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State Water Resources Control Board

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A009247

TO: Steven Herrera, Chief
Water Rights Permitting Section

FROM: Erin Mahaney
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DATE: November 28, 2006

SUBJECT: PETITIONS TO CHANGE A POINT OF DIVERSION TO A NEW SOURCE

I.
INTRODUCTION

You have requested an opinion from the Office of Chief Counsel regarding whether the Division of Water Rights (Division) must process a petition to change a point of diversion to a new source of water that is not identified in the original permit or license. You would also like to know whether the Division may deny such a request, without noticing the petition.

This memorandum first reviews the statutes and regulations governing changes to appropriative water rights. It then reviews the case law, decisions of the State Water Resources Control Board (State Water Board or Board) and its predecessors, and legal memoranda that expressly address changes in points of diversion from one tributary or source to another. The memorandum concludes that a change to a new source of water supply constitutes the initiation of a new right and that the Division should not accept or process a petition that proposes such a change. What constitutes a new source, however, requires a case-by-case analysis by the Division. In certain limited circumstances, where a proposed change is limited to the same source of supply, even if the change is from one tributary to another, the Division may process the requested change under Water Code section 1701 et seq.[1]

[1] This analysis is limited to the issue of a change in point of diversion to a new source. It is not intended to address other Division practices regarding change petitions, including authorization of additional points of points of diversion or rediversion.

EXHIBIT
TCID 197

II.
STATUTES AND REGULATIONS GOVERNING CHANGES IN THE POINT OF DIVERSION

Water Code sections 1700 through 1705 govern changes in the place of use, purpose of use, or point of diversion, of an appropriative water right.[2] Permission to make such change must be granted by the State Water Board and "[b]efore permission to make such a change is granted the petitioner shall establish, to the satisfaction of the [State Water Board], and it shall find, that the change will not operate to the injury of any legal user of the water involved." (Wat. Code, § 1702.) The petitioner also must establish that the proposed change will not effectively initiate a new right. (Cal. Code Regs., tit. 23, § 791, subd. (a).) Thus, the State Water Board must find that a proposed change will neither injure others nor initiate a new right before it approves the change.

Neither the Water Code nor the State Water Board's regulations currently contain an express prohibition against adding a new source to a water right after an application has been accepted. Before 1960, however, the regulations of the State Water Board's predecessors prohibited consideration of a "change in source" during the change petition process. In 1928, the regulation governing changes stated, in part: "Petitions contemplating a change in source or any other vital change in the original project can not be considered." (Rules and Regulations Governing the Appropriation of Water in California, Regulation 13 (1928).) This regulation was amended slightly (perhaps in the 1955 amendments) to state that "[p]etitions contemplating a *major* change in source or any other vital change in the original project will not be considered." (Cal. Admin. Code, tit. 23, § 738 (1957) [italics added].) This sentence was removed in 1960, leaving language similar to that contained in the current regulation, which does not mention a change in source. (Compare Cal. Admin. Code, tit. 23, § 738 (1960) with Cal. Code Regs., tit. 23, § 791, subd. (a).) The regulation prohibiting a proposed change in source likely was revised as a result of a series of legal memoranda in the 1950s, discussed below, that addressed the issue of whether an appropriator could change a point of diversion from one tributary to another.

III.
CASE LAW REGARDING CHANGES IN THE POINT OF DIVERSION

There are no reported California cases addressing the specific question of whether a person holding a permit or license may change the point of diversion from one tributary to another. With one exception, discussed below, the cases involving changes in the point of diversion (regardless of the basis of right), and in which the facts can be ascertained, contemplate moving a diversion point along the same stream as the original point of diversion. (*Kidd v. Laird (Kidd)* (1860) 15 Cal. 161, 179 [upholding jury instruction to the effect that a "person entitled to divert a given quantity of the water *of the stream*, may take the same at any point *on the stream*], italics added; *Whittier v. Chocheco Mfg. Co.* (*Whittier*) (1838) 9 N.H. 454, cited by *Kidd*, *supra*, as

[2] These sections apply to appropriations under the Water Code or the Water Commission Act. Section 1706 of the Water Code applies to changes to pre-1914 rights. Section 1707, which addresses changes for the protection of instream beneficial uses, applies to all types of water rights.

being directly on point, *Ramelli v. Irish* (1892) 96 Cal. 214 [31 P. 41]; *Jacob v. Lorenz* (1893) 98 Cal. 332 [33 P. 119].)

