



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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Kate Gaffney
Division of Water Rights, State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
(also via e-mail)

RE: Temporary Urgency Change Petition of North San Joaquin Water Conservation District for Water Right Permit 10477 (Application 12842)

Dear Ms. Gaffney,

The California Sportfishing Protection Alliance respectfully objects to the Temporary Urgency Change Petition of North San Joaquin Water Conservation District for Water Right Permit 10477 (Application 12842). This petition was noticed by the Board on August 4, 2009.

CSPA maintains that such a change would create a waste of water, and that the water will be used beneficially if not used by North San Joaquin as proposed. CSPA also maintains that the manner and place to which water diverted underground would be put to beneficial use under this petition is unclear and unknown. Finally, CSPA maintains that the water diverted under the proposed temporary urgency change would not be diverted "to storage" as is stated in the petition.

Legal background

Section 1435(c) of the Water Code states:

"Urgent need," for the purposes of this chapter, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find a petitioner's need to be urgent if the board in its judgment concludes, if applicable, that the petitioner has not exercised due diligence either

(1) in petitioning for a change pursuant to provisions of this division other than this chapter, or (2) in pursuing that petition for change.

Alternative beneficial use

There is no question that the 1000 af of water in question, if not diverted as requested by North San Joaquin, will be put to beneficial use. It will be used to maintain Delta outflow, or it will be used for Delta export. In either case, it will be placed to beneficial use according to the Water Code.

If retained in Camanche Reservoir over the winter, this 1000 af will be used to maintain sufficient water in that reservoir to allow cold water management of the cold water that passed from Pardee Reservoir through Camanche Reservoir as underflow, retaining its cold water character before being passed through to the Lower Mokelumne River.

If passed downstream into the Lower Mokelumne River, it will assist in providing instream flow for the benefit of aquatic biota, including possibly (depending on timing) anadromous salmonids.

Should this 1000 af of water be diverted at Woodbridge Diversion Dam, it will likely be used for irrigation.

Should this 1000 af of water pass, through a combination of fortuitous circumstances, past the Woodbridge Diversion Dam, it will provide water quality benefits in the Delta. It may be exported in whole or in part, for irrigation or for municipal purposes south of the Delta. Or, if circumstances are particularly fortuitous, it may meet Delta outflow requirements and pass into San Pablo and San Francisco bays, for the benefit of fish and wildlife and for the benefit of water quality in those water bodies.

Failing use for groundwater recharge in San Joaquin County, this 1000 af of water will surely not fail to be put to beneficial use.

Diversion to storage

Petitioner claims on page 1 of Attachment 1 of its Environmental Information for Petitions that it will divert an additional 1000 af of water to underground storage in lieu of storage in Camanche Reservoir, and that “the amount stored to replenish the groundwater basin would increase from 1000 afa to 2000 afa.” In general terms, “diversion to storage” means that water will be held for longer than thirty days before it is put to actual use. “Replenish” means that the amount of groundwater in the groundwater basin will increase.

Neither of these terms is met in their plain meaning. There is no assurance whatever that water that is diverted underground will remain there longer than 30 days, or that the water put into the ground will replenish anything. Indeed, petitioner states that the groundwater deficit for its service area is about 50,000 afa, and that the total overdraft in the service

area is between 500,000 and 750,000 af. The timing of the diversion under the requested temporary urgency change is planned for the irrigation season. This water will, in short, be pumped out of the ground as fast as it is injected. How and where it will be used is completely open to speculation. The type of irrigation it will support, where it will support irrigation, and the efficiency of the operation that will use the water are utterly unknown.

The present petition suffers the same defects as North San Joaquin's petition for permanent modification of Permit 10477

Petitioner has filed a petition to permanently modify the terms of permit 10477 so that water currently held in storage in Camanche Reservoir for diversion and surface use in the North San Joaquin service area can be diverted to "underground storage" and thence put to use for irrigation in the same general area. This petition was noticed by the Board on May 20, 2009.

