

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2023-0016

In the Matter of the petition of
the City of Stockton
for reconsideration of Order WR 2022-0176
on the water right application (A030531B) of
the City of Stockton
for a permit to appropriate water from the San Joaquin River.

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

This matter came to the State Water Resources Control Board (State Water Board or Board) on the petition of the City of Stockton (City or Stockton) for reconsideration of the Board's Order WR 2022-0176. Order WR 2022-0176 denied and, in the alternative, canceled water right Application 30531B of the City of Stockton for a permit to appropriate water from the San Joaquin River.

We denied water right Application 30531B pursuant to California Code of Regulations, title 23, section 840, because we concluded that Stockton "does not intend to initiate construction of the works required for the contemplated use of water within a reasonable time and thereafter diligently prosecute the construction and use of water to completion" and Stockton "will not be able to proceed within a reasonable time... because of absence of a feasible plan." (Order WR 2022-0176, p. 2.) In the alternative, we canceled Application 30531B pursuant to Water Code section 1276 because Stockton did not provide information requested by the State Water Board's Division of Water Rights (Division). (*Ibid.*)

In its petition for reconsideration of Order WR 2022-0176, Stockton argues that the State Water Board's adoption of this order was inappropriate or improper for the following reasons:

- (a) California Code of Regulations, title 23, section 840, subdivision (a), is not a basis to deny Application 30531B (A30531B) because the City has spent approximately \$25 million to construct a portion of the additional diversion facilities it must construct to ultimately divert A30531B water under [any permit granted on] that application;
- (b) Substantial evidence indicates that the City will proceed [with its proposed project] within a reasonable time, and therefore California Code of Regulations, title 23, Section 840, subdivision (b) is not a basis for denying A30531B; the City currently has both a feasible plan in place and the financial resources needed to construct additional facilities required to be constructed prior to actual diversion and use of A30531B water;
- (c) Water Code section 1276 is not a basis to cancel A30531B because the City has complied with requests for additional information received from the State Board to further the processing of A30531B;
- (d) It is inefficient and counterproductive for the State Board to cancel A30531B because of:
 - i. The severe financial hardship presented by the expenditure of at least \$500,000 in municipal funds required to file a new application; and
 - ii. The extraordinary length of lead time required for processing and approval by the State Board of a new application.

(Pet. for Reconsideration, p. 2.)

Stockton requests that the Board rescind Order WR 2022-0176 and maintain Application 30531B with a reduced maximum diversion volume of 33,600 acre-feet per year.

For the reasons stated in this order, we deny Stockton's petition for reconsideration.

2.0 GROUND FOR RECONSIDERATION OF A BOARD ORDER AND TIMING OF BOARD'S ORDER ON PETITION FOR RECONSIDERATION

Any interested person may petition the State Water Board for reconsideration of a water rights order within 30 days after the date on which the Board adopted the order. (Wat. Code, § 1122.)

The applicable Board regulation (Cal. Code Regs., tit. 23, § 768) provides that a petition for reconsideration may address any of the following causes:

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) Error in law.

The State Water Board adopted Order WR 2022-0176 on October 3, 2022. Stockton filed its petition on November 2, 2022, which was before the 30-day deadline for petitions specified in Water Code section 1122.

Water Code section 1122 provides that the State Water Board shall order or deny reconsideration on a petition within 90 days from the date on which the Board adopts the decision or order. If the State Water Board does not act on a petition for reconsideration within the 90-day period specified in Water Code section 1122, the petitioner may seek judicial review, but the Board is not divested of jurisdiction to act upon the petition. (State Water Board Order WR 2009-0061, p. 2, fn. 1; see *California Correctional Peace Officers Assn v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147- 1148, 1150-1151.) We therefore have authority to adopt this order on Stockton's petition for reconsideration after the end of this 90-day period.

