



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE

The State Water Resources Control Board will hold a
**Pre-hearing Conference and Hearing to Determine whether to Adopt
Draft Cease and Desist Order No. 262.31-XX**

and

**whether to Impose Administrative Civil Liability as Proposed in
Administrative Civil Liability Complaint No. 262.5-46 against
North San Joaquin Water Conservation District**

Mokelumne River tributary to San Joaquin River, San Joaquin County

The **pre-hearing conference** will commence immediately following
the Pre-hearing Conference regarding the Hearing to Determine whether to Reconsider Order
WR 2006-0018-DWR Denying North San Joaquin Water Conservation District's Petition for
Extension of Time (Application 12842),

scheduled for 10:00 a.m. on Wednesday, May 23, 2007

at

Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor, **Sierra Hearing Room**
Sacramento, CA

The **hearing** will commence immediately following the Public Hearing to
Determine whether to Reconsider Order WR 2006-0018-DWR Denying
North San Joaquin Water Conservation District's Petition for Extension of Time
(Application 12842), **but no earlier than 1 p.m. on Thursday, June 21, 2007**
and continuing, if necessary, at 9:00 a.m. on Friday, June 22, 2007

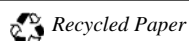
at

Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor, **Coastal Hearing Room**
Sacramento, CA

SUBJECT OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to adopt, with or without revision, draft Cease and Desist Order No. 262.31-XX regarding the alleged unauthorized diversion of water and whether to impose administrative civil liability as proposed in Administrative Civil Liability Complaint No. 262.5-46 issued by the Chief of the Division of Water Rights (Division) against North San Joaquin Water Conservation District (District).

California Environmental Protection Agency



PRE-HEARING CONFERENCE

The hearing officers will conduct a pre-hearing conference to discuss the scope of the hearing and any other appropriate procedural issues on **Wednesday, May 23, 2007**, immediately following the Pre-hearing Conference regarding the Hearing to Determine Whether to Reconsider Order WR 2006-0018-DWR Denying North San Joaquin Water Conservation District's Petition for Extension of Time (Application 12842), scheduled for 10:00 a.m. The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on, or determine the merits of any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the State Water Board may at its discretion modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

ABOUT THIS HEARING

The **hearing** will commence immediately following the Public Hearing to Determine whether to Reconsider Order WR 2006-0018-DWR Denying North San Joaquin Water Conservation District's Petition for Extension of Time (Application 12842), **but no earlier than 1 p.m. on Thursday, June 21, 2007.**

State Water Board Members Arthur G. Baggett, Jr., and Charles R. Hoppin will preside as hearing officers over this proceeding. Other Board members may be present during the hearing. The hearing team consists of the Board members and the staff assisting the Board members with the hearing. State Water Board hearing team staff members will include Erin Mahaney, Senior Staff Counsel; and Jean McCue and Ernie Mona, Water Resource Control Engineers. The hearing staff will assist the hearing officers and the other members of the State Water Board during the hearing.

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include Steve Marquez, Water Resource Control Engineer; Rich Satkowski, Senior Water Resource Control Engineer; and Matthew Bullock, Staff Counsel. The prosecutorial team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding.

BACKGROUND

Water Code section 1831, subdivision (a), provides that when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The State Water Board may issue a cease and desist order (CDO) only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing. In the case of the draft CDO to be considered in this hearing, the District requested a hearing.

Water Code section 1052, subdivision (b), provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. A trespass is the unauthorized diversion or use of water as defined in Water Code section 1052, subdivision (a). Water Code section 1055, subdivision (a), authorizes the Executive Director of the State Water Board to issue a complaint to any person on whom administrative civil liability may be imposed under section 1052. By memorandum dated May 17, 1999, the Executive Director of the State Water Board delegated this authority to the Chief of the Division. On May 16, 2002, the State Water Board delegated authority to the Division Chief to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. (State Water Board Resolution 2002-0106.) In the case of the Administrative Civil Liability (ACL) complaint to be considered in this hearing, the District requested a hearing.

