



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

APR 17 2008

In Reply Refer to:
CAR:262.0(23-03-06)

Messrs. Thomas Hill and Steven Gomes
c/o Jared G. Carter
Carter, Vannucci & Momsen, LLP
444 North State Street
Ukiah, CA 95482

Dear Mr. Carter:

REPORT OF INVESTIGATION FOR COMPLAINT FILED BY LEE HOWARD REGARDING DIVERSION
FROM THE EAST FORK OF THE RUSSIAN RIVER

By letter dated March 6, 2008, you requested, pursuant to Water Code section 1122, reconsideration by the full State Water Resources Control Board (State Water Board or Board) of the Report of Investigation for Complaint filed by Lee Howard regarding diversion from the East Fork of the Russian River.

Water Code section 1122 permits the State Water Board to order a reconsideration of a decision or order adopted by the Board. As you note in your March 6 letter, no State Water Board order or decision has been issued on the referenced matter. You request, "a prompt order from [the] Board setting the matter for rehearing or directing that the complaint underlying the Report be dismissed and the Report withdrawn or vacated." The State Water Board has neither held hearings nor issued an order or decision on this matter and therefore cannot set the matter for rehearing.

Furthermore, Water Code section 1122 limits the State Water Board's authority to reconsider a decision or order to no more than 30 days after a decision or order has been adopted. Even if the referenced report were deemed a decision or order, the 30-day time limit for reconsideration has long since elapsed. Additionally, your March 6 letter fails to fully comply with the requirements of California Code of Regulations, title 23, section 769. For these reasons, and because Water Code section 1122 does not provide for reconsideration of the staff investigation report, no further action can or will be taken upon your request for reconsideration under section 1122.

On page 4 of your petition, you express your clients' interest in gaining certainty regarding their water right claim. The State Water Board does not have the authority to provide the kind of certainty you seek except as part of a statutory adjudication. (See generally, Wat. Code, § 2500 et seq.) The State Water Board may evaluate claims of a pre-1914 water right to the extent reasonably necessary to decide an issue properly before it in an adjudicative proceeding. (See, e.g., § 1052 [prohibiting unauthorized diversion or use of water; if a party alleged to be in violation of section 1052 claims the use is authorized under pre-1914 right, the State Water Board will evaluate that claim to determine whether or not the use is unauthorized].) If the State Water Board were to initiate an enforcement action against your clients and issue an order in that proceeding, that order would be binding on your clients, but a State Water Board order in favor of your clients would not be binding on other water right holders with competing claims. The only means provided under the Water Code for obtaining a binding determination that your clients have a valid pre-1914 right is by following the procedures for a statutory adjudication, in which other claimants to rights to divert and use water from the same stream system are given a right to participate.

Sincerely,

Victoria A. Whitney
Division Chief

cc: See next page.

Messrs. Thomas Hill & Steven Gomes
c/o Jared G. Carter

2

APR 17 2008

cc: Mr. Lee Howard
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