3.0 STOCKTON'S PETITION FOR RECONSIDERATION

3.1 Denial of Application 30531B under Section 840

Stockton argues that the Board's denial of Application 30531B under California Code of Regulations, title 23, section 840, is not supported by substantial evidence and constitutes legal error. First, Stockton asserts that evidence that it constructed some of the facilities necessary to divert and use water under Application 30531B and identified the additional facilities necessary to divert and use water under Application 30531B contravenes the Board's conclusion that the City had "not offered sufficient evidence to show [it] will initiate construction of the works required to divert and use that water within a reasonable time" (Order WR 2022-0176, p. 27.) Second, Stockton asserts that the Board should have considered, and did not consider, evidence about the length of time necessary to plan, permit, and construct municipal-owned and -operated facilities; changes in water supply available to the City; and the need for surface water to address groundwater overdraft. Stockton argues that because the Board did not consider this evidence, its conclusion that "Stockton has not presented adequate evidence of actual start dates for construction of necessary infrastructure or submitted the feasible plans that are required to maintain Application 30531B" is not supported by substantial evidence. (Order WR 2022-0176, p. 43.) Stockton submitted similar comments to the Board on August 3, 2022, which we considered before adopting Order WR 2022-0176. (See August 3, 2022 City of Stockton Comments.)¹

¹ Hearing documents such as comments, motions, and briefs submitted by Stockton, materials in the Board's Division of Water Rights Records Unit files for Application 30531, exhibits submitted by Stockton and the AHO, and a recording of the hearing, are in the administrative record for this matter. The AHO has posted this administrative record in the AHO folder for this matter on the State Water Board's FTP site. Unless otherwise noted, references to page numbers in documents, including parties' exhibits, refer to the page numbers at the top of the screen reading software used to view the pdf files of these documents.

We disagree with Stockton’s arguments and conclude that our denial of Application 30531B under California Code of Regulations, title 23, section 840, in Order WR 2022- 0176, is supported by substantial evidence and does not constitute legal error.

3.1.1 Loss of Supply from Stockton East Water District

Before considering the specific arguments raised by Stockton in its petition for reconsideration relevant to subdivisions (a) and (b) of section 840, we first address Stockton’s repeated assertion throughout this proceeding that under a “worst case scenario,” it may need additional water supplies by 2035 to meet its projected demands. (Stockton-02, ¶¶ 9 & 14; Hearing Recording, 1:36:39-1:37:03; 2021-11-23 Stockton Closing Brief, p. 8; 2022-04-14 Stockton Comment Letter, p. 9; 2022-08-03 Stockton Board Meeting Comment Letter, pp. 4-5; 2022-10-03 Stockton Board Meeting Comment Letter, pp. 4-5; Pet. for Reconsideration, p. 5.)² We continue to be unpersuaded that Stockton will be unable to renew its water supply contract with Stockton East Water District (SEWD) in 2035 and that, as a result, Stockton will need to develop additional water supplies pursuant to Application 30531B by 2035 to meet its demands.

Stockton raised this “worst case scenario” for the first time in this proceeding – the scenario was not identified or discussed in any of the City’s water supply planning documents, including the City’s 2020 Urban Water Management Plan.³ (See Stockton-

² The Hearing Documents folder in the administrative record prepared by the AHO contains a recording of the hearing. Each citation in this order to “Hearing Recording” is to this recording, with start and stop times of the cited portion of the recording indicated in hours, minutes and seconds.

References in this order to file names that contain dates in year-month-day format followed by brief descriptions are to files in the various folders of the administrative record for this proceeding.

³ Stockton’s 2020 Urban Water Management Plan estimates that the City may need additional water supplies under Application 30531B between 2055 and 2060, and that planning efforts, such as development of an environmental review document under CEQA, may begin between 2040 and 2045. (Stockton-19, p. 67.) In a letter to the Division dated August 25, 2020, Stockton similarly estimated that it may need to divert and use water under Application 30531B sometime between 2050 and 2060. (Stockton-13, p. 3; see also Order WR 2022-0176, p. 12.)

