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THOMAS S. VIRSIK

December 18, 2013

Via e-mail and U.S. Mail

Eric Oppenheimer, Director
Office of Research, Planning & Performance
State Water Resources Control Board
1001 1 Street, 16th Floor
Sacramento, CA 95814
email: eric.oppenheimer@waterboards.ca.gov

Re: Groundwater Work Plan Concept Paper
October 4, 2013

Dear Mr. Oppenheimer:

Over one decade ago, the SWRCB sought public comment on a certain report by Professor Sax (Exhibit F), also addressing long-term strategic approaches to water. This office submitted comments, which are enclosed (the "2002 letter" – Exhibit A). Much of that content remains applicable and will be referenced in this comment.

While much remains the same as it was in 2002, some things have changed, or perhaps simply progressed. The water quality problems are now perhaps more prominent than they had been in the past, partially due to greater public focus rather than on any genuine structural changes or objective changes. Water quantity entitlements are also more acute, such as the controversies around the SF Bay Delta and the drought on the Colorado River.

Water levels have also received greater attention of late, e.g., the Paso Robles area, leaving aside for the moment whether the water at issue is groundwater or the underflow of a surface source, or a mix of both based on location and depth. See page 3 of the 2002 letter.

By way of update to part "Background" of the enclosed 2002 letter (Exhibit A), we have enclosed two patents that follow on to the so-called Instajudicator (Exhibits B and C). The patents are here noted as potential support for the goal set forth in part 3.2.2 of the draft Groundwater Workplan Concept Paper (searchable electronic database). Our experience suggests that the goal is an appropriate one, perhaps even tardy.

Technology is only as good as the policies that support it, however. The SWRCB has been derelict in using the tools it already has at its disposal, which were described on pages 5 and 6 of

the 2002 letter. While legislation since 2002 now requires more comprehensive filings of statements of water diversion, the Board nevertheless chooses to undermine its own policies and authority by its implementation. For example, limiting our observations to our own clients' experiences, the SWRCB accepts and requires that statements documenting redirection of Salinas River water in Monterey County but refuse by executive decision to accept statements documenting redirection of Colorado River water in the Imperial Valley. Both redirections "follow" a public agency's initial diversion via a license, yet SWRCB staff treats the Imperial Valley differently. Compare eWRIMS entries for the Salinas Valley (Exhibit D) with November 13, 2012, letter to Thomas S. Virsik from James W. Kassel rejecting 100's of statements of water diversion filed by Imperial Valley landowners in 2006 (Exhibit E). A genuinely useful searchable system is contingent on uniformity of enforcement and minimal ability of staff to thwart overall policy goals. See Concept Paper 3.2 (consistent and publically available reporting and assessment) and 3.5 (consistent enforcement of existing policies).

As for groundwater participants, disclosure will become the norm (if it is not already). The era in which secrecy was seen as a legitimate aspect of business protection is no longer viable when there are unacceptable burdens on the overall economic and other health of the State. A recent example of the winnowing of secrecy in the face of greater overall goals can be seen in the recent efforts around nitrates in groundwater. In its February 2013 Report to the Legislature, the SWRCB made 15 recommendations to address issues associated with nitrate-contaminated groundwater. Among these, the Board recommended with regard to Monitoring, Assessment, and Notification that:

Developing and managing the data necessary to identify and effectively manage nitrate contaminated groundwater, with particular attention focused on (1) defining nitrate high-risk areas in order to prioritize regulatory oversight and assistance efforts in these areas, (2) notifying groundwater users in nitrate high-risk areas, and (3) requiring property owners to sample their well as part of a property title transfer or purchase.

Recommendations Addressing Nitrates in Groundwater, SWRCB Report to the Legislature, 20 February 2013, Summary of key findings in the UC Davis Nitrate Report, p. 6.

The report went on to note that:

Inconsistency and inaccessibility of data prevent effective and continuous assessment of California's groundwater quality. A statewide effort is needed to integrate diverse water-related data-collection activities by many state and local agencies.

Recommendations Addressing Nitrates in Groundwater, SWRCB Report to the Legislature, 20 February 2013, Summary of key findings in the UC Davis Nitrate Report, p. 15, No. 8

As discussed in our September 16, 2013, comments to the SB X2 1 (Water Code Section 83002.5) Nitrate Project Interagency Task Force Meeting, there is a continuing controversy in California as to the definitions of ground and surface water and, in particular, the ambiguous distinction between groundwater and river underflow. We noted then that this controversy could hinder the collection of water pumping data. (A copy of our September 16, 2013, letter to Dr. Thomas Harter is enclosed – Exhibit G).

We encourage the SWRCB to continue to look at the long-term implications of any policy changes, including how what is sometimes called groundwater and the underflow of a surface stream is analyzed and governed. For the long-term environmental and economic vitality of California, the time has come to have a unified reporting system on all water usage. Thank you for allowing us to make these comments.

Very truly yours,

Patrick J. Maloney

Patrick J. Maloney

Encl.

- Exhibit A - Patrick Maloney April 2, 2002 letter to Paul Murphy re Sax Report
- Exhibit B - United States Patent US7805380 September 28, 2010
- Exhibit C - United States Patent US8341090 December 25, 2012
- Exhibit D – eWRIMS Salinas River Database and Fact Sheet
- Exhibit E - James W. Kassel November 13, 2012 letter to Thomas S. Virsik rejecting Statements of Water Diversion filed in 2006 by Imperial Valley landowners
- Exhibit F - Joseph L. Sax Report 1-19-02
- Exhibit G - Patrick Maloney September 16, 2010 letter to Dr. Harter (excluding attachments unrelated to current letter)