

Notice of Petition for Reconsideration of the State Water Resources Control Board's June 21, 2022 BOARD MEETING SESSION – ADMINISTRATIVE HEARINGS OFFICE Agenda Item 7

To: State Water Resources Control Board

SUBJECT: Consideration of a proposed Order prepared by the Administrative Hearings Office on petitions of Garberville Sanitary District to change water-right License 3404 (Application A009686) and water-right Permit 20789 (Application A029981), which authorize diversions of water from South Fork Eel River in Humboldt County.

RE: Pursuant to sections 1122 and 1126 of the California Water Code, section 769 of title 23 of the California Code of Regulations, and related authorities, I Edward Voice hereby petitions the State Water Resources Control Board (Board) to reconsider the June 21, 2022 Boards adoption of its order approving the Garberville Sanitary District's water-right change petition (GSD).

Dear Board,

Please see the attached public comments I submitted to the Board for the hearing on June 21, 2022, agenda item 7, as to my request and petition of reconsideration. It documents and spells out in great detail how the Board decision or order is not supported by substantial evidence, reasonable diligence or follows CEQA whatsoever in this matter.

In agenda item 7 for this matter, under "Proposed Order" it stated:

"If adopted by the Board, the proposed order would grant Garberville SD's petitions. The proposed order would conclude that the Board's approval of the petitions would not result in injury to any other legal user of water, would not unreasonably affect any fish, wildlife or other instream beneficial uses, would be in the public interest, would not cause the initiation of any new water right, and would comply with the California Environmental Quality Act."

In my view, this change petition did not comply to CEQA. Far from it. If anything, the LAFCo 2019 Addendum circumvented all aspects of CEQA, as I have stated in my public comments that I attached, of which the Board adopted on June 21, 2022 as Responsible Agency, with discretionary approval under CEQA in this matter.

As required, a copy of this petition has been transmitted by email on July 18, 2022 to:

Jeanine Townsend – Clerk to the Board
State Water Resources Control Board
jeanine.townsend@waterboards.ca.gov

1. Name and Address of Petitioner (23 Cal. Code Regs., § 769(a)(1)):

Edward Voice - Protestant of record and interested party.
PO Box 572
Nice, California 95464
707.349.1069
evoice@mchsi.com

2. The specific board action of which petitioner requests reconsideration (23 Cal. Code Regs., § 769(a)(2)):

State Water Resources Control Board's June 21, 2022 BOARD MEETING SESSION –
ADMINISTRATIVE HEARINGS OFFICE Agenda Item 7, GSD Change Petition.

3. The date on which the order or decision was made by the board (23 Cal. Code Regs., § 769(a)(3)):

June 21, 2022, Agenda Item 7

4. The reason the action was inappropriate or improper (23 Cal. Code Regs., § 769(a)(4)):

As discussed in the attached public comments, approval of GSD Change Petition is not supported by substantial evidence, did not comply with CEQA (Public Resources Code 21000–21189) and the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000–15387).

5. The specific action which petitioner requests (23 Cal. Code Regs., § 769(a)(5)):

To reverse the Board approval in this matter and have the LAFCo 2019 Addendum IS/MND sent back to GSD to eliminate all reference from the GSD 2013 Annexation IS/MND or SHCP 2016 EIR, since, as stated by the AHO and included in the Proposed Order, "This proposed project did not include any proposed deliveries of water from Garberville SD to Southern Humboldt CP."