19.)⁴ The “worst case scenario” assumes, based on a single statement in Stockton East Water District’s 2020 Urban Water Management Plan, that SEWD will terminate its contract to supply water to Stockton (the Second Amended Contract) in 2035.

(Stockton-24, p. 41.) We addressed this argument in Order WR 2022-0176 and reiterate here that we find no reasonable possibility that Stockton will be unable to renew its water supply contract with SEWD in accordance with the guarantee of continued service and right of renewal in the Second Amended Contract.

(See Order WR 2022-0176, pp. 20-21, 24-26, 38, & 62.)

Robert Granberg, former assistant director of Stockton’s Municipal Utility District, testified that the City expects SEWD to be a source for urban water in the future, that Stockton is a “willing party,” and that Stockton contemplates a continuation of the Second Amended Contract with service under the agreement continuing during renewal negotiations. (Hearing Recording, 1:32:04-1:37:03.) Although SEWD did not participate as a party to this proceeding and did not present testimony or other evidence, SEWD clarified in a July 6, 2021 status conference statement that the Second Amended Contract provides for “guaranteed continued service” and SEWD is “contractually forced to continue water service to the City upon the current terms of the contract.”⁵

(2021-07- 06 SEWD Status Conference Statement, pp. 2-3.) For these reasons, we are not persuaded that Stockton is reasonably likely to lose its supply from SEWD and are not persuaded by Stockton’s argument that the loss of this supply will prompt the City to diligently pursue a permit for a new appropriation of water under Application 30531B.

⁴ Citations to exhibits in this order refer to exhibits submitted by Stockton or the AHO. “Stockton-” refers to exhibits submitted into the evidentiary record by Stockton and “AHO-” refers to exhibits from the Division of Water Rights Records Unit files for Application 30531 submitted into the evidentiary record by the AHO.

⁵ SEWD’s Status Conference Statement is part of the administrative record for this proceeding but is not part of the evidentiary record. We do not consider SEWD’s statements in the status conference statement as evidence, but as a policy statement or legal argument about the meaning of the contract terms that directly contradicts Stockton’s interpretation.

3.1.2 Evidence about Construction of Works within a Reasonable Time

Stockton argues that its construction of the Delta Water Supply Project (DWSP) facilities with capacity in excess of that required to fully exercise its water right under Permit 21176, which was the water right permit issued by the Board on Application 30531A, is sufficient evidence to demonstrate diligent pursuit of Application 30531B.

Order WR 2022-0176 discusses and considers evidence about Stockton's DWSP and the additional facilities necessary for Stockton to divert and use water in excess of the amounts authorized under water right Permit 21176. (Order WR 2022-0176, pp. 18-19, 41, & 64.) This evidence is not sufficient to demonstrate that Stockton would initiate construction of the works necessary to divert and use water under a permit issued on Application 30531B within a reasonable time.

Stockton's evidence shows that the City designed and constructed the DWSP, which the City completed and began operating in 2012, to include excess capacity to allow future diversions and use of water in addition to those amounts authorized under Permit 21176. Stockton "sized the DWSP intake structure and raw water pipeline to accommodate water use greater than that authorized in Permit 21176."

(Order WR 2022-0176, p. 18 [citing Stockton-01, ¶¶ 15-16].) Dr. Mel Lytle testified that there was a "purposeful intention to oversize the facility to allow for additional water for Part B [Application 30531B]" and that the "treatment plant itself is designed to increase its treatment works as well." (*Id.*, pp. 18-19 [citing Hearing Recording, 36:50-37:26].)

"There can be the addition of settling basins, additional membranes ... the City spent an extra \$25 million on that portion ... so we didn't have to go back and expand the pumping station and put in a raw water line" (*Id.*, p. 19 [citing Hearing Recording, 37:26-38:17].) Stockton also submitted testimony about the additional pumping capacity and treatment works that would be necessary for the City to use any additional water supplies diverted through the DWSP. (Stockton-01, ¶ 18; Hearing Recording, 37:07-37:44 & 56:17-57:01.)

