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September 20, 2006

Mr. Gerald D. Secundy, Vice Chair and Hearing Officer
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

Re: SWRCB Hearing On Water-Right Applications 30325, 30326, 31043 and
31047 of Tejon Ranchcorp

Dear Mr. Secundy:

This firm represents Tejon Ranchcorp ("Tejon Ranch"). I am writing to you about the SWRCB hearing on the above applications, which presently is scheduled for November 2-3. For the reasons discussed in this letter, Tejon Ranch requests that this hearing be cancelled, and that SWRCB to issue Tejon Ranch water-right permits on these applications.

1. Tejon Ranch Water-Right Applications

Tejon Ranch filed water-right Applications 30325-30329 in 1993. These applications were for water-right permits for Tejon Ranch's existing diversions and uses of water from six local creeks. While many of these diversions historically had been made under Tejon Ranch's riparian rights, the applications also included diversions that might not be authorized by riparian rights.

In 1995, the SWRCB issued its public notice of these applications and only one party, Peter and Davida Delis, filed protests to the applications.

In 1999, Tejon Ranch filed water-right Applications 31043-31048. These applications were for water-right permits for the additional diversions and uses that existed in 1999 and were not included in the 1993 applications, and for some proposed new diversions and uses.

In 2001, the SWRCB issued its public notice of Applications 31043-31048 and it re-noticed Applications 30325-30327. In response to this new notice, the Delises filed new protests and the Arvin-Edison Water Storage District, the Kern Delta Water District, the Kern County Water Agency, the California Department of Fish and Game ("DFG") and the California Department of Parks and Recreation ("DPR") filed protests.

2. Wheeler Ridge-Maricopa Water Storage District EIR

Because the proposed project included a pumped storage component that would be operated by the Wheeler Ridge-Maricopa Water Storage District (“WRMWSO”), a public agency, the SWRCB agreed in 2001 that WRMWSO would be the California Environmental Quality Act (“CEQA”) lead agency for the proposed project, including the 11 Tejon Ranch water-right applications that are discussed above. Following this agreement, WRMWSO issued a notice of preparation of environmental impact report (“EIR”) in 2001, and issued its draft EIR (State Clearinghouse Number 2001061013) in 2003. Although WRMWSO sent copies of this draft EIR to DFG and DPR, neither of these agencies submitted any comments on the draft EIR. WRMWSO also sent a copy of the draft EIR to the SWRCB, and its staff submitted detailed comments. WRMWSO responded to these comments in its final EIR, which it certified in July 2004. No party filed any legal challenge to this certified EIR.

3. SWRCB Staff Information Requests and Tejon Ranch’s Responses

Besides commenting on the draft EIR, the SWRCB staff also sent formal requests for additional information to Tejon Ranch on June 10, 2003, March 10, 2004, April 22, 2005 and October 12, 2005. Among other things, these requests asked for: (a) a water-availability analysis, (b) information regarding the environmental effects of Tejon Ranch’s present and proposed diversions, compared to a “pre-development” baseline and to a baseline that included only diversions authorized by Tejon Ranch’s riparian rights, (c) the diversions’ effects on riparian vegetation, and (d) a monitoring and accounting plan.

Tejon Ranch promptly responded to all of these requests. These responses: (a) explained that the draft EIR contains a detailed water-availability analysis; and (b) explained that the draft EIR uses the environmental baseline required by CEQA, and that, by comparing the relative effects of different scenarios, the environmental effects compared to other baselines also can readily be determined. Tejon Ranch’s consultants also provided two technical reports and a letter on the effects on riparian vegetation of Tejon Ranch’s present and proposed diversions, compared to both a pre-development baseline and the baseline conditions that would have occurred if Tejon Ranch had limited its historical diversions to the amounts authorized by riparian rights. Another Tejon Ranch’s consultant provided the requested monitoring and accounting plan and a letter responding to staff’s questions about the plan.

4. Resolution of Protests and Issuance of Permits

While it was working with WRMWSO to prepare the EIR and while it was responding to the SWRCB staff’s information requests, Tejon Ranch also worked diligently to resolve the protests that various parties that had made to Tejon Ranch’s water-right applications.

In March 2001, Tejon Ranch executed a memorandum of understanding (MOU) with WRMWSD, in lieu of WRMWSD's filed protests to Tejon Ranch's applications. In February 2004, Tejon Ranch, WRMWSD, the Arvin-Edison Water Storage District, the Kern Delta Water District and the Kern County Water Agency executed an amended MOU, which resolved the latter three parties' protests. In December 2005, Tejon Ranch and Davida Delis executed an agreement resolving her protests.

