State Water Resources Control Board

Division of Water Rights
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Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

NOV 0 7 2007

Mr. Paul Minasian
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BY E-MAIL

RE: HEARING ON YUBA COUNTY WATER AGENCY'S LONG-TERM TRANSFER PETITIONS

Dear Mr. Minasian:

The issues before us in the hearing are whether and under what conditions we should approve the change petition and long-term transfer petition submitted by Yuba County Water Agency (YCWA). This is not a proceeding to reopen RD-1644 for reasons other than those involving the changes that would result from the State Water Board's action on YCWA's petitions, and the impacts of those changes. Your submittals contend that the transfer will have adverse effects on fish and wildlife and the local economy, based on its interpretation of certain language in RD 1644 which states that the State Board used an amount of 1.1 acre/ft for waterfowl habitat and rice straw decomposition in estimating water demand in the Lower Yuba River.

However, your submissions regarding Cordua Irrigation District's intent to participate in the hearing regarding YCWA's change and long-term transfer petitions appear to be premised on a misunderstanding regarding the substantive effect of the above-referenced language in RD-1644. The relevance of Cordua's proposed testimony apparently relies on the assumption that RD-1644 created an enforceable limit on what amount of water may be reasonably and beneficially used for waterfowl habitat and rice straw decomposition north of the Yuba River. This assumption is incorrect. The language explains our usage estimates. Nothing in RD-1644 established a limit on these uses, or mandates a reduction in use. The order portions of RD-1644 do not address the issue. The discussion on pages 110-111 is solely for the purpose of estimating YCWA's overall water needs, and does not amount to any kind of mandate that water use be limited in accordance with those assumptions.

It is unclear whether, given this clarification, Cordua still has an objection to the transfer. If so, and if Cordua has evidence to present in support of that claim that is relevant to the questions whether and under what conditions we should approve the change petition and long-term transfer petition submitted by YCWA, Cordua may submit the direct testimony of the witnesses identified in its original Notice of Intent to Appear.
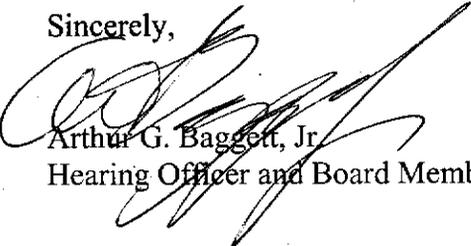
Before accepting direct testimony at the hearing, however, I will require, at the hearing, a clear explanation as to why Cordua contends that the transfer will cause the adverse impacts it alleges notwithstanding the fact that RD-1644 does not mandate the limit on water use for rice straw decomposition and waterfowl habitat that your earlier submissions implied.

After considering this explanation, I will make a determination whether the evidence is admissible and relevant. If it is, then Cordua will be allowed to present the direct testimony of up to 20 minutes per witness.

Please advise Ernie Mona of the State Water Board of Cordua's decision whether to submit testimony by the deadline for submittal of testimony: noon, November 9, 2007.

Sincerely,

Arthur G. Baggett, Jr.
Hearing Officer and Board Member

cc. abl@bkslawfirm.com, rbaiocchi@gotsky.com, rcolella@mp.usbr.gov, Crothers@water.ca.gov, jrubin@diepenbrock.com, cschulz@kmtg.com, rsahlberg@mp.usbr.gov