

*Kern Delta Water District*

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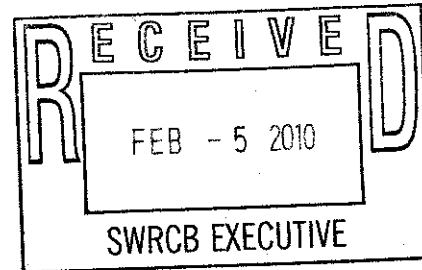


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February 5, 2010

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



By Email Only: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Re: The Draft Order Amending the Declaration of Fully Appropriated Streams to Remove The Designation of The Kern River as Fully Appropriated, dated January 19, 2010, In The Matter of: Petitions to Revise Declaration of Fully Appropriated Stream System of The Kern River in Kern and Tulare Counties, WR 89-25, dated November 16, 1964**

Dear Ms. Townsend:

Kern Delta Water District ("Kern Delta") submits this letter for the purpose of providing written comments and suggested changes to the "Draft Order Amending the Declaration of Fully Appropriated Streams to Remove the Designation of The Kern River as Fully Appropriated", prepared by the State Water Resources Control Board ("State Water Board") and subsequent to the evidentiary hearing held October 26-27, 2009. Kern Delta requests that the State Water Board take these comments under consideration and make the requested changes prior to adoption of the order.

As a participant in the Fifth District Court of Appeal's decision in *North Kern Water Storage District v. Kern Delta Water District* (2007) 147 Cal.App.4<sup>th</sup> 555 [54 Cal.Rptr.3d 587]) ("Appellate Decision"), the court examined the utilization of Kern River water by Kern Delta and its predecessors-in-interest. After examining the five years immediately preceding Kern Delta's 1976 acquisition, it was determined that, during the period from 1972 to 1976, certain rights had suffered partial forfeiture as a result of non-use of available supplies. The Kern Delta Kern River water rights have always been subject to a cap, i.e., a maximum monthly volume which could not be exceeded. The *North Kern* judgment effects a cap reduction for certain rights in certain months. The new caps are shown in the table below.

Kern Delta Water District				
Monthly Preserved Entitlements				
	Kern Island (1 <sup>st</sup> ) (AF)	Buena Vista (1 <sup>st</sup> ) (AF)	Stine (AF)	Farmers (AF)
January	8,493	347	--	--
August	--	--	--	610
September	--	--	583	268
October	6,989	--	1,380	--
November	3,375	236	22	--
December	2,050	191	12	207

Note: Months identifying "--" were not limited by forfeiture.

It is important to note that the *North Kern* litigation involved an examination of the Kern Delta Kern River water rights for possible forfeiture from the mid-1800s to the present day. While limited partial forfeiture was found as stated above, the court also determined that the balance of Kern Delta's Kern River water rights had been and are preserved. These "preserved entitlements" continue to be owned and exercised by Kern Delta on a daily basis, and continue to be vitally necessary to the agricultural economy of the Kern Delta area.

Kern Delta uses and needs all of its preserved entitlements in order to meet the demands of the lands and landowners within its boundaries. Kern Delta's boundaries encompass approximately 125,000 acres, of which approximately 90,000 acres are developed to irrigated agriculture. Kern Delta provides water service to these lands from a combination of water sources, principally Kern River water diverted pursuant to vested, pre-1914 appropriative water rights. This water is used for the irrigation of a wide variety of agricultural commodities. Kern Delta's Kern River water rights are, by far, the primary source of supply for Kern Delta lands and landowners. The continued availability and use of such Kern River water rights is absolutely essential to the agricultural operations within Kern Delta.


Kern Delta's preserved entitlements have been judicially determined, quantified, and declared; and should be protected by the State Water Board. **Therefore, it is essential that any order from the State Water Board should specifically recognize Kern Delta's preserved**

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**entitlement, and set forth that any applications for water are subject to all the vested rights of Kern Delta, as declared in the Appellate Court's determination of its preserved entitlements.**

Respectfully submitted,

KERN DELTA WATER DISTRICT

By:   
L. Mark Mulkey  
General Manager

LMM:gg