North San Joaquin Water Conservation District

The District holds Permit 10477 (Application 12842), which authorizes a total of 20,000 acre-feet per annum (afa) to be diverted from three points of diversion on the Mokelumne River. The permit authorizes a combined total of 80 cubic feet per second (cfs) by direct diversion and collection of 20,000 afa by storage from the source from December 1 of each year to July 1 of the succeeding year for Municipal, Domestic, Industrial, Irrigation and Recreational uses. Direct diversion is limited to no more than 40 cfs at any one pumping facility.

On November 30, 2006, the Division Chief issued ACL Complaint No. 262.5-46 (complaint) and draft CDO No. 262.31-XX against the District regarding alleged violations of Permit 10477 constituting a trespass. The basis of the complaint and draft CDO is the District's alleged unauthorized diversion and consumptive use of water from the Mokelumne River in San Joaquin County over the 2003, 2004 and 2005 irrigation seasons without compliance with Terms 15 and 23 of Permit 10477, or without another basis of right. The complaint proposes imposition of liability in the amount of \$66,400. A copy of Complaint No. 262.5-46 and the draft CDO are enclosed with this notice and can be found on the Division's website at http://www.waterrights.ca.gov/Hearings/no_sjwcd_hearings.html.

By letter dated December 20, 2006, the District requested a hearing on the complaint and draft CDO.

KEY ISSUES

1. Should the State Water Board adopt CDO No. 262.31-XX? If the draft CDO should be adopted, should any modifications be made to the measures in the draft order, and what is the basis for such modifications?
2. Should the State Water Board order liability in response to Administrative Civil Liability Complaint No. 262.5-46 against North San Joaquin Water Conservation District? If the State Water Board orders liability, should the amount be increased or decreased, and if so, on what basis?

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Erin Mahaney, at (916) 341-5187 or Jean McCue, at (916) 341-5351.

