



WEP

State Water Resources Control Board

Division of Water Rights

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APRIL 23 1997

In Reply Refer to: 332:CAR:X000264 (City of Bakersfield)



Pete Wilson Governor

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Messrs. Slater and Saperstein:

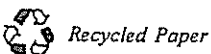
PETITION TO REVISE THE FULLY APPROPRIATED STREAM DECLARATION FOR THE KERN RIVER IN KERN COUNTY

Thank you for your letter of October 10, 1996. This letter has two purposes: (1) to serve as a petition to revise the "Declaration of Fully Appropriated Stream Systems" (FAS Declaration) by the State Water Resources Control Board (SWRCB) for the Kern River; and (2) to transmit an application for the City of Bakersfield (City) seeking a permit to appropriate via either direct diversion or groundwater storage up to 100,000 acre-feet per annum from the Kern River for municipal, recreation, irrigation, or groundwater replenishment purposes.

You contend in your letter that in light of the current dispute involving the North Kern Water Storage District (North Kern), the Kern Delta Water District (Kern Delta), and the City there is a possibility that the Tulare County Superior Court may determine that Kern Delta has forfeited a portion of its water rights due to nonuse. You also acknowledge that the effect of such a determination is not clear at this time. One possibility is that the lower-priority Shaw Decree rights might capture any rights forfeited. A second possibility is that the Court might find that any rights forfeited would revert back to the State for subsequent appropriation under the provisions of the Water Code. The City has submitted both the petition and application in anticipation of the second possibility. The trial on these issues is not scheduled to start until October 1997.

Water Code section 1206(a) prohibits the SWRCB from accepting for filing any application for a permit to appropriate water from a stream system, such as the Kern River, which has been declared to be fully appropriated. In order for such an application to be accepted, the FAS Declaration would have to first be revised so that the Kern River was found to be no longer fully appropriated.

Section 871 of Title 23, California Code of Regulations (C.C.R.) describes the appropriate method of revising the FAS Declaration. Section 871(c)(1) states that a petition requesting revision of the FAS Declaration shall include hydrologic data, water usage



Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

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data, or other relevant information upon which the Chief, Division of Water Rights, may determine that reasonable cause exists to conduct a hearing on the question of whether the fully appropriated status of the stream system should be revoked or revised.

The supporting documentation contained in your October 10, 1996 letter and attachments does not constitute "hydrologic data, water usage data, or other relevant information" upon which to base a determination that reasonable cause exists to justify conducting a hearing. However, the Division will retain your petition and unaccepted application pending the outcome of the trial. The fact that we are retaining these documents, though, should not be construed as providing any priority or advantage over any other filings which may be received in the meantime.

Please note that the City may file an application and/or petition following the resolution of the lawsuit, provided that the court determines that water is available for appropriation. In the event that competing applications are submitted, the SWRCB would likely give priority to municipal use, in accordance with Sections 106 and 1460 et seq. of the Water Code.

Please keep this office appraised of any progress in this matter, especially any decisions of the Court. If there are any questions, I can be reached at (916) 657-1359 or Charles Rich of my staff can be reached at (916) 657-1945.

Sincerely,



Edward C. Anton, Chief  
Division of Water Rights

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