be taken. Following hearing the Board will make a decision based upon the record developed at the hearing as to whether (1) the State Filing should be assigned; (2) the amendments to the State Filing should be approved; (3) the application should be approved, and if so, (4) the terms and conditions under which it will be assigned and approved.

Following favorable action by the Board, the proposed application will be given the State Filing number and a permit will be issued in accordance with the decision.

Release From Priority

Petitions for release from priority need not be submitted in any particular form but there must be either an application already on file with the Board or one must be submitted with the petition describing the project to be favored by release from the State priority. If notice of the application has not been given, further action on it will be taken in the usual manner prescribed by the Board's rules. Upon completion of the application a notice will be given which will describe the petition for release from priority as well as the project proposed by the applicant. The notice will provide for a 60-day period during which time protests may be filed against the release from priority or against the application for the project proposed by the applicant.

Granting a release from priority requires findings (a) that the project to be constructed is for the purpose of development not in conflict with the general or coordinated plan for development of the waters of the State; and (b) that the release from priority will not deprive the counties of origin of any waters which may be required for their development.

Changes in Point of Diversion, Place of Use or Character of Use under Permits or Licenses on State Filings, or under Permits or Licenses Favored by a Release from Priority

The captioned changes must be initiated before the Board by its usual petition for change procedure (Sec. 738 of the Board's Regulations). Before the changes can be allowed the Board must find that they will neither in effect constitute the initiation of a new right nor operate to the injury of any other appropriator or lawful user of water. The Board must also determine that the changes will not conflict with the general or coordinated plan.

The law requires that all permits and licenses issued on State Filings or on applications favored by release from the priority of a State Filing must be conditioned so as to require approval by the State Water Resources Control Board of any changes in the project under permit or license deemed by the Board to be substantial. The practical effect of this requirement is that all changes in the projects under such permits and licenses must be cleared with the Board.

Petition for Assignment
Application: _____

State Water Resources Control Board
Division of Water Rights
2125 – 19th Street
Sacramento, California 95818

Gentlemen:

(Name of Petitioner)

of _____
(Address of Petitioner)

requests the assignment of (a portion of*)

Application _____, heretofore filed by the State under the provisions of Section 10500 of the Water Code.

A proposed completed application in duplicate, together with the maps that are required by the Board's regulations, is attached to this petition and by reference is made a part hereof. To the best of the petitioner's knowledge, said proposed application fully complies with all of the Board's requirements for a complete application.

(Petitioner)

By _____
(Signature of authorized representative)

Attachment

(Title)

*Strike out if petitioner proposes to appropriate the full quantity of water named in the application.