This evidence does not, however, demonstrate that Stockton will initiate and diligently pursue the construction of these necessary additional works. The preponderance of the

evidence in the record indicates that the City is not likely to need to develop additional water supplies to meet projected demands within the next thirty years, and that the City does not intend to conduct additional planning or construction in furtherance of diversion or use of Application 30531B water until there is such a demand. We fully considered Stockton's evidence about the DWSP and proposed additional works before concluding in Order WR 2022-0176 that "Stockton does not have a current need or immediate plan to develop the water supplies that it seeks to appropriate." (Order WR 2022-0176, p. 50.)

3.1.3 Planning Timelines and Changing Supplies and Demands

Stockton asserts that in determining whether the City will be unable to proceed within a reasonable time to appropriate water under Application 30531B, the Board should have considered, and did not consider, evidence about the length of time necessary to plan, permit, and construct municipal-owned and -operated facilities; changes in water supply available to the City; and the need for surface water to address groundwater overdraft.

It is appropriate for the Board to consider the time necessary for an applicant to conduct the complex planning and permitting processes associated with a significant water supply project when determining whether that applicant is pursuing its application with diligence. But Stockton has not even initiated the planning process for a project to divert additional water from the San Joaquin River, which would then start the clock on a reasonable lead time for the City to plan for, obtain permits for, and construct the necessary works. (Order WR 2022-0176, pp. 42-43, 52-54, 60-61, & 64.) Most prominently, Stockton has not started developing a project-specific environmental document for additional diversions through the DWSP, and the evidence submitted by Stockton does not identify any definite, let alone immediate, date by which the City will begin to develop this document. (Order WR 2022-0176, pp. 42, 44, 48, & 54.) Without the final environmental document required by CEQA, the Board can take no action on Stockton's application other than to deny or cancel it.

Stockton asserted, for the first time in this proceeding, in written comments to the Board on the Proposed Order on August 3, 2022, that it "would need to" initiate the planning process in 2027 to construct by 2035 additional pumping and treatment capacity

necessary to use water under Application 30531B. (August 3, 2022 City of Stockton Comments, p. 4.) This eleventh hour claim by Stockton that it will start its planning process within the next four years is not credible when considered in the context of the evidentiary record. The evidence shows no reasonable likelihood that the City will have a demand for these additional supplies by 2035. (See, *supra*, Section 3.1.1; Order WR 2022-0176, pp. 25-27 & 38-42.) Therefore, we cannot accept 2027 as a reasonable estimate of when Stockton will begin its planning processes.

Stockton's projections for future water demands have changed since it filed Application 30531 nearly 27 years ago, due in part to declines in the City's expected population growth and increased conservation in urban water use. Since Stockton filed its application, the time when the City expected to initiate the planning and construction processes necessary to use additional water has continually remained just over the horizon. Stockton argues that even if it does not need additional supplies in 2035, it might need additional supplies in either 2045 or 2050, depending on several contingencies. (Order WR 2022-0176 pp. 25-27 & 40.) We addressed the speculative nature of these contingencies in Order WR 2022-0176. (Order WR 2022-0176, pp. 40- 43 & 59-63.) The evidence in the record in this proceeding strongly suggests that Stockton is in the fortunate position of having no reasonable likelihood of a greater demand than it will be able to meet with its existing water supply portfolio for at least several decades into the future.

In a final attempt to demonstrate that it will need additional water supplies sooner rather than later, Stockton asserts that it intends to use water diverted through the DWSP for groundwater recharge purposes, and that the Board inappropriately failed to consider this additional demand when assessing whether Stockton will diligently pursue its application. (Pet. for Reconsideration, pp. 8-9.) Stockton raised this argument during the AHO proceeding and we addressed the argument in Order WR 2022-0176. (Order WR 2022-0176, pp. 23, 38-39, & 61.) Stockton now provides new information in support of its argument, including reference to a June 2022 update to the Groundwater Sustainability Plan prepared by the Eastern San Joaquin Groundwater Authority and a statement that it has received \$2 million in Integrated Regional Water Management

grant program funds to pursue a groundwater recharge project.
(Pet. for Reconsideration, pp. 8-9.)