Only one California case considers a change in a point of diversion to a different tributary, and in that case, the court found that the waters involved the same source of supply. (*Cheda v. Southern Pacific Co.* (*Cheda*) (1913) 22 Cal.App. 373 [134 P. 717].) In *Cheda*, the court addressed a dispute between a downstream riparian landowner and an upstream diverter who changed its point of diversion from one spring to another where both springs were tributary to the same stream from which the downstream riparian plaintiff diverted water. Relying on the "no injury" rule, the plaintiff claimed that the defendant's change in the point of diversion from one tributary to another tributary above the confluence was unauthorized. The court determined that the defendant had acquired a prescriptive right against the downstream plaintiff. The court attached "no importance to the fact that the place of diversion was changed from one tributary to another," considering the waters to be from the same supply. (*Id.* at p. 377.) Having acquired a prescriptive right against the plaintiff, the defendant could extract the amount of that right from the same supply. (*Ibid.*)

While the applicability of the *Cheda* decision, which involved a pre-1914 prescriptive right against a riparian, to appropriations under division 2 of part 2 (commencing with section 1200) of the Water Code is debatable, it was (and apparently still is) the only California case addressing a change in a water right from one tributary to another. (Compare with *Anaheim Union Water Co. v. Fuller* (1907) 150 Cal. 327 [88 P. 978] [two streams above a confluence are considered separate streams for purposing of determining watershed to which riparian rights attach].) Nonetheless, as explained below, *Cheda* should be narrowly construed in light of the common law and statutory regime governing changes to water rights.

IV.
STATE WATER RIGHTS BOARD LEGAL MEMORANDA REGARDING CHANGES IN THE POINT OF DIVERSION

In the 1950s, the State Water Rights Board legal staff issued a series of memoranda concerning the question of whether a water right holder could petition to change a point of diversion from one tributary to another. In 1953 Gavin Craig noted that a new appropriation could not be initiated under the guise of changing the point of diversion to a new source, citing to the regulatory prohibition under then-section 738 against a change to a new source. (Memorandum from Gavin Craig to Henry Holsinger entitled "Petition for Change in Point of Diversion from One Tributary to Another" (Feb. 3, 1953).) In determining whether a change from one tributary to another would constitute a change to a new source prohibited by the regulation, Mr. Craig suggested looking at the relationship of the two tributaries at the point of diversion. He concluded that a change from one tributary to another tributary should not be permitted even if each tributary was "one stream with the main channel below the confluence of the two." (*Id.* at p. 3.) Mr. Craig also concluded that it would be appropriate to consider a petition to change a point of diversion either upstream or downstream along a river and its tributaries. The memorandum does not address whether an appropriator could eventually change the point of diversion to a new tributary by changing the point of diversion in incremental steps (e.g., by moving downstream to the mainstem and then back up to the new tributary).

In 1959 Muir Woolley reached a different conclusion as to whether a change to a different tributary involved the addition of a new source and thus constituted the initiation of a new right. (Memorandum from Muir Woolley to Gavin Craig entitled "Regarding Appropriator's Right to Change Point of Diversion" (Mar. 13, 1959) (hereinafter "Woolley Memorandum").) The memorandum specifically addressed the issue of whether the State Water Right Board "has a right to deny a request to change a point of diversion merely because it proposes removal of the point of diversion to another tributary without hearing and a showing that injury to parties would result." (*Id.* at p. 6.) Mr. Woolley cited to *Cheda*, the only California case he found involving a change in a point of diversion to a separate tributary, to conclude that under the law of that case, there seemed "to be no limitation on [an] appropriator's right to move on to different tributaries . . ." as long as there was no injury. (*Id.* at pp. 6-7.) Mr. Woolley concluded that if the *Cheda* case was followed, then the State Water Board had no power to prevent a change to another tributary despite section 738's prohibition against a major change in source. He noted, however, that what constitutes the same water supply is relative to the other water users' position on the stream. Water may be the "same supply to a party at the lower end of the stream, but it would not be the same source of supply in reference to parties on the upper reaches of the stream system." (*Id.* at p. 7.)

