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From: Basinger, Jennifer <jbasinger@downeybrand.com>
Sent: Thursday, July 18, 2013 10:55 AM
To: Unit, Wr_Hearing@Waterboards
Cc: Aladjem, David; Nikkel, Meredith
Subject: MCWRA Comment on Settlement Agreement Permit 11043 (Application 13225)
Attachments: S8833_A00K013071809460.pdf

Please see attached Comment Letter.



Jennifer Basinger, Legal Secretary to Scott Shapiro,
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July 18 , 2013

Via Hand Delivery and Electronic Mail (wrhearing@waterboards.ca.gov)

Jean McCue
Division of Water Rights
State Water Resources Control Board
1001 I Street, 2nd Floor
Sacramento, California 95814

Re: Monterey County Water Resources Agency Comment on Settlement Agreement
Permit 11043 (Application 13225), Monterey County Water Resources Agency
Salinas River, Monterey County

Dear Ms. McCue:

This letter is submitted by the Monterey County Water Resources Agency (“Agency”) in support of the Settlement Agreement dated July 1, 2013 that was executed by the Agency and the Prosecution Team of the State Water Resources Control Board’s Division of Water Rights. In particular, the Agency provides the following comments in response to the July 17, 2013 comment submitted by Mr. Thomas S. Virsik on behalf of Orradre et al.

First, the time allowed for parties to comment on the Settlement Agreement is sufficient and squarely within the discretion of the State Water Resources Control Board (“SWRCB”). The Settlement Agreement was signed on July 1, 2013 and was circulated to the parties on July 10, 2013. The Notice of Public Hearing provided that parties be given an opportunity to comment on settlement agreements submitted for approval, but left the time allowed for such an opportunity to the discretion of the SWRCB. Pursuant to such notice, the SWRCB notified the parties of the opportunity to comment on the Settlement Agreement and provided a week in which to submit those comments. The terms of the Settlement Agreement are straight-forward and do not necessitate more than the allotted comment period that was well within the discretion of the SWRCB to determine.

Second, the Settlement Agreement operates to limit only the rights of the Agency under Permit 11043 and is not adverse to any legal user of water. In particular, the Settlement Agreement reduces the maximum quantity of water the Agency may divert under Permit 11043, requires the Agency to allow certain minimum bypass flows for existing reported diversions downstream of the Permit 11043 point of diversion near Soledad, and imposes milestones for the Agency to

meet in developing a project to use water under Permit 11043. None of these three key terms of the Settlement Agreement can have any adverse effect on another legal user of water because each term limits the Agency's rights, not those of third parties. Moreover, with respect to the asserted rights of Orradre et al., the Agency's downstream diversions cannot impact the rights of diverters upstream of the Permit 11043 point of diversion near Soledad.

Finally, the language of Paragraph 4 of the Settlement Agreement, which states that the agreement contains no endorsement, assertion or rejection of water rights claimed by third parties, is standard contract language that cannot be interpreted to violate the Agency's obligations under the 2003 Settlement and Release Agreement submitted by Orradre et al. The Settlement Agreement does not put any rights claimed by third-parties at issue and therefore cannot trigger the requirements of the 2003 Settlement and Release Agreement. In any event, acknowledgment of Orradre's asserted rights would not add or detract from the substance of the Settlement Agreement and therefore cannot prevent approval of the Settlement Agreement.

There is no reason for the SWRCB to reject the Settlement Agreement and the Agency supports it in full.

Very truly yours,



David R.E. Aladjem

cc: Service List

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