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JAMES M. BOYD, JR., Of Counsel

June 23, 2010

### **VIA E-MAIL & U.S. MAIL**

Mr. Greg Wilson, P.E.  
Water Resource Control Engineer  
Bay-Delta Unit  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

Re: Response to Protests of Petition for Temporary Transfer of Water by City of Sacramento and Sacramento Suburban Water District

Dear Mr. Wilson:

This letter is in response to your e-mail to me of June 16, 2010, concerning the two protests filed by California Water Impact Network/AquAlliance ("C-WIN") and California Sportfishing Protection Alliance ("CSPA") to the Petition for Temporary Transfer jointly filed on April 20, 2010 by the City of Sacramento ("City") and Sacramento Suburban Water District ("SSWD") for the transfer of up to 4,377 acre-feet of water to eight contractors of the State Water Project during July, August and September 2010. The transfer would be accomplished by SSWD pumping groundwater in lieu of using surface water treated by the City in order to make the surface water available for transfer. In your e-mail, you have asked the City and SSWD to respond to the portion of the protests that discuss the proposed groundwater substitution transfer that the protestants allege, without any evidence or reference to the relevant documents, will have impacts on other parties within or downstream of the District.

As an initial matter, it should be noted that the protest filed by CSPA does not comment on any alleged impacts of the transfer caused by utilizing groundwater substitution to make transfer water available. Only the C-WIN protest discusses such issues. As will be discussed below, C-WIN's comments concerning the alleged issues related to SSWD's groundwater substitution transfer lack any logic or evidentiary support and therefore have no merit.

#### 1. Introduction

SSWD proposes to make available 4,377 AF of surface water to the eight State Water Contractor buyers through a groundwater substitution program. SSWD will pump an equivalent

amount of groundwater to serve municipal and industrial demands within its South Service Area in lieu of using treated surface water diverted from the lower American River under its contractual entitlement from the City. SSWD owns and operates all of the wells that will be pumped for this program. Prior to 2006, when it began using surface water in its South Service Area conjunctively with groundwater, SSWD used its established groundwater rights to serve all demands within that area. This fact is significant because C-WIN implies in its protest that SSWD has no right to pump groundwater as the sole water supply for meeting all of its customers' needs. This misstatement alone is sufficient to render C-WIN's protest without substance or foundation and therefore subject to dismissal.

2. C-WIN's Protest Includes Multiple Misstatements and Misunderstandings

In addition to lacking any merit for its failure to understand and acknowledge that SSWD is a municipal pumper with an established right to pump all of its in-service area demands from groundwater and is doing so without any harm to others according to an approved groundwater management plan, C-WIN's protest suffers from the following misstatements and misunderstandings of the facts stated and evidence provided in SSWD's April 20, 2010 petition and environmental information form (the "Petition"), the April 16, 2010 comment letter filed by the Sacramento Groundwater Authority ("SGA"), and publicly available information:

a. Because SSWD has provided specific groundwater elevation data about its pumping activities in the Petition, reference to generalized isotopic groundwater data for the Sacramento Valley is irrelevant. Isotopic groundwater is a measure of water quality, which is not in issue here. (C-WIN Protest, p. 2, ¶ 1.)

b. Contrary to C-WIN's apparent belief, SSWD's proposed water transfer is being conducted pursuant to an agreement with the eight State Water Contractor buyers and not with Reclamation's 2010-2011 CVP water transfer program. Also, SSWD's South Service Area is adjacent to the American, not Sacramento, River. It is irrelevant if the Sacramento River is a losing or gaining stream when SSWD's transfer would leave additional water in the lower American River and thence the Sacramento River below its confluence with the American River in a lower flow period and within historical flow ranges. (C-WIN Protest, p. 2, ¶ 1.)

c. The analysis that the SWRCB is required to perform on the Petition does not involve determinations concerning the conservation of water supplies that an urban water supplier such as SSWD, which is in compliance with all of its permits and planning obligations, is putting to reasonable and beneficial use. C-WIN makes no claim about unreasonable use, but merely argues its opinion that conservation is the sole solution to the State's water supply issues. Such policy questions are irrelevant to whether the transfer is within the public interest because SSWD is putting the water to beneficial use and the proposed transfer is not only authorized, but encouraged by law. (See Water Code sections 475, 1725-1732, 1735-1737.) That is particularly true in the fourth year of low allocations for water contractors and users downstream of the Delta. (C-WIN Protest, p. 2, ¶ 2.)

3. SSWD's Pumping is Consistent with the SGA Groundwater Management Plan and Within the Basin's Sustainable Safe Yield

As stated in the Petition and in SGA's April 16, 2010 comment letter, SSWD is a member of SGA and is implementing the SGA GMP. Therefore, the District's proposed groundwater substitution transfer is consistent with Water Code sections 1732 and 1745.10(a) because it is consistent with and authorized by the SGA GMP. The SGA GMP is available on-line at: [www.sgah2o.org/sga/files/2008-SGA-GMP-FINAL-20090206-print\\_ready.pdf](http://www.sgah2o.org/sga/files/2008-SGA-GMP-FINAL-20090206-print_ready.pdf). In spite of its ready availability and extensive discussion in the Petition, C-WIN totally ignored the SGA GMP and its central role as the governing document in SSWD's proposed transfer.

C-WIN instead exclusively focuses on 11 long-term well hydrographs attached as an Exhibit to SGA's comment letter. C-WIN alleges that those hydrographs illustrate that the groundwater in the entire Sacramento North Area Basin is in a continuing decline and that therefore SSWD is creating impacts within its jurisdiction and downstream. What C-WIN fails to acknowledge is that SSWD and other SGA and Water Forum members have arrested that decline, conducted the science necessary to determine the sustainable safe yield of the basin, and are now pumping well within those limits. C-WIN also neglects to recognize the evidence provided by SSWD that it and other SGA members are actively pursuing conjunctive use to stabilized groundwater levels in the basin and by pumping below the sustainable safe yield and by pursuing conjunctive use activities, have demonstrated not only that the basin has been stabilized, but that groundwater elevations have begun to increase.

