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**STOCKTON EAST WATER DISTRICT**

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of: )  
)  
Proposed Revocation of Permits 16209 )  
16210, 16211 and 16212 (Applications )  
18721, 18723, 21636 and 26137 )  
)  
AUBURN DAM PROJECT )  
North Fork American River and )  
Knickerbocker Creek in Placer )  
and El Dorado Counties )

**CLOSING BRIEF**

**I.**

**Introduction**

Stockton East Water District (Stockton East) files this Closing Brief in opposition of the State Water Resources Control Board (State Water Board) Proposed Revocation of Permits 16209, 16210, 16211 and 16212 (Applications 18721, 18723, 21636 and 26137). Stockton East asserts that it is not in the public interest to revoke the Bureau of Reclamation (Reclamation) water right permits for the Auburn Dam Project. Hearing testimony established that Stockton East is one of the intended water users of the Auburn Dam Project, and has exercised due diligence by pursuing water through contract with Reclamation. Stockton East diligently negotiated and signed a contract for the delivery of American River water, but Reclamation failed to execute the agreement. The District demonstrated a significant need for supplemental surface water to cure the

critically overdrafted Eastern San Joaquin groundwater basin. Stockton East exercised due diligence and demonstrated that it is willing and able to proceed with a project to bring American River water to San Joaquin County and place the water to beneficial use. The District has completed every action within its power, and has waited for decades for Reclamation to proceed, to no avail.

Stockton East and San Joaquin County are clearly intended beneficiaries under the various State Water Board decisions authorizing these water right permits. For this reason, it would be fundamentally unfair to revoke these permits without affording the intended beneficiaries an opportunity to develop a project together to bring the long promised water to San Joaquin County. Stockton East requests the State Water Board not revoke Reclamation's permits, and provide those entitled to water from the Auburn Dam project sufficient time to negotiate with Reclamation on a viable project to utilize the water, whether through contract with Reclamation or direct assignment of the water right.

## II.

### Argument

#### **A. Stockton East has Demonstrated Based on Congressional Authorization and State Water Board Decisions Revocation is Not in the Public Interest**

Stockton East and the San Joaquin County have demonstrated through written and oral testimony that it is not in the public interest to revoke Reclamation's water rights permits. When Congress authorized the Auburn-Folsom South Unit, Congress expressly contemplated that this project would provide needed water to San Joaquin County and included authorization of the "Folsom South canal and such related structures ...for the delivery of water...that will best serve the needs of Sacramento and San Joaquin Counties" [SJC10, pg. 8; SJC-16, p. 616; RT pg. 128, lines 2-7]. Testimony confirmed that when the State Water Board denied the water right applications of the four entities within San Joaquin County, in favor of Reclamation in Decision 893 (Folsom Project), adopted on March 18, 1958, the State Water Board conditioned the permit to allow time for parties desiring water within Placer, Sacramento, and San Joaquin Counties to negotiate water supply contracts. [SEWD-1, pg. 4; RT pg. 161, lines 2-5, SJC-10, pg 6-7, RT pg. 128, lines 2-7, pg. 129, line 1]

When the State Water Board issued decision 1356 issued on February 5, 1970, it conditionally approved Reclamation's application to appropriate water in connection with the Auburn-Folsom South Unit of the Central Valley Project (Auburn Dam Project) and granted release from priority of state-filed application 7936 and 7937 in favor of the Auburn Dam Project applications. [SEWD-1, pgs. 4-5] The original Decision 1356 included condition 19 which stated in pertinent part:

Deliveries of water from the American River Division of the Central Valley Project shall be limited to deliveries for beneficial use within Placer, Sacramento, and San Joaquin Counties and shall not be made beyond the westerly or southerly boundaries thereof, except on a temporary basis, until the needs of those counties, present or prospective, are fully met, provided, however, that agreements in accordance with federal reclamation laws between permittee and parties desiring such service within said counties are executed by December 31, 1975...[Pg. 16] [Id.]

