

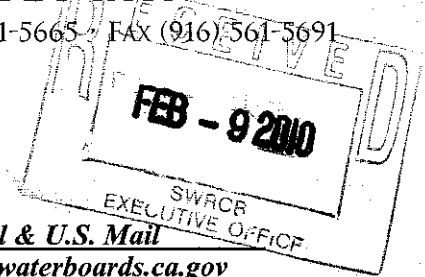


CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

2/16/10 Bd. Mtg.
Kern River
Deadline: 2/9/10 by 12 noon



Via Email & U.S. Mail
commentletters@waterboards.ca.gov

February 8, 2010

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: **COMMENT LETTER - 02/16/10 BOARD MEETING ITEM: DRAFT ORDER
AMENDING DECLARATION OF FULLY APPROPRIATED STREAMS TO
REMOVE DESIGNATION OF THE KERN RIVER AS FULLY APPROPRIATED**

Dear Ms. Townsend:

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation that's purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 85,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

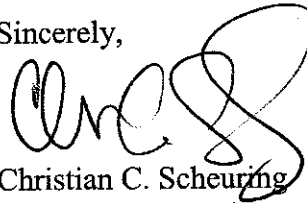
After being briefed on the issues involved in this matter and reviewing the January 19, 2010 draft Order Amending Declaration of Fully Appropriated Streams to Remove Designation of the Kern River as Fully Appropriated (Draft Order), Farm Bureau has significant concerns regarding the apparent direction and intent of these proceedings. If made final, the Draft Order would change the fully appropriated stream (FAS) status of the Kern River on the sole basis that the Kern River occasionally floods. Revising a FAS declaration in place since 1964 on the grounds that there is occasional flooding sets bad policy and seemingly makes meaningless the FAS declarations on California's other rivers and streams – almost all of which are subject to occasional flooding.

California's fully appropriated stream law was adopted in 1987 – with the support of the State Board. (See SB 1485; Water Code, § 1205 *et seq.*) The purpose of the law is to avoid wasting the time and resources of both applicants and State Board staff in preparing and processing water right applications for stream systems, such as the Kern River, where a prior water rights decision determined all water to be previously appropriated.¹ Although there are certainly situations where it would be appropriate to revise the FAS status of a river, the occasion of sporadic flooding should not suffice.

Farm Bureau is also concerned about the manner in which the Draft Order appears to accept for processing the parties' water right applications without first determining whether there is water made available by the decision in *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App. 4th 555. Farm Bureau's interest in this issue is simply that the State Board follow its own procedures in such matters: first there is a determination regarding whether there is water available for appropriation, and then applications seeking that water are accepted and processed. (See 23 C.C.R., § 871.) Following these procedures allows for an efficient and transparent FAS revision process. The agricultural districts involved in this matter may unnecessarily incur significant costs associated with processing their applications, only to have the State Board ultimately conclude that there is no water available under the *North Kern* decision. The State Board may avoid this unfortunate situation now by taking whatever steps it deems necessary to resolve the *North Kern* matter before processing any applications.

Thank you for your consideration of these comments.

Sincerely,



Christian C. Scheuring
Managing Counsel

CCS/pkh

cc: Kern River FAS Proceedings Service List

¹ Bill Report, State Water Resources Control Board (Sept. 4, 1987).