



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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March 4, 2014

North San Joaquin Water Conservation District
P.O. Box E
Victor, CA 95253
wesadler@gmail.com
Via e-mail

Re: Comments on Mitigated Negative Declaration for Water Right Change Petitions and Tracy Lake Groundwater Recharge Project

Dear Mr. Sadler and North San Joaquin Water Conservation District:

The California Sportfishing Protection Alliance (CSPA) hereby submits comments on the North San Joaquin Water Conservation District's (NSJWCD or District) Mitigated Negative Declaration (MND) for Water Right Change Petitions and Tracy Lake Groundwater Recharge Project. The MND and Notice of Intent were posted to the NSJWCD's website on January 31, 2014. The Notice of Intent states that the comment period ends on March 6, 2014 at 5 p.m.

As background, CSPA is a protestant to the District's water rights petitions for change in place of use, purpose of use, distribution of storage, modification of permit terms and extension of time for water right permit 10477 (application 12842), which were noticed by the State Water Resources Control Board (State Board) on May 20, 2009. CSPA timely filed its protest on June 14, 2009. This protest remains unresolved.

CSPA received notice of the MND early in February, 2014. CSPA appreciates the notice. As CSPA understands it, the District plans to further modify the above-referenced petitions in accordance with the project described in the MND. However, petitions to revise the petitions to conform to the project described and evaluated in the MND have not, to CSPA's knowledge, been noticed by the State Board.

Project Purpose

The MND states:

For purposes of this document, the "Proposed Project" includes all of the pending petitions related to Permit 10477 as well as the new construction and operation of the Tracy Lake Groundwater Recharge Project. The primary purpose of the Proposed Project

is to implement conjunctive use of surface and groundwater resources, thereby conserving water resources over the long term and reducing existing groundwater overdraft conditions. The project will enable the District to utilize all of its water right to reduce reliance on groundwater and reduce groundwater overdraft.

MND at 1.

However, the MND makes no showing that it will reduce overdraft. On the contrary, part of the Proposed Project is to expand the place of use of Permit 10477 to the entire District, thus tripling the size of the place of use from 45,000 acres to about 150,000 acres.¹ MND at 6 and 7. Regarding overdraft in the District, the MND states that overdraft is likely to increase:

Only 100,000 acres of the NSJWCD have been developed, and the annual groundwater use within the NSJWCD boundaries is about 173,000 AFA. About 50,000 acres are dry pasture areas, which may be developed into irrigated agricultural lands or urban land uses at some time in the future. This development has already started in the NSJWCD where in the past 2-3 years vineyards and houses are moving into the dry pasture area. Assuming a new groundwater annual demand of 1.75 acre-feet per acre, development of the 50,000 acres will increase the NSJWCD overdraft to 137,500 AFA.

MND at 8.

The MND cites to the 2009 District report on groundwater to state that the overdraft within the District may be as low as 50,000 afy. The MND reports that if currently undeveloped areas within the District are developed either for agricultural or residential development (“vineyards or houses”), the annual overdraft within the District may increase to 137,500 afy. *Id.*

The “primary purpose” of the Proposed Project (“reducing existing groundwater overdraft conditions”) thus conflicts with the stated facts.

The MND makes the *presumption* that adding surface water to groundwater will improve the situation of groundwater within the District. In making this presumption, the MND fails to account for the fact that individual water users within the District may increase current levels of groundwater pumping in order to avail themselves of the benefit of improved groundwater levels. This is particularly true within relatively close proximity to the proposed Tracy Lakes recharge facility. In addition, availability of up to 19,000 afy of surface water may encourage either agricultural or residential development of acreage within the District that otherwise might not have been developed. Finally, increased groundwater usage by existing landowners may simply overwhelm any incremental recharge benefits achieved by the Proposed Project.