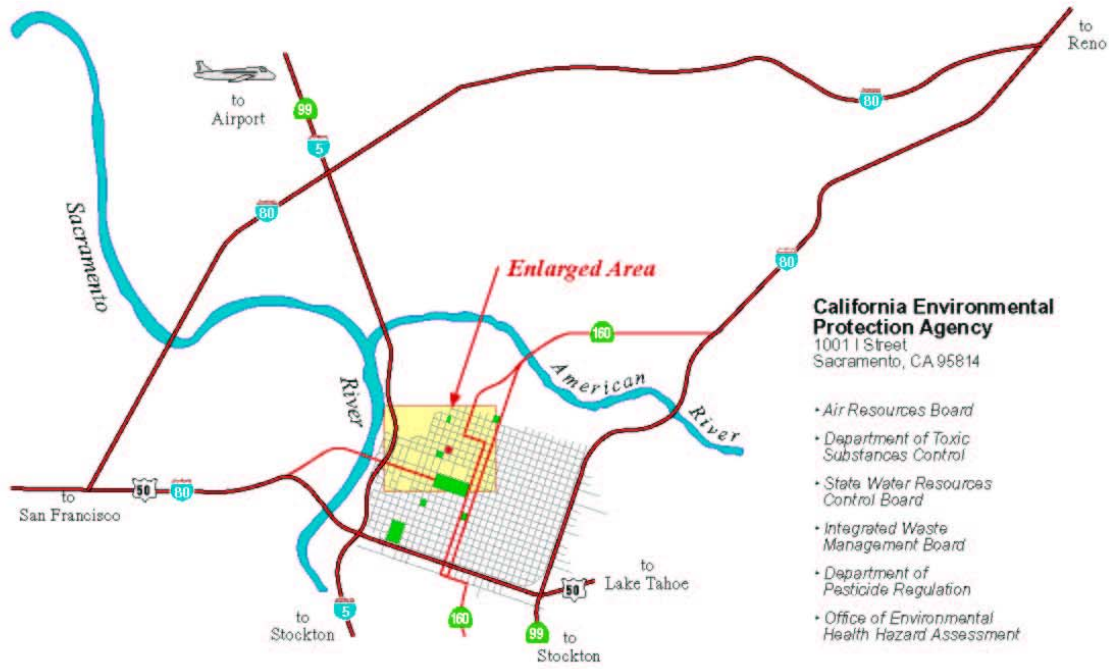


Song Her
Clerk to the Board

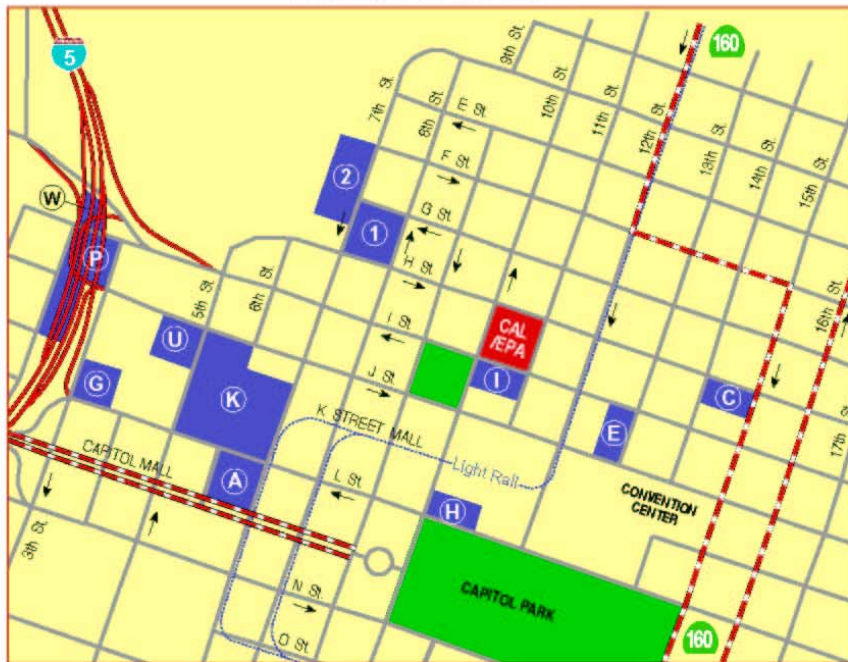
Date: April 16, 2007

Enclosures

Enclosure 1



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2006-00XX

In the Matter of Unauthorized Diversion by the
North San Joaquin Water Conservation District
Cease and Desist Order No. 262.31-XX

SOURCE: Mokelumne River tributary to San Joaquin River
COUNTY: San Joaquin County

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831 to issue a cease and desist order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code.¹
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the State Water Board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against North San Joaquin Water Conservation District (District) for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. The District is owner of Permit 10477 (Application 12842), which authorizes the direct diversion of 80 cubic feet per second (cfs) and collection of 20,000 acre-feet per year from the Mokelumne River from December 1 of each year to July 1 of the succeeding year for Municipal, Domestic, Industrial, Irrigation and Recreational uses. Direct diversion is limited to no more than 40 cfs at any one pumping facility. The permit allows a total of 20,000 acre-feet per annum (afa) to be diverted per water year.
2. The State Water Board has granted the District three extensions of time to complete full beneficial use of water under Permit 10477. In 1992 the District entered into a stipulated agreement with the

¹ Water Code section 1052, subdivision (a) states that "The diversion or use of water subject to this division other than as authorized in this division is a trespass."

East Bay Municipal Utility District (EBMUD), the Department of Fish and Game (DFG), and the California Sportfishing Protection Alliance (CSPA) to resolve the protests over its 1991 time extension petition. As part of the last order granting an extension of time in 1992, the State Water Board incorporated terms of the stipulated agreement by adding Terms 15 and 23 to the District's permit. Term 15 states, "No water shall be diverted under this permit during the 1992 or subsequent water years, until the permittee has constructed screening facilities adequate to protect fishlife and/or has entered into an operating agreement with the Department of Fish and Game [DFG] that will protect fishlife." If fish screens are constructed, then DFG is required to notify the Division of its approval of the plans in writing. Term 23 provides that: "No diversion shall be made under this permit until an agreement has been reached between the permittee and the [DFG] with respect to flows to be bypassed for aquatic life," or failing to reach such agreement, until further order is entered by the State Water Board.