Based on this Decision, the Auburn Dam Project authorization and various supporting reports, Reclamation furnished a draft contract to Stockton East to deliver American River water through the proposed Folsom South Canal down to San Joaquin County. Negotiations regarding these contracts resulted in Stockton East approving the contract for execution. [SEWD-1, pg. 5; SEWD-2, RT pg. 161, lines 10-13] However, this contract was never executed by Reclamation due to a combination of circumstances and changing policies, not because Stockton East did not need the water, nor was it because Stockton East did not diligently pursue the contract. [SEWD-1, pg. 5; TR pg. 161, lines 10-13] Stockton East has demonstrated that it is an intended beneficiary of the project water, and that it has exercised due diligence in contracting for the water. Revocation of the permits would not be in the public interest in light of the water conditions existing in San Joaquin County today; it would punish the intended beneficiaries because of Reclamation's failure to proceed. [RT pg. 161, lines 14-25, pg. 162, line 1]

**B. Stockton East has Demonstrated It is Not in the Public Interest to Revoke the Permits as the District has a Need for American River Water Supplies to Assist in Curing the Eastern San Joaquin Critically Overdrafted Groundwater Basin**

Stockton East has demonstrated that it is not in the public interest to revoke Reclamation permits because of the significant need for additional surface water supplies in San Joaquin County. Stockton East and the County presented substantial written testimony detailing the serious problems with the Eastern San Joaquin County Groundwater Basin. [SEWD-1, pg. 1-2; RT pg. 160, lines 8-12] In 1967 the Department of Water Resources concluded that poor quality groundwater was moving into the Stockton area at a lateral rate of 140 to 150 feet per year. In 1980 the State concluded that the Eastern San Joaquin County Groundwater Basin was subject to critical conditions of overdraft. In 1985 the *Eastern San Joaquin County Groundwater Study* confirmed that groundwater levels were still declining, concluding that (a) water levels declined 1.7 feet per year during the period of 1947 to 1984; (b) the saline front advanced inland approximately one mile between 1963 and 1983; and (c) if no additional surface water is imported into the service area and all increased demands are met from groundwater, the groundwater model indicated that water levels will decline to as much as 160 feet below sea level (up to 200 feet below the ground surface) and the saline front will advance approximately an additional two miles by the year 2020. [SEWD-1, pgs. 1-2]

Since its organization, Stockton East has pursued its legislative charge of obtaining supplemental surface water supplies in order to lessen the demand for groundwater. Stockton East's testimony confirms that it currently obtains supplemental surface water supplies from two sources. By contract with the Reclamation, the District receives approximately 70,000-acre feet annually from New Hogan Reservoir on the Calaveras River in Calaveras County since about 1976. [SEWD-1, pgs. 2-3] The estimated safe yield of the New Hogan Project is 84,100 acre feet annually. [Id.] The District testimony revealed that through the same contract with Reclamation, Calaveras County Water District is entitled to a 45% allocation from the New Hogan Project, of which it currently uses only 4,000-acre feet annually. [Id.] While Stockton East is authorized to utilize any water Calaveras County Water District cannot place to beneficial use and has consistently used approximately 70,000 acre feet annually when available, Calaveras County projects increased use which will eventually reduce the

amount of water available to Stockton East. [Id.] Additional supplemental surface water is needed to fill the void created by the decrease in Calaveras River water and the continued pumping of our critically overdrafted basin. [SEWD-1, pg. 3; TR pg. 160, lines 18-22]

