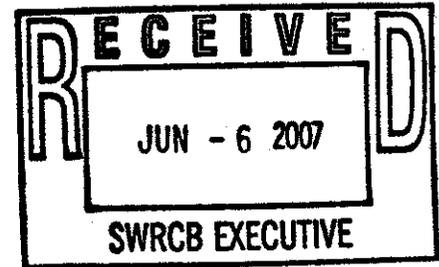


TO: Song Her, Clerk to the Board
State Water Resources Control Board

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SUBJECT: Workshop to Receive Information Regarding
Policy Direction on Water Right Enforcement

The Water Resources Control Board (WRCB) should adopt enforcement provisions in its AB 2121 policy.

Building Developments Proceeding Without Water Rights. Developments are being constructed in the state without water rights to provide water for the development. Enforcement is not being initiated against water agencies who provide letters of commitment to developers for water for which they do not have water rights. The developers then use these commitments to get building permits and to complete construction without water rights to back up the water needed for the development. In some cases the State Fish and Game and others have compelling reasons for not providing water rights to the development. However, once the buildings are on the ground and using water for which there are no water rights the petitioning agency then has a compelling reason to get water rights approved for the development. This process undercuts state agencies and citizens who have compelling reasons for not providing water rights for the development. In the present situation development dictates water use not sound water use policy.

Occidental Case Study of Building Development and No Water Rights. "Will Serve" letters committing to provide water to developers are being provided by Occidental Community Service District for water to which they have no water rights. The OCSD is pumping water from the Russian river but they do not have approved water rights for the water. One developer is using the OCSD "Will Serve" letter to get building permits to create a development, which will increase the size of Occidental by one-third or more. This development and a second development in the planning stages will double the water used by Occidental and OCSD does not have any water rights to support these developments. The Water Resources Control Board has not approved either OCSD's application for water rights or a County Water Agency (CWA) petition for diversion of water rights. The State Fish and Game Department and I have filed protests against the excessive amounts of water requested and there are very good reasons for water for these developments not to be approved but the developments will be created because of lack of enforcement. Cease and Desist Orders need to be immediately issued when the SWB learns of development moving forward in the absence of water

rights. Citizens against this situation have not been able to stop this unlawful development.

Lack of Enforcement Nullifies Water Right Law. Lack of enforcement makes water right law irrelevant because boards can unlawfully fuel development in their community and create meters in the ground for which they can then have a compelling reason for water right approval. In the present enforcement climate development guides the use of water not sound water policy

Enforcement Solution. The WRCB must implement a strong enforcement policy against water providers and developers who move forward with development without water rights to provide the water for the development. This policy should include an immediate response to violators with the issuance of Cease and Desist Orders to stop the development until water rights are approved. The WRCB must then act on any application for water rights for the development as if the illegal development did not exist. Those in support of the illegal development must not be given any power regarding approval of water rights by the fact of the illegal development being built or partially built. Recognizing illegal buildings on the ground will only encourage violations by reducing the risk of getting caught. The teeth behind this action would stop the practice of starting development without water rights. It would also reduce the effort of enforcing violations because the risk of being caught would be high and infractions would be minimized. Enforcing such a strong policy will stop the practice of undercutting protesters such as the State Fish and Game by developers illegally getting construction projects started or completed and then using the illegal development as justification for water rights.