3. Term 15 prohibits the District from diverting water until the District constructs fish screens or enters into an operating agreement with DFG that protects fishlife. The Division's records indicate that in 1993 the District installed a temporary fish screen loaned to it by DFG for that diversion season. By letter dated April 8, 1993, DFG informed the District that the temporary installation would be unacceptable on a permanent basis and that DFG expected the District to develop a long-term solution.
4. In a letter to the Division dated October 13, 2005, the District states that, at the end of the 1993 diversion season, an employee in DFG's Screen Shop said not to bother installing fish screens in the future. The Division, however, has no record that this is DFG's official position with respect to compliance with Term 15. In fact, in 2005, DFG staff informed the State Water Board that DFG does not agree with the District's statement that the District does not need to comply with Term 15.
5. Term 23 prohibits the District from diverting water until the District and DFG reach an agreement regarding bypass flows or, failing to reach such an agreement, until the State Water Board enters an order regarding those flows. The State Water Board has not entered any such order pertaining to Permit 10477 and there is no evidence that the District has entered into an agreement with DFG.
6. The District filed a fourth petition for extension of time in December 2000, and a petition to add a point of diversion and a place of underground storage in May 2004. The latter petition is for a proposed pilot groundwater recharge and extraction project funded by a Cal-Fed Conjunctive Use Grant Application that was revised in 2003. As part of the Division's review and consideration of these petitions, Division staff conducted a field inspection of the District's permitted project on February 2, 2006, to determine the District's maximum amounts beneficially used and overall compliance with terms and conditions of the permit. Division staff found that between 1993 and 2000, the District's maximum direct diversion amounts were 14.4 cfs and 3,200 afa being taken from the Mokelumne River. The District has diverted a total of 8,200 acre-feet over the 2003, 2004 and 2005 irrigation seasons. Neither point of diversion covered by the permit was equipped with a fish screen that complies with Term 15. In addition, Division staff contacted DFG, which informed Division staff that DFG is not aware of any construction of permanent fish screens or of any operating agreement as required by Term 15.
7. In June 2005, the United States Bureau of Reclamation (Bureau) made a Finding of No Significant Impact for the District's proposed pilot recharge project. The Bureau concluded that the threatened Central Valley steelhead occurs in the Mokelumne River near the project site with some steelhead residing in the area and other steelhead migrating upstream from about late summer through early spring, and juveniles migrating downstream April through June. The Bureau's finding was made with an understanding that the new pump would be screened to National Marine Fishery Service's standards to avoid impacting the endangered Central Valley steelhead. The District's existing two pumping facilities are not currently equipped with suitable fish screens and, therefore, may adversely impact the steelhead.

8. As of the date of this order, the District has not demonstrated compliance with Terms 15 or 23.
9. Since 1993 the District has diverted and used water in violation of Term 23 and it has diverted water in violation of Term 15 since at least 1994. The District's unauthorized diversion of water constitutes a trespass against the State under Water Code section 1052.
10. The District's violation of permit Terms 15 and 23 and the statutory prohibition against the unauthorized diversion of water is subject to issuance of a CDO in accordance with Water Code section 1831.

IT IS HEREBY ORDERED, that the District shall take the following corrective actions and satisfy the following time schedule:

1. The District shall immediately cease its diversion of water from the two pumping facilities currently covered by Permit 10477 until it submits a plan and timeline to the Division for complying with Term 15. The District shall submit the compliance plan and timeline for the Division's approval within 90 days of the date of this order. The District shall comply with the compliance plan and timeline approved by the Division.

If fish screens are to be constructed, the District shall submit a copy of its written request for DFG's written approval of the plans to the Division within 5 days of its request. The District shall provide the Division with a copy of any approval by DFG of either the fish screen construction plans or the operating agreement within 30 days of such approval.

2. The District shall immediately cease its diversion of water from the two pumping facilities currently covered by Permit 10477 until the District submits to the Division one of the following documents to demonstrate its efforts to comply with Term 23: (1) a final agreement with DFG with respect to bypass flows; or (2) written confirmation from DFG that a bypass agreement is unnecessary. The District shall submit this information to the Division within 90 days of the date of this order.