6. A statement that copies of the petition and any accompanying materials have been sent to all interested parties (23 Cal. Code Regs., § 769(a)(6)):

This petition and accompanying materials have been emailed to following instrested parties on July 18, 2022;

Administrative Hearings Office
State Water Resources Control Board
AdminHrgOffice@waterboards.ca.gov
P. O. Box 100
Sacramento, CA 95812-0100

Jennie Short
Ralph Emerson
Garberville Sanitary District
P.O. Box 211
Garberville, CA 95542
jmshort@garbervillesd.org
remerson@garbervillesd.org

Russ Gans, Esq.
P.O. Drawer 1008
Eureka, CA 95501
rgans@mitchelllawfirm.com
Attorney for Garberville SD

Cody Cox
Redway Community Services District
1150 Evergreen Road, Unit 2
Redway, CA 95560
ccox.rcsd@gmail.com

Kristin Vogel
P.O. Box 453
Garberville, CA 95542
kv2@gotsky.com

Carolyn Hino-Bourassa
Laura Cochrane
South Humboldt Community Park
P.O. Box 185
Garberville, CA 95542
ceikoh@yahoo.com
laura@sohumpark.org

Colette Metz Santsche
Humboldt LAFCO
1125 16th Street, Suite 202
Arcata, CA 95521
colettem@humboldtlafco.org

Linda Sutton
P.O. Box 631
Redway, CA 95560

Conclusion

For the reasons set forth above and in the attached materials, Petitioner respectfully request that the Board grant reconsideration of the June 21, 2022 approval of the GSD Change Petition immediately and set aside that approval.

Thank you,
Edward Voice

To: STATE WATER RESOURCES CONTROL BOARD

For: BOARD MEETING Tuesday, June 21, 2022 – 9:30 a.m.

From: Ed Voice, aka Protestant of Record

Re: ADMINISTRATIVE HEARINGS OFFICE ~ Agenda Item 7.

Subject: Consideration of a proposed Order prepared by the Administrative Hearings Office on petitions of Garberville Sanitary District to change water-right License 3404 (Application A009686) and water-right Permit 20789 (Application A029981), which authorize diversions of water from South Fork Eel River in Humboldt County.

Dear Water Board,

The following are my public comments and arguments to why the Water Board as the Responsible Agency, with discretionary approval under CEQA, shall not grant, authorize or adopt this Change Petition and CEQA Addendum as written or applied to this water right, license and permit for the Garberville Sanitary District (GSD).

Comment 1. In the Administrative Hearing Office (AHO) Proposed Order to the Water Board, dated March 28, 2022, it states, from Section 3.2, page 20, footnote 15:

"Although section 2.6 discusses the 2016 Humboldt County EIR for the Southern Humboldt CP project, the proposed project described and analyzed in that EIR did not include proposed extensions of Garberville SD water service to Southern Humboldt CP, and the 2019 Humboldt LAFCo CEQA Addendum was not an addendum to that EIR. We therefore do not rely on the 2016 EIR for the Board's CEQA compliance for this order."

The SHCP 2016 EIR is directly implied and referenced 29 times throughout the LAFCo 2019 Addendum IS/MND, including all 26 pages of the "MITIGATION MONITORING AND REPORTING PROGRAM", which are directly stated from the SHCP 2016 EIR. The LAFCo 2019 Addendum IS/MND only relied on the SHCP 2016 EIR for analysis, and as stated by the AHO, ***"We therefore do not rely on the 2016 EIR for the Board's CEQA compliance for this order."*** If the AHO cannot rely on the SHCP 2016 EIR, the Water Board cannot approve this Change Petition and meet the requirements of CEQA to adopt the LAFCo 2019 Addendum IS/MND.

For this reason the SWRCB needs to contemplate this contradiction in terms as stated by the AHO. Because you are opening the door to a reconsideration and challenge.

In Section 2.7, page 8, of the Proposed Order, when discussing the “2013 Garberville Sanitary District Annexation Project Initial Study/Mitigated Negative Declaration for Change in Jurisdictional Boundary & Place of Use” (GSD 2013 Annexation IS/MND):

"This proposed project did not include any proposed deliveries of water from Garberville SD to Southern Humboldt CP. (Id., pp. 29-32.) The Initial Study stated that these proposed deliveries and related land use changes were being analyzed in an Environmental Impact Report (EIR) that was being prepared by Humboldt County. (Id., p. 31.)"

