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August 7, 2009

State Water Resources Control Board
Division of Water Rights
Attn: Ms. Diane Riddle
P.O. Box 2000
Sacramento, CA 95812-2000

2009 AUG 10 PM 12:03
DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Re: Hearing to Consider Modification of Order WR 2006-0006

Dear Ms. Riddle:

On behalf of Stockton East Water District, enclosed please find five copies of *Closing Brief* with regard to the above-referenced matter.

Should you have any questions, or require any additional information, please do not hesitate to contact our office.

Very truly yours,



MARYANN DALRYMPLE
Secretary to ALEXIS K. GALBRAITH

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Enclosures

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Attorneys for

STOCKTON EAST WATER DISTRICT

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Hearing:)
)
To Determine Whether to)
Modify Part A of Order 2006-0006)
)
_____)

CLOSING BRIEF

I. Introduction

Stockton East Water District (“Stockton East”) files this Closing Brief on the Hearing to Determine Whether to Modify Part A of Order WR 2006-0006 (“Hearing”) which, in part, adopted a Cease and Desist Order against the Department of Water Resources (“DWR”) and the United States Bureau of Reclamation (“Bureau”).

II. Argument

A. The Bureau has Improperly Relied on the New Melones Project to Meet San Joaquin River Water Quality Objectives

Stockton East holds a contract with the Bureau for water from the Central Valley Project (“CVP”) delivered through the New Melones Project (“New Melones”) on the San Joaquin River. New Melones was built to provide water to the Stanislaus River watershed and adjacent areas. However, for years the Bureau has

used New Melones for water quality purposes to meet its salinity objective at Vernalis. New Melones' use for this purpose was predicated on the fact that this use was not to interfere with the authorized purpose of the project. Nevertheless, New Melones has been used as the cure-all for San Joaquin River and southern Delta water quality problems for over 25 years.

B. The Mandate of HR 2828

In Public Law 108-361 ("HR 2828"), Congress directed the Secretary of the Interior to "develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility" before CVP export limits were increased. (SDWA-14 p.4) HR 2828 required the Secretary to include various measures in the development and implementation of the program including a recirculation program, water purchases, and a best management practices plan to reduce the water quality impact of discharges from wildlife refuges. (SDWA-14 p. 4) Congress provided the Secretary with this authority and direction for the purpose of providing "greater flexibility in meeting existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligation to Central Valley Project contractors from the New Melones Project." (SDWA-14 p.5) Despite this mandate from Congress the Bureau continues to rely solely on water released from New Melones to meet its water quality objectives at Vernalis with no indication as to when this will end.

C. Recommendations and Proposals for Interim Measures

One of the key issues the Hearing sought to address was the interim protective measures that should be imposed if the compliance schedule contained in Part A of Order WR 2006-0006 is modified. (SWRCB Notice of Public Hearing p. 3) During the Hearing the State Water Resources Control Board ("State Water Board") received evidence and heard testimony regarding various interim measures that could be used to assist the Bureau and DWR in meeting the southern Delta salinity objectives. The interim measures that were discussed in detail included: increased flows on the San Joaquin River, recirculation, the installation of low lift pumps, adjusting the height of the temporary barriers, and adjusting the operation of culverts.

1. Increased Flows on the San Joaquin River

Stockton East opposes the use of this interim measure to assist the Bureau and DWR in meeting the southern Delta salinity objectives if it involves additional releases from New Melones. Any interim measures adopted by the Board must comply with the mandates of HR 2828. HR 2828 does not allow the Bureau to make

additional water releases from New Melones to meet the southern Delta salinity objectives. (SDWA -14 p.4 and 5) HR 2828 requires the Bureau to reduce its reliance on New Melones water for these purposes. (SDWA-14 p.4) As result, the Board should implement other proposed alternatives such as reducing exports, water purchases, recirculation and reduction of discharges from entities downstream of Vernalis.

Stockton East's asserts that if water quality releases are to be used to meet the southern Delta salinity objectives, New Melones cannot and should not be the only source of that water. As a result, Stockton East requests that the Board impose caps on the quantities of water that can be released from non-export facilities. Finally, if the Board orders any new modeling to look at the effect of additional flows from New Melones, Stockton East requests that these models include an evaluation of the effects of those additional flows on New Melones carry-over storage and the New Melones CVP contractors.

2. Recirculation

Stockton East believes that recirculation is a viable interim measure to meet the southern Delta salinity objectives. However, in order to comply with the mandates of HR 2828, this measure must be used to reduce reliance on New Melones releases; it cannot be used to supplement them. (SDWA-14 p.4) It is currently assumed that recirculation will require a minimum flow at Vernalis of about 1000 cfs. (SDWA-2 p.2) At the very least, during recirculation, "releases from New Melones must be maintained at the rate that would be required in the absence of recirculation." (SDWA-2 p.2) Under these circumstances recirculation violates the requirements of HR 2828. Recirculation is intended to reduce reliance on New Melones, not maintain it. (SDWA-14 p.4) As a result, Stockton East opposes the use of recirculation as an interim measure if it cannot be implemented within the mandates of HR 2828 to reduce reliance on New Melones.

3. Installation of Low Lift Pumps

Stockton East does not have an opinion with regard to the installation of low lift pumps to meet the southern Delta salinity objectives

4. Adjusting the Height of the Temporary Barriers

Stockton East does not have an opinion with regard to the use of adjusting the height of the temporary barriers to meet the southern Delta salinity objectives.

5. Adjusting the Operation of the Culverts

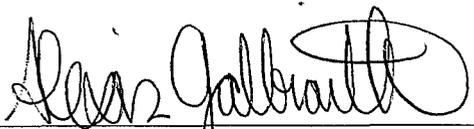
Stockton East does not have an opinion with regard to the use of adjusting the operation of the culverts to meet the southern Delta salinity objectives.

III. Conclusion

Any action taken by the Board must be in conformance with the limitations imposed by HR 2828. Stockton East strongly opposes any interim measure that requires additional flows from New Melones. New Melones has been used by the Bureau for years in contravention of the project's purpose and congressional mandate. A viable solution to the southern Delta salinity objectives must be found, but that solution cannot require continued reliance on New Melones.

DATED: August 7, 2009

Respectfully Submitted,
HERUM CRABTREE
A Professional Corporation

By: 
ALEXIS K. GALBRAITH
Attorney for Stockton East Water District