


SOMACH SIMMONS & DUNN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814

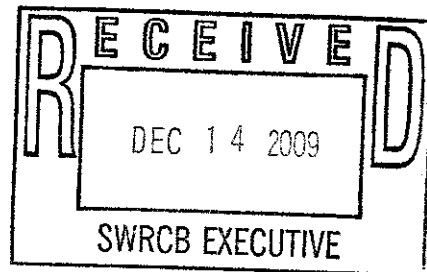
OFFICE: 916-446-7979 FAX: 916-446-8199

SOMACHLAW.COM

1/5/10 Bd Mtg
Dft Order Modify WR2006-0006
Deadline: 12/14/09 by 12 noon

Via Fax (916-341-5620) and First-Class U.S. Mail

December 14, 2009



Jeanine Townsend, Clerk to the Board
Executive Office
State Water Resources Control Board
Cal/EPA Headquarters
1001 "I" Street, 24th Floor
Sacramento, CA 95814-2828

Re: COMMENT LETTER – 1/05/10 BOARD MEETING: DRAFT ORDER
MODIFYING ORDER WR 2006-0006

Dear Ms. Townsend:

The City of Stockton thanks the Board for the opportunity to submit these comments on the Draft Order modifying Order WR 2006-0006.

As you know, the SWP and CVP water rights are conditioned on implementation of the interior southern Delta salinity objectives, which were set under the 1995 Water Quality Control Plan at 0.7 millimhos per centimeter (mmhos/cm) electrical conductivity (EC) from April 1 through August 31 each year and 1.0 mmhos/cm EC from September 1 through March 31 each year at the following three locations: (1) Station C-6 (San Joaquin River at Brandt Bridge), (2) Station C-8 (Old River near Middle River), and (3) Station P-12 (Old River at Tracy Road Bridge). Paragraph A.1 of the 2006 Cease and Desist Order, WR 2006-0006 ("2006 CDO"), required DWR and USBR to "obviate the threat of violation of the 0.7 mmhos/cm interior southern Delta salinity objective by July 1, 2009."

As required by the 2006 CDO, DWR and USBR submitted a compliance plan for meeting the interior southern Delta salinity objectives; that plan proposed to obviate the threat of violation at Station C-8 and Station P-12 by constructing the permanent, operable gates component of the South Delta Improvement Project ("SDIP"). The compliance plan proposed to obviate the threat of violation at Station C-6 by "continuing and expanding ongoing San Joaquin River salinity management activities."

Jeanine Townsend, Clerk to the Board

State Water Resources Control Board

Re: Comment Letter – 1/05/10 Board Meeting: Draft Order Modifying Order WR 2006-0006
December 14, 2009

Page 2

Subsequently, DWR and USBR encountered difficulties in obtaining the regulatory permits necessary to construct the gates for the SDIP. Consequently, DWR and USBR requested that the Board stay paragraph A.1 of the 2006 CDO, or extend the compliance deadline, until the Board has completed its water quality control planning process and determined whether the interior southern Delta salinity objectives will remain as stated above. (Draft Order, at p. 11.)

The draft Order candidly acknowledges the scientific uncertainty regarding whether the current interior southern Delta salinity objectives are appropriate. To that end, the draft Order indicates that the Board "is currently reviewing the 2006 Bay-Delta Plan to determine what, if any, changes should be made to the southern Delta salinity objectives or the associated program of implementation for those objectives to ensure the reasonable protection of agricultural beneficial uses in the southern Delta." (Draft Order, p. 9.) The Order further provides that "State Water Board staff are currently preparing technical and environmental analyses to inform the State Water Board regarding any modification to the objectives" and notes that a draft report entitled *Salt Tolerance of Crops in the Southern Sacramento-San Joaquin Delta* (Draft Report), by Dr. Glen Hoffman, "suggests that higher salinity water than the current objectives may be fully protective of agricultural beneficial uses in the southern Delta and recommends additional analyses to further review this issue." (*Id.*) The draft Order notes that the information from Dr. Hoffman's final report, along with other relevant information, will be considered. Then, after public review and comment on any proposed amendments, the Board will determine what, if any, changes should be made to the objectives and program of implementation through adoption of any amendments to the Bay-Delta Plan. The draft Order indicates that the Board plans to complete this basin planning phase and the associated water rights implementation phase by the spring of 2012. (Draft Order, at p. 9.)

The draft Order also admits that existing efforts to achieve the standard for Station C-6 (San Joaquin River at Brandt Bridge) have not been successful. The compliance plan proposed by DWR and USBR to obviate the threat of violation at Station C-6 required continuation and expansion of ongoing San Joaquin River salinity management activities (Draft Order, at p. 5). Despite these efforts, though, the salinity objective was exceeded at Station C-6 every day from June 25 through July 13, 2008. (Draft Order, at p. 8.)