This evidence was not timely submitted into the evidentiary record for this proceeding and Stockton does not include an affidavit or declaration with its petition as required for us to consider the information in support of reconsideration of Order WR 2022-0176. (Cal. Code Regs., tit. 23, § 769, subd. (b).) However, even if we were to consider this additional information, it would not change our conclusion that Stockton has no immediate plan to pursue its application.

Stockton's updated June 2022 Groundwater Sustainability Plan⁶ identifies a proposed project to divert water through Stockton's DWSP for groundwater recharge as a "Category A Project" that is "likely to advance in the next five years and has existing water rights or agreements." (Pet. for Reconsideration, p. 9.) However, neither the groundwater sustainability plan update nor Stockton's petition explains which water rights or agreements would be used to authorize diversions of water for such a project.

Application 30531B does not include any proposal to store water in the groundwater basin, either for use in situ or for subsequent extraction and use. (See Stockton-04.) Stockton would need to file a petition to change this application and obtain approval from the Board before Stockton could obtain a permit issued on Application 30531B that would authorize diversions for groundwater recharge. Stockton has made no indication that it is prepared to file or pursue such a petition. Because groundwater recharge is not an element of the present application, we cannot reasonably consider a groundwater recharge project as a potential source of demand for water diverted under a permit issued on this application.

⁶ Stockton referenced the June 2022 Update to the Groundwater Sustainability Plan and provided a link to the document in its Petition for Reconsideration. (Pet. for Reconsideration, p. 9, fn. 7 [https://www.sjgov.org/docs/default-source/public-works-documents/water-resources/final-esj-revised-gsp_june2022_clean.pdf?sfvrsn=675b059b_5].) The June 2022 Update to the Groundwater Sustainability Plan is not part of the evidentiary record for this proceeding. The AHO has included it in the administrative record (but not the evidentiary record) for Stockton's Petition for Reconsideration. The administrative record is posted in the AHO folder for this matter on the State Water Board's FTP site.

Stockton also has not attempted to identify any other bases of right in its water supply portfolio under which it could divert water for storage in the aquifer. Stockton's failure to discuss the statutory and regulatory requirements necessary to pursue a groundwater recharge project, and to identify actions to address these requirements, supports our conclusion that Stockton does not at this time intend to develop supplies diverted under a permit issued on Application 30531B for groundwater recharge purposes.

3.1.4 Denying Stockton's Petition for Reconsideration Based on Section 840

Applicable case law and Board precedents do not allow a water right applicant to reserve the priority of a potential future water right by filing an application and then to maintain that priority by slow-walking the application process. "[I]t is a settled principle that an application to appropriate is not a proper instrument to make a reservation of water for [] development at an indefinite and uncertain time in the future." (Decision 893 (1958) p. 54; see also Decision 907 (1958) p. 7.) "Basic to the law of water rights is the principle that an appropriator of water must pursue the development of [the] project from its inception to completion with due diligence in order to claim priority over subsequent appropriators." (Decision 1309 (1968) p. 4.)

As we concluded in Order WR 2022-0176, Stockton does not intend to initiate the construction necessary for diversions and use of Application 30531B water within a reasonable time, does not intend to diligently prosecute such construction or such use of water, and does not have a feasible plan for development or construction of the project. Our factual findings on these points are supported by substantial evidence, and our legal conclusion that Stockton has failed to meet the diligence requirements set by section 840 was not legal error. "[A]bsent a demonstrated demand for the water sought, diligent pursuit of the necessary planning and other actions necessary to complete the appropriation, and an immediate intent to put the water to beneficial use, California law requires that we deny Stockton's application." (Order WR 2022-0176, p. 50.)