If the District fails to reach agreement with DFG regarding bypass flows or the necessity for bypass flows, the District may propose a term to implement Term 23, including a proposal for bypass flows, to the State Water Board. The District shall submit the proposed term with an opinion by a fisheries expert as to whether the proposed term is protective of aquatic life in accordance with the intent of Term 23. The State Water Board will consider whether or not to incorporate the term only after it provides notice and opportunity for hearing to the DFG, EBMUD, CSPA, and any other affected parties the State Water Board deems appropriate. The District may not divert water from the two pumping facilities unless authorized in writing by the State Water Board or until the State Water Board renders a final decision on proposed term.

3. The District shall comply with the Division's requests for information, environmental documents, maps, and fees within the designated time frames.

//
//
//
//
//

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), the Attorney General, upon the request of the State Water Board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845 subd. (a).) Any person or entity that violates a CDO issued pursuant to chapter 12 may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b).) Civil liability may be imposed by the superior court or administratively by the State Water Board pursuant to Water Code section 1055.

STATE WATER RESOURCES CONTROL BOARD

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated:

SM:lv 11/22/2006;jmtipps 11.30.06
U:\LICDRVSMARQUEZ\Lynnette\NSJWCD draft CDO final with stripe.doc

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

Administrative Civil Liability 262.5-46

North San Joaquin Water Conservation District

SOURCE: Mokelumne River tributary to San Joaquin River

COUNTY: San Joaquin County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The North San Joaquin Water Conservation District (District) is alleged to have violated Water Code section 1052, subdivision (a), which states:

"The diversion or use of water subject to [division 2 of the Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass."
2. Water Code section 1052, subdivision (b), provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Chief of the Division of Water Rights (Division) the authority to issue a complaint or impose civil liability under Water Code section 1055, subdivision (a). On May 16, 2002, the State Water Board delegated authority to the Division Chief to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. (State Water Board Resolution 2002-0106.)

ALLEGATIONS

4. The following facts provide the basis for the alleged trespass:
 - a) The District is owner of Permit 10477 (Application 12842), which authorizes the direct diversion of 80 cubic feet per second (cfs) and collection of 20,000 acre-feet per year from the Mokelumne River from December 1 of each year to July 1 of the succeeding year for Municipal, Domestic, Industrial, Irrigation and Recreational uses. Direct diversion is limited to no more than 40 cfs at any one pumping facility. The permit allows a total of 20,000 acre-feet per annum (afa) to be diverted per water year.
 - b) The State Water Board has granted the District three extensions of time to complete full beneficial use of water under Permit 10477. In 1992 the District entered into a stipulated agreement with the East Bay Municipal Utility District, the Department of Fish and Game (DFG), and the California Sportfishing Protection Alliance to resolve the protests over its 1991 time extension petition. As part of the last order granting an extension of time in 1992, the State Water Board incorporated terms of the stipulated agreement by adding Terms 15 and 23 to the District's permit. Term 15 states, "No water shall be diverted under this permit during the 1992 or subsequent water years, until the permittee has constructed screening facilities