Ultimately, the draft Order acknowledges that the compliance plan's proposal to construct permanent, operable gates in the southern Delta "is no longer viable." Consequently, the draft Order proposes to extend the compliance deadline set forth in Order WR 2006-0006 "until after [the Board] complete[s] [its] review of the 2006 Bay-Delta Plan and any subsequent water right proceeding, so that DWR and USBR's revised compliance plan can take into account any changes to DWR's or USBR's responsibility for meeting the interior southern Delta salinity objectives that may occur as a result of [the] review of the 2006 Bay-Delta Plan." (Draft Order, pp. 19 – 20.)

Jeanine Townsend, Clerk to the Board

State Water Resources Control Board

Re: Comment Letter – 1/05/10 Board Meeting: Draft Order Modifying Order WR 2006-0006

December 14, 2009

Page 3

Considering all the available salinity control measures and the circumstances, the draft Order proposes that DWR and USBR be required to do only the following: (1) DWR must continue to implement the temporary barriers program, (2) DWR and USBR must study the effectiveness and feasibility of alternative salinity control measures, and implement any additional measures that the Executive Director determines are both reasonable and feasible, and (3) DWR and USBR must continue to implement, and update as necessary, the component of the compliance plan that was intended to achieve compliance at Station C-6 (San Joaquin River at Brandt Bridge). Even though the existing measures have not been sufficient to meet the interior southern Delta salinity standards at Station C-6, or elsewhere, the draft Order declined to require the implementation of other salinity control measures. Thus, the draft Order acknowledges that it is not appropriate to require extraordinary measures to achieve compliance with the interior southern Delta salinity objectives while the Board is in the process of reconsidering those objectives.

For this same reason, the City should not be required to implement extraordinary measures to ensure compliance with the interior southern Delta salinity standards. In considering the City of Stockton's NPDES permit just two months ago, the Board adopted an Order that will require the Central Valley Regional Water Quality Control Board to adopt effluent limitations for the City's discharges that adhere to the 1995 WQCP standard of 0.7 mmhos/cm (EC) from April 1 through August 31 each year and 1.0 mmhos/cm EC from September 1 through March 31 each year. The Board's reasoning was that adherence to these standards is necessary to protect agricultural uses in the Southern Delta. However, the draft Order at issue here acknowledges that these objectives are currently subject to scientific uncertainty and revision and finds that water users should not be required to take extraordinary measures to meet these objectives at this time.

Using the same reasoning as contained in the draft Order, the City should not be required to implement this questionable standard. At the October 6, 2009 adoption hearing of the State Water Board's Order for Stockton, the City provided testimony explaining that to comply with the 0.7 mmhos/cm EC standard, the City will be compelled to build Reverse Osmosis (RO) treatment facilities at an extreme cost to City ratepayers, even though the City's discharge has no impact on compliance at the C-6 station. Yet the Board ordered that the City's permit be subject to this standard, while the draft Order modifying the 2006 CDO excuses the Projects from complying with the interior southern Delta salinity standards based on current scientific uncertainty regarding the standards and the lack of identified feasible control measures.

Standards and objectives such as these must be enforced evenly, or not at all. Since the Board has chosen to allow DWR and USBR relief from compliance, the same privilege must be extended to all other affected entities subject to the same objectives.

Therefore, if the Board grants the proposed Order, the City requests that the State Water Board provide the City with the same consideration as DWR and USBR by using its

Jeanine Townsend, Clerk to the Board

State Water Resources Control Board

Re: Comment Letter – 1/05/10 Board Meeting: Draft Order Modifying Order WR 2006-0006

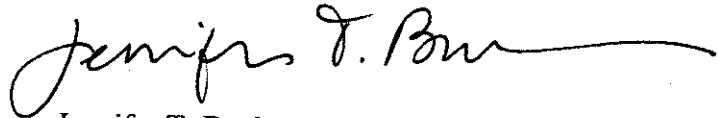
December 14, 2009

Page 4

broad discretionary authority to rescind the portion of Order WQ 2009-0012 that remands the City's NPDES permit to the Central Valley Water Board directing it to adopt effluent limitations for EC that implement south Delta salinity standards. In lieu of remanding this portion of the City's permit, the State Water Board should issue a stay of effluent limitations for EC pursuant to section 2053 of Title 23 of the California Code of Regulations, which provides the State Water Board with authority to issue a stay on its own motion. At the very least, the stay should be in effect until such time that the State Water Board revises the south Delta salinity standards and the standards are effective.

Thank you for your consideration of these comments. Should you have any questions about the matters discussed above, please do not hesitate to contact me at (916) 469-3820.

Very truly yours,

A handwritten signature in cursive script that reads "Jennifer T. Buckman". The signature is written in black ink and extends across the width of the page.

Jennifer T. Buckman, Esq.

JTB:aw

Enc.