

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2008-0018-EXEC**

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In the Matter of the Petition for Reconsideration of the  
**Hanuman Fellowship (Mount Madonna Center)**  
Regarding Cancellation of Application 30772

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SOURCE: Unnamed Streams tributary to Gamecock Canyon thence Browns Creek thence Corralitos Creek thence Salsipuedes Creek thence Pajaro River

COUNTY: Santa Cruz

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**ORDER REINSTATING APPLICATION**

BY THE EXECUTIVE DIRECTOR<sup>1</sup>

**1.0 INTRODUCTION**

On January 8, 2008, Hanuman Fellowship-Mount Madonna Center (Petitioner) petitioned the State Water Resources Control Board (State Water Board) for reconsideration of the Division of Water Rights (Division) order cancelling water right Application 30772 (Application). The Application was cancelled for failure of Petitioner to timely submit a signed Memorandum of Understanding for the fulfillment of obligations under the California Environmental Quality Act (CEQA). Petitioner requests the State Water Board to reinstate the application, because Petitioner did not receive notice that the Application would be cancelled. With this order, State Water Board grants that request.

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<sup>1</sup> State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration falls within the scope of the authority delegated under Resolution No. 2002-0104. The State Water Board has not designated decisions by the Executive Director as precedent decisions pursuant to the Administrative Procedures Act. (WR Order 96-1, at p. 17, fn. 11.)

## 2.0 GROUNDS FOR RECONSIDERATION

Any interested person may petition the State Water Board for reconsideration of a decision or order on any of the following grounds:

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was presented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; or
- (d) Error in law. (Cal. Code Regs., tit. 23, § 768.)

## 3.0 BACKGROUND

On September 25, 1998, Petitioner filed water right Application 30772 with the Division, requesting the right to divert 20 acre-feet per annum (afa) of water from two Unnamed Streams tributary to Gamecock Canyon thence Browns Creek thence Corralitos Creek thence Salsipuedes Creek thence Pajaro River in Santa Cruz County. The water would be diverted by means of enlarging two existing permitted reservoirs (under License 13772, Permit 19521, Application 27800). The proposed purposes of use would be irrigation, recreation, fire protection and stockwatering.

On December 12, 2007, the Division issued an order cancelling Application 30772. Petitioner submitted a timely request for reconsideration on January 8, 2008, under California Code of Regulations, title 23, section 768, subdivision (a)<sup>2</sup>. The request for reconsideration claims that Petitioner never received the notice letter of March 8, 2005, which advised Applicant of a six-month deadline to sign a Memorandum of Understanding (MOU) for fulfillment of obligations under the California Environmental Quality Act (CEQA). Applicant alleges that, because notice was not received, the Division abused its discretion in cancelling the application. With the

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<sup>2</sup> The State Water Board is directed to order or deny reconsideration on a petition within 90 days from the date on which the State Water Board adopts the decision or order. (Wat. Code, § 1122.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the State Water Board is not divested of jurisdiction to act upon the petition simply because the State Water Board failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; SWRCB Order WQ 98-05-UST at pp. 3-4.)

request for reconsideration, Petitioner included three copies of the CEQA MOU, signed by Petitioner's representative and the representative of Analytical Environmental Services, Petitioner's proposed CEQA Consultant.

#### **4.0 REASONING**

Petitioner alleges that reconsideration of the order is appropriate under California Code of Regulations, title 23, section 768, subdivision (a), regarding procedural irregularity or abuse of discretion that denied the Petitioner a fair hearing, because petitioner did not receive the March 8, 2005, letter from Steven Herrera, Chief, Water Rights Permitting Section, directing Petitioner to enter into the CEQA MOU. Under Water Code, Section 1275, subdivision (c), the State Water Board may request information from water right applicants, including information necessary for the fulfillment of CEQA. If that information is not provided in the reasonable timeframe given, the application is subject to cancellation. (Wat. Code, §§ 1275, 1276.) But an applicant who does not receive the request for information cannot reasonably be expected to comply.

In this instance, a standard information request letter dated March 8, 2005 is in the State Water Board file. The signature in the letter's signature block is printed in uppercase, indicating that an original signature was not required. However, the letter is not date-stamped, and the file contains no other proof that the letter was mailed.

Petitioner claims not to have received the letter. Petitioner's prompt selection of a CEQA contractor, signing of the CEQA MOU, and response to the cancellation support this claim, as it demonstrates that Petitioner was willing and able to provide the requested information in a timely manner.

Because Petitioner claims not to have received notice that the State Water Board was intending to cancel the application if Petitioner did not sign a CEQA MOU, because the evidence in the file does not offer conclusive proof that notice was mailed, and taking into account Petitioner's prompt compliance with signing the requested CEQA MOU, the State Water Board will rescind its cancellation order of December 12, 2007.

ORDER

IT IS HEREBY ORDERED THAT:

1. The request for reconsideration of cancellation of Application 30772 is granted, and that
2. Application 30772 be reinstated.

Dated: **APR - 2 2008**



Dorothy Rice  
Executive Director