3.2 Cancellation of Application 30531B under Water Code section 1276

Stockton asserts that Water Code section 1276 is not an appropriate basis for the Board to cancel Application 30531B because it complied with the Division's requests for additional information. Stockton objects to our finding in Order WR 2022-0176 that

Stockton did not respond to the Division's request in 2008 for more information about a schedule for completion of a project-level CEQA document. (Pet. for Reconsideration, p. 10; see Order WR 2022-0176, pp. 43-44.) Stockton further argues that we should consider its August 3, 2022 assertion that it will begin the planning process to develop additional pumping and treatment capacity no later than 2027, as a timeline for CEQA compliance that is sufficient to avoid cancellation of its application. (August 3, 2022 City of Stockton Comments, p. 4.)

Neither of these arguments is sufficient to support Stockton's petition for reconsideration. The Board may refuse to reconsider an order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration stated in section 768. (Cal. Code Regs., § 770, subd. (a)(1).) Stockton does not raise "substantial issues related to," (*ibid.*), whether the Board's findings with respect to Water Code section 1276 are supported by "substantial evidence" (Cal. Code Regs., § 768, subd. (b)). Although we could decline to address this part of Stockton's petition, we address Stockton's arguments and conclude that the substance of these arguments do not support reconsideration of any portion of the order. (Cal. Code Regs., § 770, subd. (a)(1).)

In 2007, the Division directed Stockton to submit a "schedule for completion of the project-level California Environmental Quality Act document for Application 30531B," which should include "preparation of all biological resource studies, preparation of the Draft Project Environmental Impact Report (EIR), responses to comments and certification of the Final EIR." (2007-09-11 SWRCB Letter to M. Madison, p. 1.) Stockton responded that it "can estimate our efforts going forward after an estimated General Plan approval in 2008," but provided a general projection that it may begin these planning processes in 2014, complete a CEQA document in 2017, and begin diverting and using water under Application 30531B in 2020. (2007-10-11 M. Madison Letter to SWRCB, p. 3.)

In 2008, the Division responded to Stockton's schedule by notifying Stockton that the Division was considering whether to "recommend cancellation of Application 30531B for failure to exercise due diligence, based on the timeline submitted by the City. Any

information submitted within the next 30 days will be taken into consideration.” (2008- 12-01 SWRCB Letter to M. Madison, p. 1.) Stockton did not respond to this 2008 letter or otherwise update its proposed schedule, nor did Stockton initiate its project-specific environmental planning process in 2014, complete a CEQA document in 2017, or divert and use water under Application 30531B by 2020. Stockton’s failure to update its timeline to ensure that the Division had the most accurate information in response to its requests for information under Water Code section 1275 is evidence that supports cancelation of Stockton’s application under Water Code section 1276.

Stockton argues in the alternative that it has now provided a timeline to begin the environmental planning process in its August 3, 2022 written comments to the Board on the Proposed Order, in which Stockton stated that by 2027 it “would need to” initiate the planning process to construct additional pumping and treatment capacity necessary to use water under Application 30531B by 2035. (August 3, 2022 City of Stockton Comments, p. 4.) This information was first presented by Stockton after the close of the AHO’s evidentiary hearing in this matter, after the AHO had circulated a draft proposed order on March 14, 2022, and after the AHO submitted a final proposed order to the Board on July 5, 2022. In addition to being an untimely response to the Division’s 2007 request and untimely submitted in this proceeding for inclusion in the evidentiary record, for reasons already discussed in this order, we do not find Stockton’s newly proposed schedule to be credible.