Six days later, Mr. Craig drafted a memorandum stating that there appeared to be no restriction on the right of an appropriator to change a point of diversion from one tributary to another unless other water users would be adversely affected. (Memorandum from Gavin Craig to L.K. Hill entitled "Changes in Point of Diversion" (Mar. 19, 1959).) He noted, however, that even though a change to another tributary may be lawful, the changed appropriation would be subordinate to the other rights on the new tributary that were established at the time of the change, even if the petitioner had a higher priority at the former point of diversion. Thus, the change would amount to a new appropriation against the existing lawful users on the new tributary, but the petitioner would retain its priority against users below the two tributaries. Mr. Craig concluded that the State Water Rights Board "should accept a petition to change a point of diversion from one tributary to another and approve or deny such petition depending on whether there is sufficient water in the second tributary to satisfy the appropriation without infringing on the then-existing rights of others." (*Id.* at p. 2.) In other words, approval of the change would require both a showing that unappropriated water was available in the new tributary and an express condition that water may diverted from the new point only if the diversion did not interfere with the exercise of existing waters on that tributary. (*Ibid.*)

In sum, the State Water Rights Board's attorneys ultimately concluded that under *Cheda*, the Board should accept and process a petition to change a point of diversion from one tributary to another. Soon after the latter two memoranda were written, the State Water Rights Board's regulations were amended to eliminate the prohibition against considering changes in source.

V.
PAST ORDERS AND DECISIONS

Although the State Water Board and its predecessor have approved changes that involve moving a diversion point along the same stream system as the original diversion point, their

consideration of whether a change involves the initiation of a new right has been limited to just a few decisions and orders. For example, in Decision 1030 (1961), the applicant held a state-filed application with a 1949 priority date to divert from the East Fork Russian River. In 1958 the applicant sought to add points of diversion on the main stem of the Russian River in addition to the East Fork Russian River diversion point. The State Water Rights Board noted that: "These changes, if permitted without suitable conditions, would allow diversion of water of both the East Fork and all other tributaries above the respective points of diversion and would, to that extent, constitute a new appropriation with, at best, a 1958 priority." (Decision 1030, at p. 40.) In order for the applicant to maintain its 1949 priority, the Board conditionally approved the changes by limiting the diversion of water to the amount contributed to the Russian River by flow from the East Fork. (Decision 1030, at p. 41.)

In Order WR 79-22, the State Water Board expressly considered whether a proposed change in point of diversion would initiate a new right. The licensee proposed a change in the point of direct diversion from Poodle Creek to East Borrow Pit of the Sutter Bypass in Sutter County. Noting that it could not approve a change from a source with maximum rate of supply to one with unlimited capacity, the State Water Board imposed a term in the license to assure that diversion of water from East Borrow Pit occurred only when Poodle Creek and East Borrow Pit constituted a common supply. (*Id.* at p. 9.). The State Water Board further noted that:

> The Board has consistently interpreted Division 2, Part 2 of the Water Code as precluding a petitioner for a change of a point of diversion to initiate a new right by such a change. See Decision 1030. An example of an attempted initiation of a new right by a petition to change a point of diversion is where the original appropriative right is acquired with a point of diversion on a stream tributary to a much larger watercourse. Moving the point of diversion from the tributary to the larger watercourse makes the source for the water right different and increases the reliability of the right. Such a change in point of diversion is not permitted by Division 2, Part 2 of the Water Code. (*Id.* at p. 9, fn. 6.)

It is not entirely clear whether the State Water Board's primary concern was the change in the source of supply, the potential enlargement of the right, or both. The reference to Decision 1030, discussed above, suggests that the Board's focus was on avoiding enlargement of the right.[3]

[3] See also Decision D 1013 (1961), which noted that the State Water Rights Board had previously allowed the applicant to amend a state-filed application to change points of diversion from Gerle Creek and the Rubicon River to Pilot Creek in El Dorado County. It is unclear whether the amendment involved a change downstream or to another tributary. In Mr. Woolley's March 13, 1959 memorandum, he mentioned the then-proposed amendment, concluding that the change in point of diversion would not result in any injury and recommending that the petition be granted without a hearing. The application was subsequently amended in 1960. Although the Board in Decision D 1013 notes that the amendment was not at issue in the hearing because it had been previously approved, it also concludes that the protestant would not have been harmed by the change because substantially less water was available at the new point of diversion.