In April 2005, SWRCB sent letters to DFG and DPR, noting that neither DFG nor DPR had submitted any comments on the draft EIR or the final EIR that WRMWSD prepared for this project and directing them, pursuant to Water Code section 1332, to submit additional information to support their protests within 60 days. These letters stated that SWRCB might cancel these protests pursuant to Water Code section 1335 if it did not receive the requested information.

Neither DFG nor DPR responded by the specified deadline, and, in December 2005, SWRCB staff cancelled DPR's protest to all applications and DFG's protest to all applications except Applications 30325, 30326, 31043 and 31047. The SWRCB staff did not cancel DFG's protest to these latter four applications, which are for permits to appropriate water from Tejon and El Paso Creeks.

Because these actions resolved all of the protests to, and all of the SWRCB staff's requests for information regarding, Applications 30327-30329, 31044-31046 and 31048 (which concern the local creeks besides Tejon and El Paso Creeks), the SWRCB staff issued water-right Permits 21178-21184 on these applications to Tejon Ranch in March 2006.

Although DFG had not provided the requested information by the specified deadline in July 2005, the SWRCB staff nevertheless allowed DFG to provide this information many months later, and DFG submitted a letter in February 2006, which stated its concerns about Applications 30325-30326, 31043 and 31047. This letter stated that DFG was concerned about the potential effects of Tejon Ranch's diversions from Tejon and El Paso Creeks (the creeks involved in these four remaining applications) on the riparian communities on the creeks and two salamander species.

Tejon Ranch responded to this letter in May 2006, with a technical memorandum (based on detailed field investigations) regarding riparian communities on Tejon and El Paso Creeks and with several technical reports regarding the two salamander species. The technical memorandum demonstrated that Tejon Ranch's diversions were not having and will not have any significant effects on riparian vegetation. The technical reports demonstrated that the two salamander species do not live in aquatic habitats, and therefore would not be affected by any changes in creek flows.

Following that letter, representatives of Tejon Ranch and DFG met in June 2006 and reached a tentative agreement resolving DFG's protest to the four remaining applications, Applications 30325, 30326, 31043 and 31047. Because of the vacations and workloads of the Tejon Ranch vice

president and DFG regional manager, Tejon Ranch and DFG did not complete and sign their written agreement resolving DFG's protest until September 14. This agreement and DFG's September 18 transmittal letter to the SWRCB confirm that the agreement has resolved DFG's concerns about the effects of Tejon Ranch's diversions from Tejon and El Paso Creeks on riparian vegetation and the two salamander species. Among other things, this agreement requires Tejon Ranch to maintain bypass flows at specified levels at Tejon Ranch's upper points of diversion (referred to as POD's 3 and 4 in the EIR) on Tejon and El Paso Creeks.

5. Issues In SWRCB Hearing Notice

On September 8, the SWRCB issued its notice of hearing on Tejon Ranch's Applications 30325, 30236, 31043 and 31047. This notice confirmed that, as of September 8, all protests to Tejon Ranch's applications besides DFG's protest had been resolved or cancelled, and that the primary remaining issue was the issue raised in DFG's February 2006 letter about the potential effects of Tejon Ranch's diversions on riparian vegetation and the two salamander species.

Because DFG and Tejon Ranch now have executed an agreement that resolves this issue, a hearing on this issue no longer is necessary.

The hearing notice also specifies four other issues "related to the issuance of the requested permits." These issues concern water availability, the public interest, injury to prior rights and appropriate permit conditions. However, Tejon Ranch already addressed the water-availability issue in its responses to the SWRCB staff's information requests, the WRMWSD EIR provides detailed information demonstrating that the proposed appropriations are in the public interest, and no other party ever raised either of these issues in any protest. The issue of injury to prior rights was raised in the Delis and water district protests, but, as discussed above, Tejon Ranch resolved all of those protests when it executed agreements with these protestants in 2004 and 2005. Finally, the appropriate permit conditions for the permits that are issued on these four remaining applications should be the same as the conditions that the SWRCB has included in the seven permits (Permits 21178-21184) that it already has issued to Tejon Ranch. A hearing therefore is not necessary to resolve these issues.

6. Center For Biological Diversity

The letter that Jane Farwell of the SWRCB staff sent yesterday to the parties states that only three parties, Tejon Ranch, DFG and the Center for Biological Diversity ("CBD"), have submitted notices of intent to appear at the hearing. However, Tejon Ranch and DFG both have stated that a hearing is not necessary, and they submitted their notices of intent to appear only in case the SWRCB nevertheless holds a hearing. CBD therefore is the only party that apparently still wants a hearing.