3.3 Good Cause, Efficiency, and Financial Impacts

Stockton argues that there is good cause for the Board to allow additional time for the City to initiate and complete its planning processes, to provide the information needed by the Board to act on Application 30531B, and to put water diverted under any permit issued on the application to beneficial use. Stockton argues that it would be inefficient and counterproductive for the Board to cancel its application if Stockton intends to re-file a similar application within the next four years as Stockton asserts it will. Stockton argues that it would lose the benefit of approximately \$82,000 that it has paid in annual fees to maintain its application, its application priority date, and its place in “the application review line” with the Division. (Pet. for Reconsideration, p. 11.) Stockton

also asserts that it would experience “severe financial hardship” to pay the initial filing fee to file a new application for a permit to divert 33,600 acre-feet per year, which would exceed \$500,000. (*Id.*, at p. 2.)

Stockton’s arguments for “good cause” directly conflict with the fundamental principle of California water law that prohibits reservation of a priority date while an applicant determines when and whether it will initiate a proposed water-supply project. (See Order WR 2022-0165, pp. 29-30; see also *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, 619.) The alleged financial hardship and loss of priority that Stockton asserts would justify preservation of its application are the direct result of its own attempt to passively reserve a water right priority in violation of the priority system of appropriation. Stockton’s arguments for “good cause” also provide no assurance that Stockton will now, after all this time, immediately and resolutely move forward with its proposed project. As we have discussed in this order and Order WR 2022-0176, the weight of the evidence leads us to conclude that Stockton will likely have no need for additional water supplies for a significant amount of time into the future. (Order WR 2022-0176, pp. 24-26 & 36-41.)

In addition, we are not persuaded that Stockton would experience “severe financial hardship” or limitations on its future water supply based on its priorities of right because of our decision to cancel Application 30531B. Although the initial filing fee to appropriate 33,600 acre-feet of water is not insignificant, \$500,000 is a relatively small portion of the cost of a typical water supply project.⁷ In comparison, Stockton’s DWSP cost more than \$220 million. (Stockton-15; Stockton-19, p. 308.) With respect to the priority of any future-filed application, Stockton may continue to assert the same special priorities for rights to divert water derived from its wastewater discharges under Water Code section 1485 and to divert water native to the San Joaquin River System under the Watershed Protection Act (Wat. Code, §§ 11460-11465) as it did under Application 30531B.

⁷ Application 30531B requests a permit for total annual diversions of 92,300 acre-feet. Stockton proposes in its petition on reconsideration to limit Application 30531B to a total annual diversion rate of 33,600 acre-feet.

Finally, Stockton’s assertion that it will lose its place in the “application review line” misunderstands the Division’s inability to advance an application when an applicant fails to provide information that is legally required for the Board to act.

(Pet. for Reconsideration, p. 11.) The City, not the Division, had the responsibility to prepare and provide the documentation necessary for the Board to consider and potentially approve Application 30531B. If and when Stockton is prepared to file a new water right application and to diligently pursue that application, Division staff will “be available to assist Stockton [with its application], if needed and as appropriate....”

(Order WR 2022- 0176, p. 50.)

4.0 CONCLUSION

Stockton’s petition for reconsideration essentially repeats the arguments that we already considered and rejected in Order WR 2022-0176. In that order, we concluded that Stockton does not intend to initiate the construction necessary for diversion and use under a permit to be issued on Application 30531B water within a reasonable time, or to diligently pursue such construction or such use of water, and that Stockton does not have a feasible plan for development or construction of the facilities necessary to divert and use water under the application. We also found that Stockton did not provide the information the Division requested that was necessary to support the City’s application which justified cancelation of the application under Water Code section 1276. Nothing in Stockton’s petition for reconsideration changes our conclusions in Order WR 2022- 0176. Therefore, we deny Stockton’s petition for reconsideration.

ORDER

IT IS HEREBY ORDERED that:

1. The Board denies the City of Stockton’s petition for reconsideration of Order WR 2022-0176.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 18, 2023.

AYE: Chair E. Joaquin Esquivel
Vice Chair Dorene D'Adamo
Board Member Sean Maguire
Board Member Nichole Morgan
NAY: None
ABSENT: Board Member Laurel Firestone
ABSTAIN: None



Courtney Tyler
Clerk to the Board