VI.
A CHANGE TO A NEW SOURCE CONSTITUTES THE INITIATION OF A NEW RIGHT

Notwithstanding past decisions and legal memoranda that consider the discrete issue of moving a change in the point of diversion from one tributary to another tributary, the relevant inquiry is whether a change involves the addition of a new source, as discussed below. The Water Code and case law support a conclusion that a change to a new source constitutes the initiation of a new right that is prohibited under section 791 of the State Water Board's regulations and other applicable law. Accordingly, when the Division receives a request to change a point of diversion, it should determine on a case-by-case basis whether the change involves a change in source. If so, the Division should reject the change petition and require a new application to be filed. In certain limited cases, however, a change from one tributary to another tributary may involve the same source and may be addressed through the change petition process.

A. A Change in the Point of Diversion Cannot Result in an Increase in Water Use

A fundamental principle of water right law is that a change cannot enlarge an appropriator's diversion entitlement and thus, initiate a new right. Under Water Code section 1225, a person cannot acquire a right to appropriate water subject to appropriation except in compliance with the statutory water right provisions. Water subject to appropriation is defined to include all water that has never been appropriated. (Wat. Code, § 1202, subd. (a).) Any attempt to change a water right in a manner that increases the amount of water diverted (as opposed to perfecting a previously initiated appropriation) necessarily amounts to an appropriation of water that has never been appropriated. Thus, any change in the point of diversion (regardless of the changed location) that increases the amount of water diverted under the original right, initiates a new right.

In addition, this principle is supported by the common law rules governing changes to established water rights. (See *State Water Resources Control Bd. Cases* (*State Water Bd. Cases*) (2006) 136 Cal.App.4th 674, 739-743 [39 Cal.Rptr.3d 189] [reviewing common law rules governing changes prior to enactment of legislation].) The Water Code provisions governing changes to water rights codify the common law, which allowed changes if the quantity of water used was not increased, and the change did not prejudice others. "The changes in the exercise of appropriative rights do not contemplate or countenance any increase in the quantity of water diverted under the original exercise of the right." (1 Hutchins, Water Rights Law in the Nineteen Western States (1971), p. 624.) "It is settled that where a right exists to use a certain quantity of water, a change in the mode and objects of the use, *without increasing the quantity*, is no violation of the right." *Whittier, supra,* 9 N.H. 454, ___ [1838 WL 2607 at *3], italics added, cited with approval by *Kidd, supra*, 15 Cal. at p. 181 and *State Water Bd. Cases*, 136 Cal.App.4th at pp. 739-740.)[4] In sum, a change that increases the quantity of water diverted under an existing right constitutes the initiation of a new right.

[4] Water Code section 1706 governs changes to water rights acquired other than by compliance with the Water Commission Act or the Water Code. State Water Board Order WR 2006-0001 found that the respondent had illegally increased its pre-1914 consumptive water use above the amount of water to which the respondent was entitled. The State Water Board noted that the measure of a pre-1914 right is

B. A Change to a New Source Is a New Appropriation

The common law and statutory regime governing changes support the conclusion that the addition of a new source, regardless of whether it would increase the amount of water available to be diverted, constitutes the initiation of a new right. The source of water appropriated under a permit or license is a fundamental component of an appropriative right that cannot be changed without altering the very essence of that right. For example, Water Code section 1260, in addition to requiring identification of the location of the point of diversion, expressly requires that an application specify the source of the water supply. Similarly, Water Code section 1301 requires that the notice of application provided by the State Water Board must identify the source of supply for the proposed diversion. In other words, the source of water to be diverted is one of the "basic parameters defining the water right." (Order WR 88-3, at p. 8 [rejecting argument that an increase in head initiates a new right because the proposed changes did not involve any "basic parameters defining the water right" other than the changed location of point of diversion on same stream].)