Stockton East further testified that it obtains supplemental surface water supplies by contract with the Reclamation from New Melones Reservoir on the Stanislaus River. [SEWD-1, pg. 3; TR pg. 160, lines 23-25, pg. 161, line 1] Water delivery facilities were constructed at an estimated cost of \$65 million dollars and have been in place since 1993, but the first deliveries were not made to the District until 1995. [SEWD-1, pg. 3] The District's contract is for 75,000-acre feet annually. Stockton East has had a difficult time obtaining water from Reclamation pursuant to its water supply contract from New Melones. [Id.] Water allocations to the District from the project have been reduced because Reclamation has reallocated water from the project for fish and wildlife enhancement pursuant to the Central Valley Project Improvement Act, and for enhancement of the Bay-Delta Estuary pursuant to the Bay-Delta Accord. [Id.] Stockton East believes these reallocations violate state and federal laws, and Stockton East has sued the United States for failure to deliver water pursuant to its contract.

Stockton East's testimony identified recent Congressional directive regarding its Stanislaus River water supply. Congress adopted HR 2828 (Public Law 108-361, signed October 25, 2004) which provided key direction to the Secretary of the Interior and Reclamation regarding operation of New Melones Reservoir [SEWD-1, pgs. 3-4; SEWD-3]. HR 2828 requires not later than one year from the enactment, the Secretary must develop **and initiate implementation** of a program (Program) to meet all existing water quality standards and objectives for which the Central Valley Project is responsible. [Id.] The purpose of the Program is to provide Interior with greater flexibility in meeting the existing standards **so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to CVP contractors from the New Melones project.** [Id.]

HR 2828 directs the Secretary to update the New Melones operating plan to take into account the actions in HR 2828 that are designed to reduce the reliance on New

Melones Reservoir for meeting the water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science. [Id.] Since adoption in 2004, Reclamation has neither implemented a meaningful Program, nor moved forward with a Revised Plan of Operation for New Melones Reservoir. [Id.]

### **San Joaquin County Water Right Application Is Not An Adequate Substitute for Reclamation Water Rights Priority Date**

Hearing Officer Dr. Wolff questioned why the maintenance of the Reclamation priority date is necessary because the County has filed and is pursuing Application 29657 for American River water. First and foremost, this application was filed on behalf of the County and Stockton East does not presently have a contract for delivery of any water sought pursuant to this application. Second, there are absolutely no assurances that the State Water Board will issue this permit and most importantly that it would apply the area of origin protections when considering the permit. The most important reason, however, is the priority date of the Reclamation's existing permits. The County's pending application has a priority date of 1990, and will be caught up in arguments of priority with Central Valley Project or State Water Project over Delta conditions. Reclamation's existing water rights, however, have priority dates of 1959 and 1964, and provide needed senior water rights to Stockton East and San Joaquin County.

Stockton East recognizes that certain changes to Reclamation's water right permits, such as a change in point of diversion and/or assignment of water right may likely be needed in order to effectuate delivery of water to the District pursuant to Reclamation's water right permits. However, in light of the previous State Water Board orders foreclosing water deliveries to San Joaquin County and directing the County water entities to American River water, it is in the public interest to allow a sufficient period of time for Reclamation and the intended beneficiaries to develop a viable project to utilize the permitted water right which as intended to serve San Joaquin County.

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III.

**Conclusion**

Stockton East diligently negotiated and signed a contract for the delivery of American River water, but Reclamation failed to execute the agreement. Stockton East has a real need for additional surface water to cure the critically overdrafted Eastern San Joaquin groundwater basin. Stockton East is willing and able to proceed with a project to bring American River water to San Joaquin County and place the water to beneficial use. Stockton East and San Joaquin County are clearly intended beneficiaries under the various State Water Board decisions authorizing the water right permits and it would be unfair to have these permits revoked without affording those entities that will actually use the water an opportunity to see if a project can be put together and funded to bring the water to San Joaquin County. Stockton East requests the State Water Board not revoke Reclamation's permits, and provide the parties sufficient time to attempt to negotiate with Reclamation and other interested parties. We would propose a three (3) year period to negotiate, with annual updates provided to the State Water Board.

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Respectfully submitted,

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By:   
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