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EXEC

STATE WATER RESOURCES
DOWNEY BRAND
CONTROL BOARD ATTORNEYS LLP

Kevin M. O'Brien
kobrien@downeybrand.com
916/520-5235 Direct
916/520-5635 Fax

621 Capitol Mall, 18th Floor
Sacramento, CA 95814
916/444-1000 Main
downeybrand.com

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DIV OF WATER RIGHTS
SACRAMENTO

March 5, 2015

VIA EMAIL (SWRCB-2014INFORMATIONAL-ORDER@WATERBOARDS.CA.GOV)

Barbara Evoy
Deputy Director, Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Reclamation District 2068 Response to 2015 Informational Order, Statements S000565, S000566, S000567, S000571, S000573, S000574, S000576, S000577, S000578, S000579, S000580, S000581, S000582, S000583, S000584, S004995 (collectively "Statements")

Dear Ms. Evoy:

This firm is counsel to Reclamation District 2068 (RD 2068), and files the correspondence below on its behalf in connection with RD 2068's response to the State Water Resources Control Board (Board) Division of Water Rights Order WR 2015-0002-DWR (Order), relative to the above-referenced Statements. RD 2068 provides this information to assist the Board in processing the information submitted and with the understanding that it is not the Board's purpose or authority to confirm or validate the existence, extent or nature of RD 2068's water rights on the parcels identified in its submissions.

The Order exceeds the scope of the Board's authority under Section 879(c)

Title 23, section 879(c) of the California Code of Regulations gives the Board the authority to issue an order requesting "additional information regarding the property patent date, the date of initial appropriation, and diversions made or anticipated during the current drought year" when it receives a complaint alleging interference with a water right by a riparian or pre-1914 water right holder, or when it receives information that indicates unlawful diversions by those water right holders. RD 2068's water rights are not the subject of the either complaint identified in the Board's Order, and the Board has not indicated that it has received any information regarding an illegal diversion by RD 2068. Under these circumstances, it is not clear that section 879(c) applies to require RD 2068 to respond to the Order at all.

The Board has requested that RD 2068 submit documentation supporting the type of water right claimed in each Statement Number identified in its Order, including the property patent date and

patent map for riparian water rights, and copies of notices of appropriation, property deeds “and all other information supporting the pre-1914 right pertaining to initial diversion and continued beneficial use of water” for pre-1914 rights. RD 2068 contends that the array of documents requested in the Order is beyond what is authorized by section 879(c). Further, the time frame that the Board has allocated for respondents to provide that data is unreasonably short given the breadth and scope of the information requested.

Despite these issues, in an effort to assist the Board’s planning and investigation during the ongoing drought, RD 2068 has submitted information regarding the water rights identified in the Statements as requested by the Order. RD 2068 has provided information to the best of its ability, given the limited timeframe identified by the Board for response. RD 2068 reserves the right to contest SWRCB authority to bring any enforcement action against RD 2068.

North Delta Water Agency Contract

North Delta Water Agency (“NDWA”) and DWR are parties to a water supply and quality settlement contract (“1981 Contract”) in which water users in the north Delta are authorized and have paid for the right to use water stored by the State of California. RD 2068 lies within NDWA, and is authorized to receive water pursuant to the 1981 Contract. Therefore, RD 2068 asserts that the Order is inapplicable to its water diversions, because DWR is obligated to provide a full water supply of adequate quality to all water users within the NDWA. NDWA submitted a comment letter regarding this Order on February 24th, 2015. In addition to the comments contained in this submittal, RD 2068 joins in that comment letter.

The history and scope of water rights within NDWA’s service area has been extensively studied and documented. In issuing Reclamation’s permits for operating the Central Valley Project, the Board relied on intensive research and information generated in a cooperative study program commonly referred to as the “1956 Cooperative Studies”—an effort between the Bureau Reclamation, the State of California, and Sacramento Valley water users involving years of water right research and technical studies to determine the amount of water available under existing water rights. The 1956 Cooperative Studies assumed that the Delta lowlands held riparian rights. Following the execution of the Sacramento River Settlement Contracts, and in response to questions from upland and Sacramento River users regarding the nature of riparian rights in the Delta lowlands, the Bureau of Reclamation published the 1964 Delta Lowlands Service Area Investigations Report, which compiled and summarized the field data regarding land ownership, water rights, and water supplies in the Delta Lowlands, including the parcel now covered by RD 2068’s submittals. Like the 1956 Cooperative Studies, the 1964 Delta Lowlands report was intended as an informational tool and not a definitive quantification the respective parties’ water rights.

The documentation included in this submittal is intended to provide more information regarding those rights, but RD 2068 refers the Board to the 1956 Cooperative Studies and the 1965 Delta

Lowlands Service Area Investigation for a more complete picture of the rights held by water users within NDWA.

RD 2068's right to amend, augment, or expand upon information provided

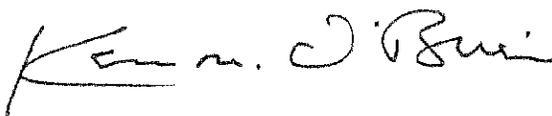
This submission is a good faith effort on the part of RD 2068 to comply with the Board's request, but is not intended as a complete representation of RD 2068's water rights. Given the short timeline identified for responding to the Order, RD 2068 anticipates that it may uncover additional information regarding its claim to the water right identified in the Statements. RD 2068 reserves the right to augment, amend, or supplement this submittal as to its water rights, diversion amounts, and any other pertinent information identified in these submittals.

Additionally, technical inconsistencies and lack of clarity in the online reporting form provided by the Board for responding to this Order have made it extremely challenging for RD2068 to guarantee that it has provided either the scope or the type of information that the Board is seeking. RD 2068 has responded to the best of its ability. RD 2068 submittals for monthly diversions in 2014 are based upon provisional and preliminary data, and may be subject to change as data is finalized. Further, RD 2068 anticipates that its 2015 diversions may vary from the projected amounts reported in its submittal, as actual diversions are likely to change subject to weather and hydrologic conditions, among other factors, as the year progresses.

Please also note that RD 2068's submittal of information in response to the Order in no way waives or estops RD 2068 from asserting or claiming additional or alternative water rights, either with respect to the places of diversion and use identified in the statements highlighted by the order, or with respect to any other property.

Very truly yours,

DOWNEY BRAND LLP



Kevin M. O'Brien

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