There is no question that once an appropriator has obtained a prior right to use a given quantity of water he or she may change certain basic parameters of the water right, such as the point of diversion, place of use, or method of use, of water to which he or she is entitled. (Wat. Code, § 1701; Cal. Code Regs., tit. 23, § 791, subds. (a), (e).) These other parameters, which merely identify the mode of water use, are incidental to the fundamental right to use the water and thus can be changed with the State Water Board's approval. "The reasons for the right to make the above changes are that, by his taking and devoting water to a beneficial use, the appropriator has acquired the right to take the quantity which he beneficially uses, as against others having no superior rights in the source, and that neither the particular place of use, the character of the use, nor the place of taking is a necessary factor in such acquisition. The change of place of taking becomes wrongful only in the event that others are injured thereby." (*City of San Bernardino v. City of Riverside* (1921) 186 Cal.7, 29 [198 P. 784] [applying rules applicable to surface water diversions to groundwater extractions]; *Miller & Lux v. Rickey* (*Miller*) (C.C.D.Nev. 1904) 127 F. 573, 584-585; *Jacob v. Lorenz* (1893) 98 Cal. 332, 340-341 [33 P. 119].) As explained below, however, the source of supply is an intrinsic component of the water right entitlement that cannot be changed without initiating a new right.

In considering changes in points of diversion, the courts consistently refer to changes involving the same stream system, source of supply, or waters to which the appropriator is entitled. " 'It is well settled that a person entitled to a given quantity of the water of a stream may take the same *at any point on the stream*, and may change the point of diversion at pleasure, and may also change the character of its use, if the rights of others be not affected thereby.' " (*Miller, supra*, 127 F. at p. 584, quoting *Union Mill & M. Co. v. Dangberg* (C.C.D.Nev. 1897) 81 Fed. 73, 115.) "It is also settled that [an] appropriator may change the place from whence the water *is taken out of the source*, provided others are not injured by such change." (*City of San Bernardino, supra*, 186 Cal. at pp. 28-29, italics added; *Kidd, supra*, 15 Cal. at pp. 179-181 [person entitled to divert quantity of water of the stream may take the same at any point on the stream]; *Hand v.*

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the amount of water actually used (*id.* at p. 10), thus underscoring the principle that if there is a change in a specific pre-1914 water right, it cannot result in an increase in water use.

Cleese (1927) 202 Cal. 36, 45 [258 P. 1090] [change in means of diversion "of the waters to which they were entitled"]; *Barton v. Riverside Water Co.* (1909) 155 Cal. 509, 517 [101 P. 790] [new wells "take from the same supply as the old ones"].)

These cases indicate that a water right entitlement is limited to the beneficial use of waters from a particular source of supply. "'If the change involved the appropriation of more water *or taking water from a different river system*, the rule against the initiation of a new right would apply to prevent the change.'" (*Johnson County Water Dist. v. State Water Rights Board* (1965) 235 Cal.App.2d 863, 879 [45 Cal.Rptr. 589], italics added [quoting the Board's argument].) In other words, a diversion from a different source is an entirely new appropriation.

C. The *Cheda* Decision Should Be Narrowly Applied

The State Water Rights Board's legal memoranda rely on *Cheda* to conclude that a change in the point of diversion to another tributary may be lawful. The memoranda, however, arguably construe *Cheda* more broadly than the facts of the case warrant. Even if *Cheda's* precedential value to post-1914 appropriative rights were unquestioned, the case is limited to changes involving the same source of supply. In addressing the right of the defendant to divert water from the second spring despite its effect on water availability at the plaintiff's downstream riparian property, the Court of Appeal stated:

> We attach no importance to the fact that the place of diversion was changed from one tributary to another. The rights acquired by the original appropriation and user up to 1903 were in the water supply of the creek, and the water taken from Dyer spring was as much the water supply of Stenner Creek as was that water which flowed from Serrano spring. . . . The water and the [defendant's] right to divert and use the same were the things acquired by the prescriptive title. Having acquired that right as against the plaintiff, in 1903, no reason occurs to us why defendants might not upon their own lands extract from the *same supply* an equivalent amount of water. True, by the abandonment in 1903, they relinquished the easement right upon the land then occupied, but did not thereby release the right to go upon their own land and take an equal amount of water from the *same source of supply*. There is nothing in the record which, to our minds, discloses insufficiency of the evidence to support the finding of the court that the change of the point of diversion was without injury to plaintiff. (*Cheda, supra,* 22 Cal.App. at p. 377, italics added.)

Thus, while *Cheda* involved a change from one tributary to another, the court viewed the change as involving the same source of supply. The case does not authorize a change to another source.