CBD did not file any protests to Application 30325 or Application 30326 when these applications were noticed in 1995. CBD did not file any protests to these applications when they were re-noticed in 1999, or to Applications 31043 or 31047 when they were noticed in 1999. CBD did not submit any comments on the WRMWSD draft EIR when it was circulated for public comments in 2003, or on the final EIR when it was certified in 2004. CBD did not file any legal challenge to this certified EIR. In fact, the first time that CBD submitted anything to the SWRCB regarding these applications was on March 10, 2006, over 12 years after these applications were filed, when CBD sent a letter to SWRCB staff. Because Tejon Ranch has worked diligently for over 12 years to resolve all of the protests to these applications, to provide detailed information and technical reports responding to all of SWRCB staff's information requests, and to work with WRMWSD to complete an EIR for these applications, it would not be proper to allow CBD now effectively to re-start this process by raising new objections in the hearing. Instead, it is time for the SWRCB to issue the four remaining permits to Tejon Ranch.

Moreover, CBD's March 10, 2006 letter does not state any valid basis for denying Tejon Ranch's applications at this time. CBD's letter primarily is based on DFG's February 2006 letter, and, as discussed above, DFG's concerns stated in that letter now have been resolved.

CBD's letter asserts that the WRMWSD EIR used the wrong environmental baseline for analyzing the effects of Tejon Ranch's diversions, and specifically that Tejon Ranch's diversions must be analyzed against a baseline that includes only diversions authorized by Tejon Ranch's riparian rights. SWRCB staff raised similar concerns in its information requests, and Tejon Ranch addressed those concerns in its responses to those requests, which, among other things, included a technical report analyzing the effects of Tejon Ranch's diversions on riparian vegetation using exactly the baseline that CBD now advocates. Tejon Ranch should not be required to address this same concern again in response to CBD's very tardy comments.

CBD's letter also claims that the WRMWSD EIR did not adequately analyze several animal species. However, these species are not listed in the SWRCB's hearing notice, CBD's letter does not demonstrate that any of these species actually are present in the parts of Tejon Creek or El Paso Creek that are affected by Tejon Ranch's diversions, and CBD's letter does not even attempt to demonstrate that Tejon Ranch's diversions will affect any of these species. Instead, CBD's letter just argues, without citing any legal authorities to support its argument, that more surveys and studies should be conducted because these species might be in the vicinity of these creeks and might be affected by Tejon Ranch's diversions. Because Tejon Ranch already has paid well over \$500,000 to its consultants to conduct the surveys and to prepare technical reports for this project that are discussed above and that satisfied all of the applicable legal requirements, and because CBD has not presented any substantial evidence demonstrating that Tejon Ranch's diversions actually will have any adverse impacts on these species, or any legal argument that the requested surveys and studies are required, CBD's argument for more surveys and studies should be denied.

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Finally, CBD's letter argues that Tejon Ranch's diversions might constitute "take" under section 9 of the federal Endangered Species Act. However, CBD's letter does not provide any substantial evidence that Tejon Ranch's diversions actually will cause any such "take." Moreover, even if any such "take" might occur, this would not justify a SWRCB hearing here. Instead, the SWRCB can address this issue by including its Standard Permit Term 14 in the permits that it issues on Applications 30325, 30326, 31043 and 31047, just as the SWRCB did in the seven permits that it already has issued on Tejon Ranch's seven other applications.

CONCLUSION

Just before the SWRCB issued its hearing notice, SWRCB staff told me that, if Tejon Ranch could resolve DFG's protest, then the SWRCB would not issue the hearing notice and would proceed to issue the four remaining permits to Tejon Ranch. Unfortunately, we did not know exactly when the hearing notice would be issued, and Tejon Ranch and DFG did not execute their written settlement agreement until six days after the notice was issued. Nevertheless, the hearing should not be held now, solely because of this six-day difference.

The Division of Water Rights' statistics state that, on June 30, 2006, 567 water-right applications were pending, and that during the 2005-2006 fiscal year, only 13 water-right permits were issued. Issuing the four remaining permits to Tejon Ranch without a hearing would help clear this backlog and allow the SWRCB staff to focus its limited resources on other pending applications.

Because over 12 years and the deadlines in at least three public notices passed before CBD raised its concerns, and because CBD has not demonstrated that Tejon Ranch's diversions actually will have any adverse impacts, it would not be appropriate to allow CBD to delay the issuance of the final four water-right permits to Tejon Ranch now. Tejon Ranch therefore respectfully requests that the hearing that is scheduled for November 2-3 be cancelled and that the SWRCB issue the final four water-right permits to Tejon Ranch.¹

Very truly yours,



ALAN B. LILLY

ABL:tmo

¹I am e-mailing and mailing copies of this letter to the representatives of the other parties that are listed in Ms. Farwell's September 19 letter. This letter therefore is not an ex parte communication.

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