In Section 2.7, page 8-9 of the Proposed Order, states in part while discussing “2016 Humboldt County Environmental Impact Report – Southern Humboldt Community Park” (SHCP 2016 EIR):

"In April 2016, the Humboldt County Planning Department circulated a Draft EIR for the Southern Humboldt Community Park project. (CEQA-9.) The proposed project described in this Draft EIR included various new land and facility uses and types of events. (Id., pp. 46-84.) The Draft EIR described the park's existing water system and the proposed system improvements that were part of the proposed project. (Id., pp. 76-79.) The proposed project did not include any proposed water service from Garberville SD. (Id.)"

In both the GSD 2013 Annexation IS/MND and SHCP 2016 EIR, ***"This proposed project did not include any proposed deliveries of water from Garberville SD to Southern Humboldt CP."*** How can the Water Board rely on the LAFCo 2019 Addendum IS/MND to meet the requirements of CEQA, since the GSD 2013 Annexation IS/MND did not adopt any proposed deliveries of water from Garberville SD to Southern Humboldt CP?

In the final GSD 2013 Annexation IS/MND, page 25 and page 26, states in part:

"The SHCP project is being analyzed in a separate EIR being prepared by Humboldt County as the lead agency. This project area is within the boundaries of the existing SOI, but the specific impacts of any changes to zoning and land uses will be included in the SHCP EIR and are not addressed in the GSD project."

"At such time as the SHCP completed the Draft EIR, the GSD as a responsible agency will review the proposed water consumption that is dependent upon future water service from the GSD utilizing this basis. Water service to the SHCP is also subject to approval from Humboldt LAFCo and SWRCB DWR."

To reiterate, how does the Water Board expect to adopt the LAFCo 2019 Addendum IS/MND under CEQA and at the same time not rely on the SHCP 2016 EIR, given the fact they are all interconnected and piecemealed together. And if the AHO did not rely on the SHCP 2016 EIR, which included thousands of pages of documents and references in this Change Petition, how can the SWRCB adopt the LAFCo 2019 Addendum IS/MND as the CEQA Responsible Agency (Cal. Code Regs. Tit. 14, § 15381), since the AHO state; **"We therefore do not rely on the 2016 EIR for the Board's CEQA compliance for this order."** (Section 3.2, page 20, footnote 15).?

CEQA Guidelines define a project under CEQA as "the whole of the action" (CEQA Guidelines Section 15378) that may result either directly or indirectly in physical changes to the environment. However, the LAFCo 2019 Addendum IS/MND submitted for this Change Petition is the definition of piecemealing or segmenting, i.e. dividing a project into two or more pieces and evaluating each piece in a separate environmental document, rather than evaluating the whole of the project in one environmental document. This is explicitly forbidden by CEQA because dividing a project into a number of pieces would allow a Lead Agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact on the environment, but which together may result in a significant impact.

Another example from the Proposed Order, Section 3.1.3, page 17 and footnote 13:

"During the hearing, Ms. Short testified that the public "is extremely supportive of the SHCP overall and for them being allowed to have potable water." (GSD-12, p. 6.) To support this statement, her testimony refers to "the over 400 signatures of support and almost 600 letters of support in the County's processing of the SHCP EIR, General Plan Amendment, and Rezone project." (Id., referring to CEQA-11, support letters, parts 1 through 6.) She also referred to the letters of support Southern Humboldt CP submitted as hearing exhibits. (GSD-12, p. 6; see SHCP-2 through SHCP-23.)"

These "400 signatures" and "600 letters of support" came directly from the SHCP 2016 EIR, and consequently, had nothing to do with the public supporting potable water being supplied by GSD to the SHCP for this Change Petition. The SHCP did not include using water from GSD in the SHCP 2016 EIR, or disclosed a method to produce potable water from the SHCP non-potable onsite water sources. And as stated by the AHO, **"We therefore do not rely on the 2016 EIR for the Board's CEQA compliance for this order."** Footnote 13 states the real facts:

"In response to the Division's November 11, 2019 Notice of Petitions, 27 people filed letters supporting the petitions. (See section 2.6.)"

