



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Executive Office

Charles R. Hoppin, Chairman
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Arnold Schwarzenegger
Governor

NOV 22 2010

Mr. John Herrick
4255 Pacific Avenue, Suite 2
Stockton, CA 95207

Dear Mr. Herrick:

SUBJECT: PARTY STATUS FOR THE STATE WATER RESOURCES CONTROL BOARD HEARING STARTING JANUARY 18, 2011 REGARDING WATER RIGHT APPLICATIONS SUBMITTED BY CITY OF DAVIS, UNIVERSITY OF CALIFORNIA, DAVIS, AND CITY OF WOODLAND

On November 17, 2010, the State Water Resources Control Board (State Water Board) received the Notice of Intent (NOI) to Appear at the subject hearing that you submitted on behalf of your client, the South Delta Water Agency. The NOI indicates your client will not present evidence at the hearing and only intends to participate by cross-examination or rebuttal. South Delta Water Agency did not protest Application 30358 and was not previously a party in this matter. Prior to granting your client party status at the hearing, I need to understand how their participation as a party will aid the State Water Board in reaching a decision in this matter, and your client's interests that may be affected if they cannot participate as a party. Please provide an explanation of your client's interests that may be substantially affected as a result of this proceeding and whether those interests can be adequately presented by the submission of a policy statement.

Please submit your response to me by noon on Monday, November 29, 2010.

Sincerely,

Frances Spivy-Weber
Vice Chair

cc: See next page

California Environmental Protection Agency

Mr. John Herrick

- 2 -

cc: Mr. Michael B. Jackson
P.O. Box 207
Quincy, CA 95971

Mr. Alan B. Lilly
Bartkiewicz, Kronick & Shanahan, P.C.
1011 22nd Street
Sacramento, CA 95816-4907

California Environmental Protection Agency

 *Recycled Paper*

FROM : JOHN HERRICK

PHONE NO. : 209 956 0154

Dec. 01 2010 10:29AM P1

SOUTH DELTA WATER AGENCY

4255 Pacific Avenue, Suite 2
Stockton, CA 95207
(209) 956-0150
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FAX COVER SHEET

TO: Ms. Frances Spivy-Weber, Vice Chair
FAX: (916) 341-5621
FROM: JOHN HERRICK, ESQ.

MESSAGE

Letter to follow.

Number of pages (including a cover page): 3 Date Sent: 11-30-10 Time Sent: 10:20 a.m.
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FROM : JOHN HERRICK

PHONE NO. : 209 956 0154

Dec. 01 2010 10:29AM P2

SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
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Directors:

Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Natalino Bacchetti
Jack Alvarez
Mary Hildebrand

Counsel & Manager:
John Herrick

November 30, 2010

Via fax: (916) 341-5621

Ms. Frances Spivy-Weber, Vice Chair
State Water Resources Control Board
1001 I Street
P. O. Box 100
Sacramento, CA 95812-0100

Re: Application 30358 City of Davis, et. al.

Dear Madam Vice Chair:

I asked to participate in the hearing for the above-described matter on behalf of the South Delta Water Agency. Our interest in this matter would not be adequately protected by any of the other parties currently on the list of participants. This is because we believe that there should be no new permits issued on the Sacramento River system unless and until there has been a comprehensive evaluation of the available water supply on that system, including the supply maintained in the Delta Pool.

As you know, in 2009, the USBR and DWR were unable to meet their permit conditions for such things as outflow (X2) in the earlier part of the year. They actually petitioned the SWRCB for relief from those conditions, using as their excuse/justification that they needed the limited water in storage to meet other permit conditions later in the year (cold water habitat). At the same time, USBR notified its various contractors that it might not be able to supply the Exchange Contractors with their full contract amount via the Delta Mendota Canal, and might have to supply some of the Exchange Contractor amounts via the San Joaquin River.¹ Under

¹ Generally, the Exchange Contractors are guaranteed their full amount through Delta diversions, and if that cannot be done, the Bureau must then provide water from its Friant Division via the San Joaquin River.

FROM : JOHN HERRICK

PHONE NO. : 209 956 0154

Dec. 01 2010 10:30AM P3

Ms. Frances Spivy-Weber, Vice Chair

November 30, 2010

Page Two

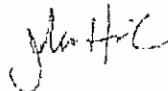
those circumstances, the Sacramento River system is bankrupt; being incapable of supplying current demands/needs.

This situation occurred during what was thought to be the third consecutive drought year. Until there is an accounting of available supply over the various water year types, there may be no water for any new applications. However, new applications, such as this one for the City of Davis et. al., could be granted as a recapture of project water under the area of origin statutes of Water Code Sections 11460 et. seq. Under those statutes, users such as the City of Davis could be given project water to fulfill their needs, with a corresponding decrease in project exports, as is anticipated in the area of origin and other statutes.

Even under such a recapture of project water, there remains the issue of when and how much water is available for superior needs. Currently the amounts of water required for fisheries in the subject of debate, and thus one cannot determine how much water must come from the projects (or other parties). More importantly to SDWA (and the other clients I represent in the southern Delta) it is unknown how any change in upstream deliveries, storage, and exports will affect the Delta Pool, which is an historic and current supply for in-Delta superior right holders. That Pool is a large reservoir of fresh water which slowly becomes more salty under drier conditions and/or when the projects fail to meet their permit obligations (which occurs often). It is unlikely that any current party to the City of Davis hearing will adequately explore this issue or give any thought to the effects on Delta diverters. Hence, I believe my participation is both proper and necessary.

Please feel free to contact me if you have any questions. I apologize for my delay in responding to your letter.

Very truly yours,



JOHN HERRICK

cc (via e-mail):

Michael B. Jackson, Esq. (mjatty@sbcglobal.net)

Alan B. Lilly, Esq. (abl@bkslawfirm.com)