

**BARTKIEWICZ, KRONICK & SHANAHAN**

PAUL M. BARTKIEWICZ  
STEPHEN A. KRONICK  
RICHARD P. SHANAHAN  
ALAN B. LILLY  
RYAN S. BEZERRA  
JOSHUA M. HOROWITZ

A PROFESSIONAL CORPORATION  
1011 TWENTY-SECOND STREET  
SACRAMENTO, CALIFORNIA 95816-4907  
(916) 446-4254  
FAX (916) 446-4018  
E-MAIL: [bks@bkslawfirm.com](mailto:bks@bkslawfirm.com)

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JAMES M. BOYD, JR., Of Counsel

November 15, 2002

Mr. Arthur G. Baggett, Jr., Chairman  
State Water Resources Control Board  
1001 I Street, 25<sup>th</sup> Floor  
Sacramento, California 95812

Re: November 12, 2002 Draft Order WRO 2002-\_\_\_\_, Regarding Water Right  
Permits 1267, 1268, 1271 and 2492 of Oroville-Wyandotte Irrigation  
District (OWID) and Permits 11516 and 11518 of OWID and Yuba  
County Water District

Dear Mr. Baggett:

This firm represents the Yuba County Water District ("YCWD"). This letter discusses the November 12, 2002 Draft Order (the "new Draft Order") regarding the above permits, which is scheduled to be considered by the SWRCB at its November 19, 2002 meeting. Although I have not received a copy of this new draft order from the SWRCB, I was able to download it from the SWRCB's website yesterday.

I just received a copy of the written comments that Jeffrey Meith faxed to you today on behalf of the Oroville-Wyandotte Irrigation District ("OWID"). Like Mr. Meith, I would like to submit brief written comments on the new draft order. This letter contains my comments.

Mr. Meith correctly notes that the 1958 Department of Water Resources release from priority recognized that, to finance the South Fork Project's construction costs, hydroelectric power generation would have to have the first priority for Project water until the Project bonds are paid off, and that, after the bonds are paid off, irrigation and domestic uses of Project water would be able to increase.

Water-right Decision 838, which we filed as an exhibit during the hearing on this matter, recognized the same point. Specifically, Decision 838 states that the South Fork Project could be operated on a "power demand schedule" to yield certain amounts of water (55,000 af/yr to OWID and 15,000 af/yr to YCWD) until the project bonds are paid off, and that, after payment of the construction bonds, the project could be operated on an "irrigation demand schedule" to yield much greater amounts of water (100,000 af/yr to OWID and 50,000 af/yr to YCWD). (See exh. YCWD-6, p. 85.) While the two districts' present uses and estimates of future demands are somewhat lower than these numbers, the basic concept has not changed: the South Fork Project still will be able to provide substantially greater amounts of water for irrigation and domestic purposes after the Project bonds are paid off in 2009.

Mr. Arthur G. Baggett, Jr.  
November 15, 2002  
Page 2

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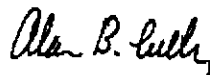
Under these circumstances, it would not be appropriate for the SWRCB to dictate exactly the opposite result by capping the districts' rights to use Project water at 2004 levels. The new draft decision thus contains the same fundamental flaw as earlier drafts: it would cap the authorized irrigation and domestic uses under Permits 11516 and 11518 at 2004 levels, even though already-constructed Project facilities will be able to supply significantly greater amounts of water beginning in 2009, and even though the SWRCB's predecessors recognized and acknowledged this basic fact in the 1950's before the South Fork Project was built.

As Mr. Meith points out in his comments, the need to operate the Project on a "power demand schedule" through 2009 has been a significant obstacle that OWID and YCWD could not reasonably have avoided. The only feasible method of the financing of the project was through construction bonds that would be paid by power revenues, which required precisely this obstacle: a "power demand schedule." Subject to this obstacle, the districts have exercised reasonable diligence, and they will make satisfactory progress if an extension of time past 2004 is granted.

Because the districts have satisfied the criteria for extensions of time, it would not be appropriate for the SWRCB to decide now to prohibit all extensions of time on Permits 11516 and 11518 after 2004, particularly when no party asked the SWRCB to do this. The new draft decision also still does not explain why it would be appropriate, or in the public interest, for the SWRCB to decide now an issue that will not arise until December 1, 2004. Instead, the preferable course of action would be for the SWRCB to wait until 2004 to decide whether or not any further extensions of time should be granted.

In conclusion, the Yuba County Water District respectfully requests that the SWRCB amend the November 12 draft order so that it will not make any determination now on whether any extensions of time should be granted past 2004. The SWRCB should wait until 2004 to decide that issue.

Very truly yours,



ALAN B. LILLY

ABL:tmo

Encls.

cc: Peter S. Silva  
Richard Katz  
Gary Carlton  
David Beringer  
Attached Service List

OWID Mailing List

Yuba County Water District  
c/o Mr. Alan B. Lilly  
Bartkiewicz, Kronick & Shanahan  
1011 22<sup>nd</sup> Street  
Sacramento, CA 95816

Yuba City  
c/o Mr. Daniel F. Gallery  
926 J Street, Suite 505  
Sacramento, CA 95814

Oroville-Wyandotte Irrigation District  
c/o Mr. William H. Baber III  
Minasian Law Offices  
P.O. Box 1679  
Oroville, CA 95965-1679

Mr. Dale Storey  
P.O. Box 425  
Oregon House, CA 95692

California Sportfishing Protection Alliance  
Mr. Jerry Mensch  
2553 Stonehaven Drive  
Sacramento, CA 95827

Yuba County Water District  
Mr. Dennis Parker  
P.O. Box 299  
Brownsville, CA 95919

Greg Crompton, Chairman  
Dobbins/Oregon House Action Committee  
P.O. Box 703  
Oregon House, CA 95962

Cora Peterson  
Dobbin/Oregon House Fire Protection District  
P.O. Box 164  
Oregon House, CA 95962