- adequate to protect fishlife and/or has entered into an operating agreement with the Department of Fish and Game [DFG] that will protect fishlife." If fish screens are constructed, then DFG is required to notify the Division of its approval of the plans in writing. Term 23 provides that: "No diversion shall be made under this permit until an agreement has been reached between the permittee and the [DFG] with respect to flows to be bypassed for aquatic life," or failing to reach such agreement, until further order is entered by the State Water Board.
- c) Term 15 prohibits the District from diverting water until the District constructs fish screens or enters into an operating agreement with DFG that protects fishlife. The Division's records indicate that in 1993 the District installed a temporary fish screen loaned to it by DFG for that diversion season. By letter dated April 8, 1993, DFG informed the District that the temporary installation would be unacceptable on a permanent basis and that DFG expected the District to develop a long-term solution.
 - d) In a letter to the Division dated October 13, 2005, the District states that, at the end of the 1993 diversion season, an employee in DFG's Screen Shop said not to bother installing fish screens in the future. The Division, however, has no record that this is DFG's official position with respect to compliance with Term 15. In fact, in 2005, DFG staff informed the State Water Board that DFG does not agree with the District's statement that the District does not need to comply with Term 15.
 - e) Term 23 prohibits the District from diverting water until the District and DFG reach an agreement regarding bypass flows or, failing to reach such an agreement, until the State Water Board enters an order regarding those flows. The State Water Board has not entered any such order pertaining to Permit 10477 and there is no evidence that the District has entered into an agreement with DFG.
 - f) The District filed a fourth petition for extension of time in December 2000, and a petition to add a point of diversion and a place of underground storage in May 2004. The latter petition is for a proposed pilot groundwater recharge and extraction project funded by a Cal-Fed Conjunctive Use Grant Application that was revised in 2003. As part of the Division's review and consideration of these petitions, Division staff conducted a field inspection of the District's permitted project on February 2, 2006, to determine the District's maximum amounts beneficially used and overall compliance with terms and conditions of the permit. Division staff found that between 1993 and 2000, the District's maximum direct diversion amounts were 14.4 cfs and 3,200 afa being taken from the Mokelumne River. The District has diverted a total of 8,200 acre-feet over the 2003, 2004 and 2005 irrigation seasons. Neither point of diversion covered by the permit was equipped with a fish screen that complies with Term 15. In addition, Division staff contacted DFG, which informed Division staff that DFG is not aware of any construction of permanent fish screens or of any operating agreement as required by Term 15.
 - g) In June 2005, the United States Bureau of Reclamation (Bureau) made a Finding of No Significant Impact for the District's proposed pilot recharge project. The Bureau concluded that the threatened Central Valley steelhead occurs in the Mokelumne River near the project site with some steelhead residing in the area and other steelhead migrating upstream from about late summer through early spring, and juveniles migrating downstream April through June. The Bureau's finding was made with an understanding that the new pump would be screened to National Marine Fisheries Service's standards to avoid impacting the endangered Central Valley steelhead. The District's existing two pumping facilities are not currently equipped with suitable fish screens and, therefore, may adversely impact the steelhead.
 - h) As of the date of this complaint, the District has not demonstrated compliance with Terms 15 or 23.
 - i) Since 1993 the District has diverted and used water in violation of Term 23, and it has diverted water in violation of Term 15 since at least 1994.

PROPOSED CIVIL LIABILITY

5. The basis of this complaint is the District's unauthorized diversion or use of water from the Mokelumne River during the irrigation seasons of 2003, 2004 and 2005. During these irrigation seasons, the District diverted water from the Mokelumne River using its two existing pumping facilities for irrigation purposes within its service area. The District's diversion or use of water from the Mokelumne River without compliance with Terms 15 and 23 of Permit 10477, or another basis of right, is a trespass against the State pursuant to Water Code section 1052, subdivision (a). The maximum civil liability that can be imposed by the State Water Board is \$500 for each day in which an unauthorized diversion or use of water, or trespass, occurred. Assuming 150 days of irrigation each year, the District had 450 days of unauthorized diversion or use of water. A maximum civil liability of **\$225,000** can be considered for the trespass.
6. In determining the amount of civil liability, Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action taken by the violator. In this case, the District has diverted water from the Mokelumne River for at least 12 years without complying with both Terms 15 and 23, which govern fish screen construction and bypass flows. Although the Division has not quantified the precise harm caused by the District's unauthorized diversions, the District's diversions may adversely impact the salmon, steelhead, and other aquatic resources that Terms 15 and 23 were intended to protect.
7. The District has received an economic advantage over other water users in the area by foregoing the costs of constructing fish screens and any bypass flows. The Department of Water Resources' California Water Plan for 2005 identifies San Joaquin County water rates at \$74 per acre-foot from the State Water Project (SWP), an average of \$28 per acre-foot from the Central Valley Project (CVP), and maximum price paid by farmers of \$80 per acre-foot. Using \$50 per acre-foot, which is the average of the SWP and CVP water rates rounded to the nearest five acre-feet, and the District's diversion amount of 8,200 acre-feet over the 2003, 2004 and 2005 irrigation seasons, the District's estimated avoided cost for water in the last three years is \$410,000 (\$50 X 8,200 acre-feet). Additionally, the Division estimates that its staff cost to conduct the field inspection, prepare an inspection report and the enforcement documents to be approximately \$9,400.
8. Having taken into consideration all the factors described above, the Chief of the Division proposes that an administrative civil liability be imposed in the amount of **\$66,400**, which is approximately equivalent to three years of violation based on reported water use (114 days over three irrigation seasons at \$500 per day) plus \$9,400 in Division staff costs. The 114 days were calculated using the District's monthly diversion amounts over the 2003, 2004 and 2005 irrigation seasons divided by the maximum rate of diversion at any one pumping facility under Permit 10477 (40 cfs or 79.34 acre-feet per day¹) and rounded up to the nearest whole day. This amount discounts the maximum liability in this case to achieve settlement with the District, streamline the enforcement process, and avoid the expense of a hearing before the State Water Board. This liability amount is the minimum liability recommended by the Division, and the State Water Board may consider the maximum liability if this matter goes to hearing.