On June 15, 2009, CSPA protested this petition on the grounds that the petition if granted would not serve the public interest, would be contrary to law, and would have an adverse environmental impact. In essence, North San Joaquin seeks to allow surface water to percolate into the ground while at the same time water in the North San Joaquin service area, and in San Joaquin County in general, is in a "state of critical overdraft," as petitioner documents extensively in both its May 20, 2009 petition and in the present temporary urgency change petition. However, North San Joaquin has placed no limitations or restrictions on the amount of water that can be pumped out of the ground in its service area, and, moreover, shows no sign of serious effort to do so. A minimal groundwater pumping charge of \$1 to \$5 per acre was approved by the North San Joaquin Water Conservation District, but the charge has to date not been imposed. Even if that charge were imposed, it is far from sufficient to incentivize meaningful water conservation that would address the chronic overdraft.

According to Attachment B (Engineer's Report) of the petition for permanent change in the terms of Permit 10477:

The State decided last November to deny the District's petition for extension of its 20,000 AFA right to Mokelumne River water because the District has not used the full 20,000 AFA.

The District petitioned the State for reconsideration of the denial and has been granted a hearing on June 21, 2007. The District must show construction and financing plans at the hearing or will lose the water right.

More recently, the State canceled the County's water right application for Mokelumne River water.

Should a majority of the people within the District oppose the groundwater charge, the District will definitely lose its water right, and the County will probably lose its first priority position for water from the Mokelumne River.

North San Joaquin Water Conservation District and all other agencies within Eastern San Joaquin County must take immediate action to correct the overdraft. If nothing is done, the State will proceed with "adjudication" of the Basin.

Adjudication means limiting groundwater pumping to natural recharge. It would result in all pumpers being restricted to approximately 75% of what they pump today. It would also eliminate any future development that would need more than 75% of the current groundwater use for a specific location.

North San Joaquin and other water interests in San Joaquin County have been on notice since at least 1982, when the Board officially declared the groundwater basin "critically overdrafted" (Ibid). Yet for twenty-seven years, no organized, concerted effort has been made to reduce demand. The only wide scale approach considered appears to have been a series of searches for supply increases to be gained by diverting surface water underground. The engineer states:

The only realistic way to deal with an average overdraft of 50,000 AFA, is to use 100,000 acre-feet or more during wet years because none is available in dry years.

Demand control just does not seem to have entered the realm of the possible for North San Joaquin. Indeed, the Engineer's Report explicitly contemplates future irrigation of 50,000 acres within the North San Joaquin district that at present are "dry."

The Temporary Urgency Change Petition should be denied

The section of the Water Code that deals with temporary urgency changes was created at a time when a primary form of "waste" of water was considered to be failing to put water to beneficial use. The original Permit 10477 contemplated "surplus" water in the Mokelumne drainage. Today, on the contrary, the state's water resources are over-appropriated, and over many decades San Joaquin County has been unable to identify a source of surface water to compensate for or even begin to seriously address its spendthrift water use. Statewide efforts are widely being proposed in the legislature, by the Governor, and by numerous other parties to reduce water use. It is in this context that

the Board should consider whether North San Joaquin's existing and proposed pattern of water management constitutes a pattern of wasteful and unreasonable use, and whether its proposed approach to feed surface water into an ever-increasing groundwater deficit should be allowed.

As stated in CSPA's June 15, 2009 protest of North San Joaquin petition for permanent modification of the terms of Permit 10477, diversion of water to a critically overdrafted groundwater basin with no attempt to control demand therefrom is an unreasonable method of diversion under the Water Code, and constitutes waste and unreasonable use of water. We see nothing different here. There is no particular identified temporary urgency. The only urgency is that if this petition is not granted, petitioner will not be able to use the water in contradiction of the terms of WRO 2006-18-DWR. This is simply a work-around on the terms of that order, and a down payment on a longer-term approach that that is misguided and unreasonable.

Moreover, this temporary urgency is a work-around in regards to CEQA. WRO 2006-18-DWR Section 3.5 notes that environmental review was conducted only for a pilot diversion to underground of 1000 afy; for this explicit reason, the Order specifically limits the amount of water that may be diverted for underground use under Permit 10477 to 1000 afy.

Respectfully submitted,



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cc:

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