Moreover, *Cheda* does not support the conclusion that different tributaries that ultimately converge into one stream system should always be considered the same source of supply, only that two tributaries may constitute the same source under limited circumstances. A review of the topographic map covering the area at issue in *Cheda* suggests that the change took place high in the headwaters of the stream system, indicating that the scale of the change was limited. Assuming, *arguendo*, that *Cheda* applies to changes in applications, permits, and licenses, it

should not be construed as authorizing large-scale changes between tributaries. Instead, the decision should be narrowly applied to relatively minor, geographically proximate changes. Factors that the Division should consider in evaluating whether a change to a new tributary involves the same source, and thus falls within the limited scope of the *Cheda* decision, are set forth below.

D. Factors to Consider in Evaluating Whether a Change Involves the Same Source

In its evaluation of whether a change in the point of diversion involves the same source, the Division should consider the following factors:

- *Hydrologic connectivity.* The points of diversion must be hydrologically connected. Under *Cheda* and other cases that provide geographic descriptions of the contested change in point of diversion, the change involves the same water supply or the same stream. While *Cheda* takes a broad view of what constitutes the same water supply, a hydrologic connection is still present. There is no authority supporting a change in a point of diversion to an unconnected water supply. Accordingly, the Division should not consider any such change. In determining whether there is a hydrologic connection between a spring and a nearby stream, the Division's previous issuance of a permit may imply a finding of connectivity between the groundwater and surface water.

- *Geographic scale of the proposed change. Cheda* involved points of diversion in close proximity to each other, high in the headwaters of the stream system. The case does not support consideration of a proposed change on a large geographic scale—e.g., from one major tributary system to another.[5]

- *Water availability.* A petitioner may seek to change the point of diversion due to more favorable water supply conditions. To avoid enlarging the right, the change should be conditioned to ensure that the petitioner cannot divert at the new point of diversion at times when water would not be available for diversion under the petitioner's priority at the old point of diversion.

- *No injury.* To avoid injury to legal users of water downstream of the new point of diversion, the petitioner should demonstrate that there is sufficient water at the new point of diversion to satisfy the appropriation without injuring the existing rights of other water users below the new point of diversion. If unappropriated water is available only at certain times or in certain amounts, then the change should be conditioned to prohibit interference with existing rights, including junior rights downstream of the new point of diversion that were not affected by diversions at the old point of diversion (see below).

[5] An example of the kind of change that may be considered to be from the same source, even though different tributaries were involved, is presented by Decision 1502 (1979). The State Water Board approved a change in a pending application from one spring to two upstream springs. As the State Water Board recognized, the springs were tributary to the unnamed stream. (*Id.* at pp. 1-3.) Strictly speaking, the change was from one tributary to two others, but the State Water Board approved the change, without expressly considering whether the change involved a new source, based on a finding that it had no impact on other users. (*Id.* at p. 6.)

- *Subordination of priority.* To avoid injury to water users potentially affected by diversions at the new point of diversion who were not affected by diversions at the old point of diversion, the changed water right would have to be subordinated to all rights on the new tributary, down to the confluence of the two tributaries, that are established at the time of the change, even if those rights are junior to the changed right. With respect to water users below the confluence, the petitioner's diversions from the new point of diversion would retain the priority of the original appropriation. If a change petition raises an issue of subordination because the presence of other water users that would otherwise be injured by the change, this may suggest that the new diversion is not within sufficiently close proximity to the old diversion and thus, may involve a new source.

In addition, the Division raises the issue of whether the State Water Board can cancel a change petition before noticing it. The State Water Board certainly may cancel a change petition that is so clearly defective that it cannot be remedied by allowing the petitioner to submit additional information. (Wat. Code, §§ 1701.1-1701.4.) For example, the State Water Board could cancel a petition that seeks to initiate a new right (e.g., through an expansion of the season of use). (Cal. Code Regs., tit. 23, § 791, subd. (a).) Presumably, however, such clear-cut cases are rare. If there is any question, Division staff should elevate the matter to management before proceeding. In most instances, the Division should require the petitioner to submit additional information that may remedy the defect before deciding whether to cancel the petition. (Wat. Code, §§1701.3-1701.4.)

V.
CONCLUSION

Although the State Water Board's regulations no longer expressly prohibit the addition of a new source to an existing right, applicable law supports such a prohibition whether it is adopted as regulation or not. Accordingly, when considering a request to change the point of diversion to a different tributary, the Division must evaluate whether the proposed change will initiate a new right by enlarging the existing right (e.g, by increasing the amount of water that the appropriator could divert) or by adding a new source.

cc: **[All via email only]**
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