Comment 2. As included in the AHO Proposed Order, in "APPENDIX C - Summaries of Parties' Other Arguments and Board's Responses", on page 3, item 9, it states:

"9. Mr. Voice's comments express concerns that the Southern Humboldt CP may use the potable water that Garberville SD delivers to the park throughout the park's 400 acres, and not just on the 18 acres within the park that will be added to the authorized places of use in License 3404 and Permit 20789. (Id., pp. 1-2, ¶¶ 2-6.)"

"Response: The AHO added a new term 12 to amended License 3404 to address this issue. It states:"

"Right holder shall attach to each year's annual report of licensee a diagram of the water-conveyance infrastructure that conveys water diverted under this right within the Southern Humboldt Community Park and a map of the places within the park where such water is used, sufficient to demonstrate that no water diverted under this right and delivered to Southern Humboldt Community Park is used anywhere outside the authorized place of use specified in this license. That is"

"The AHO added a new term 13 to amended Permit 20789, which contains similar language. These new terms are appropriate to require Garberville SD to demonstrate that it and Southern Humboldt CP are complying with the place-of-use provisions of License 3404 and Permit 20789, especially considering the district's past violations of these provisions. (See sections 2.3 and 2.5.)"

This requirement should be addressed and approved by the Water Board, that is, this requirement should be presented to the Water Board for approval and verified in public before the Water Board, not given approved sight unseen. GSD has known since March 28, 2022 of this requirement and there is no reason why GSD cannot produce this map for this hearing today. (see Attachment 1 SHCP Waterline Map of the 400 acre Park)

This statement above also addresses another concern, that states the reason for this requirement:

"These new terms are appropriate to require Garberville SD to demonstrate that it and Southern Humboldt CP are complying with the place-of-use provisions of License 3404 and Permit 20789, especially considering the district's past violations of these provisions. (See sections 2.3 and 2.5.)"

I assume the AHO cannot trust GSD to abide their Place of Use, given their past track record of Cease & Desist Orders, Violations of said orders and Administrative Civil Liability in the amount of \$40,000 over the past 10 years (See sections 2.3 and 2.5.).

Comment 3. I would like to address what was also stated in "APPENDIX C - Summaries of Parties' Other Arguments and Board's Responses", on page 4, item 10:

"10. Mr. Voice's comments refer to some of his prior e-mails to the AHO and his closing brief, and assert that representatives Garberville SD and Southern Humboldt CP made misstatements, and that the State Water Board should address "perjury under sworn testimony." (Id., p. 3, ¶ 9.)"

"Response: The AHO hearing officer reviewed Mr. Voice's arguments and assertions and concluded that they all concerned issues that the State Water Board does not need to resolve in this order. We agree with the AHO hearing officer's conclusion."

I would like to ask the Water Board why all parties that testified under oath at the June 15, 2021 AHO hearing for this Change Petition were not held accountable for perjury. I have proven, in both cases, statements made, while under oath at the June 15, 2021 AHO hearing, were not the truth. I have provided evidence to the AHO and on the record for this Change Petition on the AHO-FTP website.

One example; the SHCP Executive Director testified under oath at the June 15, 2021 AHO hearing, that the SHCP had conveyed and relinquished all of its development rights on the Park property to the County of Humboldt, through an agreement with the County of Humboldt and would provide a copy to the AHO, as instructed by AHO Hearing Officer Liliy. The SHCP never provided a copy of this agreement and after researching this claim I was informed by the County of Humboldt Planning Department that no such contract existed between the County of Humboldt and the SHCP. The SHCP used this prevarication to justify its claims that the SHCP was not going to use water from GSD to induce new growth or development at the SHCP, because they had no development rights. And as we know now, this claim could not be further from the truth (see Attachment 2, page 2, last paragraph).

In closing, I look forward addressing the Water Board on June 21, 2022, and hope the Water Board has read my protest arguments and all public comments I submitted throughout this whole process, dating back to June/July 2019.

Thank you for your time, Thursday, June 16, 2022, 10:37:06 AM

Ed Voice