



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Executive Office

1001 I Street • Sacramento, California 95814 • (916) 341-5611
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 341-5621 • Web Site Address: <http://www.swrcb.ca.gov>

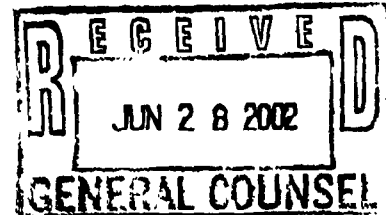


Gray Davis
Governor

In Reply Refer
to:333:MSM:31174

JUN 24 2002

California Sportfishing Protection Alliance
c/o Jerry Mensch
2553 Stonehaven Drive
Sacramento, CA 95827



Dear Mr. Mensch:

COMPLAINT AGAINST WATER RIGHTS STAFF

We have reviewed your complaint on behalf of the California Sportfishing Protection Alliance (CSPA) dated May 13, 2002. In the complaint, you allege generalized discrimination, harassment and misconduct on the part of unnamed Division of Water Rights (Division) staff, particularly with regard to your protests filed with respect to Application 31174 filed by Orange County Water District (District) in the Santa Ana River watershed. Please be assured that any allegations of improper conduct on the part of the Division of Water Rights staff by a good-faith participant in the water rights process, whether applicant, protestant or other interested party are carefully evaluated and thoroughly investigated to determine their validity.

CSPA Protest of Application 31174 of Orange County Water District

Your complaint claims that the CSPA is being required to submit information far in excess of that required of the applicant. A Division review of the file of Orange County Water District Application 31174 indicates that the District, in fact, submitted extensive supplemental information in response to Division requests, including, but not limited to, information to clarify the points of diversion, quantities and engineering maps.

Your complaint further cites the "arbitrary and capricious" nature of Board staff requests with regard to the CSPA protests filed on Application 31174 of Orange County Water District. The following review of your protest submitted on behalf of CSPA indicates that the requests made by the Division with regard to the CSPA protest were, in fact, routine, reasonable, fair, and made within the letter and intent of the California Water Code and the California Code of Regulations.

Review of CSPA Protest of Application 31174

The CSPA protest against Application 31174 was filed with the Division on February 8, 2002, based on environmental concerns and alleged following:

"The Santa Ana River and its environs support numerous fish species and riparian habitat valuable to numerous wildlife species including sensitive and listed species."

JUN 24 2002

The CSPA protest stipulated the following dismissal conditions:

- 1) "maintain a flow of 200 cfs Dec. 1 – May 31; 150 cfs remainder of year below all diversions"
- 2) "install, operate and maintain fish ladders and screens"

By letter dated March 6, 2002, the Division, in accordance with Title 23, California Code of Regulations section 745 requested that CSPA provide, within 60 days, certain basic information in support of the CSPA's objections to the approval of Application 31174. The information requested by the Division consisted of the following:

- 1) an identification of the species of concern
- 2) the criteria used to select suggested bypass flow requirements
- 3) the facilities that you believe require fish ladders and screens

The purpose of the request was to clarify, for the benefit of all interested parties, the basis of the CSPA protest and provide the protestant with the opportunity to conform such protest to the following specificity requirements of Title 23, California Code of Regulations section 745 and Water Code section 1331:

Section 745(c). The allegation that the proposed appropriation would not be within the board's jurisdiction, would not best conserve the public interest or public trusts uses, would have an adverse environmental impact, or would be contrary to law shall be accompanied by a statement of facts supporting the allegation.

Water Code Section 1331. The protest shall meet all of the following requirements:

- (c) *Clearly and specifically* set forth the protestant's objections to the approval of the application, and *state the bases for these objections.* (emphasis added)

On May 6, 2002, the Division's March 6, 2002, letter to you was returned marked "unclaimed". The Division sent to you another letter dated May 8, 2002, that granted the CSPA an additional 30 days to submit the information in accordance with California Code of Regulations section 750. On May 11, 2002, the Division received a letter from you stating that you were having a problem with the post office in receiving certified mail and wished to maintain the CSPA protest. The May 11, 2002, letter did not provide any of the information requested by the Division in its March 6, 2002 letter.

Division Authority to Request Information

The authority of the Division of Water Rights to request information from the Applicant and Protestant, as well as to set deadlines for submittal of such information is well established. The California Water Code contains numerous provisions granting the Division authority to request supplemental information from both Applicant and Protestant (See Water Code sections 1270-1276 and 1330-1335). Requests for information allow the Division to develop facts and narrow issues towards providing an effective and fundamentally fair administration of California water rights.

Jerry Mensch

3

JUN 24 2002

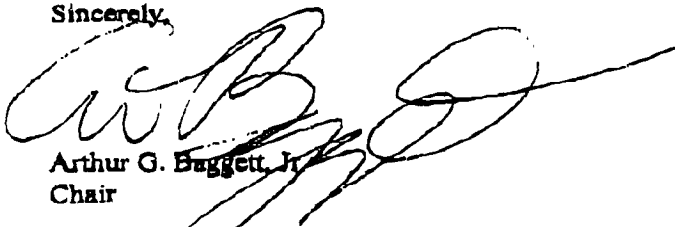
Extension of Time to Submit Information

In response to your concerns, the Division will grant the CSPA an additional 45 days from receipt of this letter to submit the requested information in order to support the CSPA protest dismissal conditions. This will allow the CSPA to either arrange a visit to the site to inspect the site in cooperation with the District or review the Division file for Application 31174 in order to prepare a submittal in response to the Division's request. The Division files for Application 31174 contain comprehensive information on the proposed project, including maps, photographs and information on points of diversion and facilities. Water right files may be requested for public viewing in advance by contacting Cathy Nease of our records department at (916) 341-5333.

Upon receipt and review of the information submitted, the Division will determine whether the CSPA protest will be accepted. Because of the complex nature of the proceedings in processing the applications on the Santa Ana River, if the CSPA does not submit the requested information within the 45 days allowed, the Division will continue to hold the CSPA protest in abeyance pending completion of the California Environmental Quality Act (CEQA) draft document. When the CEQA draft document is completed, the Division will allow the CSPA additional time to supplement its protest in support of its stated or modified dismissal conditions.

If you have any questions or need additional information on this application, please contact Mitchell Moody at (916) 341-5383, or you may discuss general operations of the Division with Edward C. Anton, Chief, Division of Water Rights at (916) 341-5302.

Sincerely,



Arthur G. Baggett, Jr.
Chair

CERTIFIED MAIL

cc: Virginia Grebbien, P. E.
General Manager
Orange County Water District
P.O. Box 8300
Fountain Valley, CA 92728-8300