¹ The Division used a conversion factor of 1 cfs equaling 1.9835 acre-feet per day.

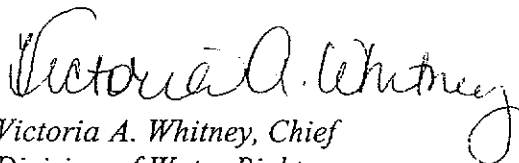
RIGHT TO HEARING

9. The District may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date this complaint is received. (Wat. Code, § 1055, subd. (b).)
10. If the District requests a hearing, it will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
11. If the District requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the Water Code and its responsibilities under the public trust doctrine. Any order setting an ACL shall become final and effective upon issuance.
12. If the District does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this complaint for the amount of the ACL set forth in paragraph 8 above, to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

13. If the District does not request a hearing and does not remit the ACL, the State Water Board may seek recovery of the ACL as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: **NOV 30 2006**

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/water_laws/index.html.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officers may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officers will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the North San Joaquin Water Conservation District, the Division of Water Rights' prosecutorial team, and any other persons or entities authorized by the hearing officers to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officers will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file five copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Friday, May 11, 2007**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4 below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **noon on Friday, June 1, 2007**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the State Water Board and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: seven paper copies of each of its exhibits or five paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Friday, June 1, 2007**, and served on the other participants on or before that date.

¹ The hearing officers may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officers may allow presentation of the oral direct testimony without requiring written testimony.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officers have discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2000 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. **Large Format Exhibits:** Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officers specify otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 15 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "North San Joaquin WCD CDO/ACL Hearing". Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in

the same format as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at http://www.waterrights.ca.gov/Hearings/no_sjwcd_hearings.html.

6. **ORDER OF PROCEEDINGS:** The State Water Board members serving as hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officers, at the hearing officers' discretion, as a result of the pre-hearing conference.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officers.
 - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officers may allow redirect examination and recross examination. The hearing officers will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening

statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
- iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officers have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the

² The hearing officers may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officers are satisfied that the participant could not produce written direct testimony for the witness.

³ The hearing officers may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible, and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled, “Ex Parte Questions and Answers” is available upon request or from our website at <http://www.waterboards.ca.gov/docs/exparte.pdf>.
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE STATE WATER BOARD:** Notices of Intent to Appear, written testimony and other exhibits submitted to the State Water Board should be addressed as follows:

**Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Jean McCue
Phone: (916) 341-5351
Fax: (916) 341-5400
Email: wrhearing@waterboards.ca.gov
With Subject of “North San Joaquin WCD ACL_CDO Hearing”**

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding:
 (name of party or participant)

North San Joaquin Water Conservation District CDO and ACL Hearing
Scheduled to Commence Thursday, June 21, 2007
(Pre-hearing Conference scheduled for Wednesday, May 23, 2007)

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

Phone Number: (____) _____ Fax Number: (____) _____

E-mail Address: _____