SSWD's proposed pumping to effectuate the proposed groundwater substitution transfer is consistent with the SGA GMP's Basin Management Objectives. As already documented in the Petition and again in this letter, SSWD's temporary increase in groundwater pumping in 2010 will not adversely impact the groundwater basin because the additional 4,377 acre feet of groundwater extracted is well within the sustainable safe yield of the basin and in total is consistent with recent SSWD pumping levels that have not adversely impact the basin. Also important, SSWD been importing surface water into its South Service Area, which has helped stabilize groundwater levels in the central portion of the North Area Basin.

In addition to the evidence provided in the Petition, attached is a recent report of monitoring wells used in SSWD's 2009 water transfer showing that levels in those wells have already recovered to pre-transfer elevations. Also attached is a table of all SSWD South Service Area wells showing a six-year upward trend in groundwater elevations in the area from which SSWD will be pumping groundwater for the proposed 2010 water transfer. In the face of this evidence, C-WIN's unsupported arguments and conjecture about impacts simply have no merit.

4. Sacramento County Has Approved SSWD's Proposed 2010 Water Transfer as Consistent with all Relevant County Plans and Policies

In paragraph 2, page 2 of its protest, C-WIN argues that SSWD's 2010 water transfer somehow violates the policies and plans adopted by Sacramento County to protect local groundwater. This

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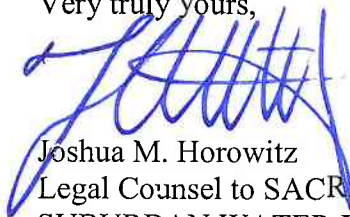
unsupported statement is contrary to the evidence presented by SSWD in the Petition and again highlights C-WIN's apparent failure to read the Petition before it filed its protest or to provide any evidence to support its opinions and arguments. In fact, Sacramento County approved SSWD's proposed 2010 water transfer as consistent with all relevant County plans and policies as documented in Part 2 of SSWD's Environmental Information Form and Exhibit 1 thereto. Like SSWD, Sacramento County is a member of SGA and through that organization also is involved in implementing the SGA Groundwater Management Plan ("SGA GMP"). Also, both the County and SSWD are signatories to the Water Forum Agreement in which Sacramento Area water agencies have committed to sustainably manage the groundwater basin by conjunctive management and to undertake water conservation efforts. (See [www.waterforum.org/about.cfm](http://www.waterforum.org/about.cfm).)

5. SSWD's 2009 Water Transfer Occurred With No Impacts

C-WIN also fails to address the facts that SSWD successfully completed its 2009 groundwater substitution transfer with no demonstrable impacts to any third party. In accordance with the monitoring and reporting plan in its contract with DWR for the 2009 Drought Water Bank Transfer, SSWD was obligated to report on any third party claims made for impacts caused by the additional groundwater pumping necessary for the transfer. SSWD received no such claims and no impacts came to its attention. All water transferred was pumped by DWR in compliance with all applicable biological opinions, laws, regulations and court orders. The only impact was temporary – SSWD's additional pumping did lower groundwater elevations for a few months. As stated above and established by the attached exhibits, groundwater elevations in SSWD's South Service Area have already recovered to pre-transfer conditions consistent with recent trends since SSWD has been operating a conjunctive use program and SGA members, including SSWD, have been pumping in accordance with the SGA GMP.

Please contact me if you have any questions about this letter or need any additional information or assistance with this issue.

Very truly yours,



Joshua M. Horowitz  
Legal Counsel to SACRAMENTO  
SUBURBAN WATER DISTRICT

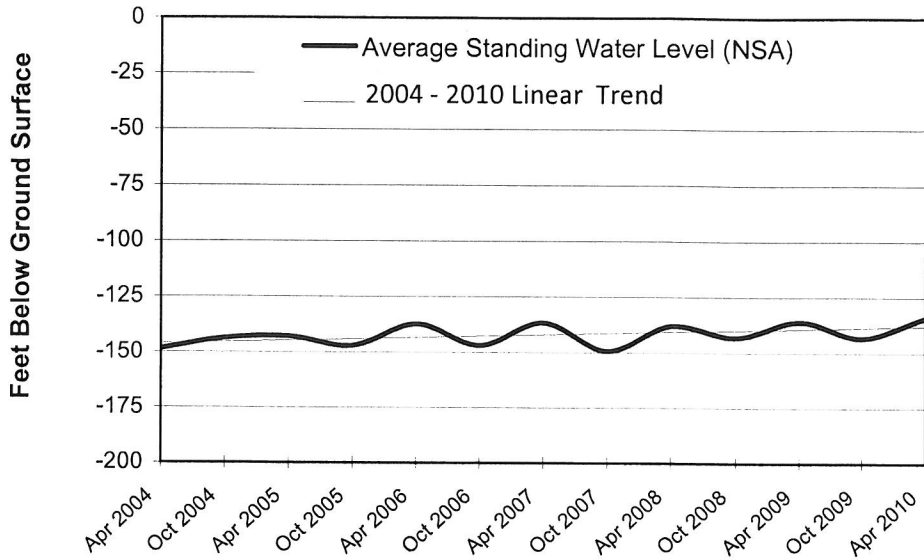
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Rob Roscoe  
Ed Formosa  
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**SSWD North Service Area  
Average Biennial  
Static Well Water Level**



**SSWD South Service Area  
Average Biennial  
Static Well Water Level**