The MND states:

In 1996, NSJWCD adopted a Groundwater Management Plan to address declining groundwater levels, degradation of groundwater quality, and securing reliable surface water supplies. Plan elements include the continued effort to seek a reliable supplemental

¹ The stated acreage on pp. 6-7 slightly conflicts with description on p. 11.

surface water supply from the Mokelumne River and other sources, promotion of more efficient irrigation water application methods, participation in regional groundwater management efforts, and development of groundwater recharge facilities.

MND at 10. The Groundwater Management Plan apparently does not include any requirements to reduce demand or to equitably apportion reductions in use of limited groundwater supply. If the District has placed restrictions or limitations on groundwater pumping, or assigned any cost to pumping, the MND does not describe it.

The MND does not report whether the Plan (or any subsequent plan) requires individual reporting to the District of groundwater pumping within the District. The MND does not state whether the District has an alternative to individual reporting and accounting that will assist it in incentivizing and successfully managing groundwater use to achieve a positive long-term groundwater balance. It appears to CSPA that the Proposed Project is thus missing essential elements required by the State Water Board in Water Rights Order 2008-0016 in ordering ¶s 7-8:

7. Condition 7 of Order WR-2006-0018-DWR (modified standard permit term 117) is amended as follows (in underline):

Prior to diversion of water to underground storage under this permit, permittee shall (1) install devices to measure the quantities of water placed into underground storage and (2) install devices to measure or provide documentation of the method to be used to determine the quantity of water recovered from underground storage and placed to beneficial use. All measuring devices and the method of determining the quantity of water recovered from underground storage shall be approved by the Deputy Director prior to diversion of water at the Mokelumne River point of diversion under this permit. All measuring devices shall be properly maintained.

The District shall report the quantity of water placed into, and recovered from, underground storage under Permit 10477 (Application 12842) to the State Water Board with the annual "Progress Report by Permittee."

8. Permittee shall establish a method, and install and maintain appropriate devices, to measure the instantaneous rate of diversion and cumulative quantity of water diverted from each point of diversion, and the cumulative quantity of water applied to beneficial use under this permit. Permittee must obtain approval from the State Water Board of all devices, the method of determining the rate and amount of water diverted, and the method of determining the amount of water applied to beneficial use. Within three months of the date of this order, the Permittee shall submit a plan for approval by the Deputy Director that will demonstrate compliance with this term. The plan shall include as a minimum:

- a. A description of any gages and/or monitoring devices that will be installed or have been installed.
- b. A time schedule for the installation of these devices.

- c. A description of activities that will be taken to ensure the continued maintenance and operation of the devices, including a schedule for inspection of the devices by the permittee.
- d. A description of the frequency of data collection, the methods for recording data, the format for reporting data to the Division of Water Rights, and any calculations required to develop the records.
- e. A description of the method to be used in reporting East Bay Municipal Utility District's diversion of water to storage for the District's benefit under Permit 10477, and the amount of that water actually applied to beneficial use by the District.

A record of such measurements shall be maintained by the permittee, and made available to interested persons upon reasonable request. A copy of the records shall be submitted to the State Water Board with the annual "Progress Report by Permittee."

It is evident that the District monitors groundwater levels, because Figure 2 reports trends in groundwater levels at numerous locations in the District over the period 1992-2012. MND at 9. However, there appears to be no plan to manage the groundwater balance within the District or to actually reduce groundwater overdraft.

In Water Rights Order 2008-0016, the State Water Board also requires, at ordering ¶3:

With the exception of underground storage conducted pursuant to the North San Joaquin Pilot Recharge Project, the District must submit a conjunctive use plan to the Deputy Director prior to placing water into underground storage. The plan shall identify the proposed groundwater recharge or storage areas, the location of pumps and other facilities used for injection or percolation to storage, and the methods and points of measurement of the water diverted to and withdrawn from underground storage. The plan also must address whether and how placing water to underground storage, and subsequently withdrawing the water, under Permit 10477 will prevent additional overdraft in the Eastern San Joaquin groundwater basin and include measures to avoid any such impacts. If the Deputy Director determines that all or a portion of the plan is not acceptable, then the District must submit any modifications to the plan required by the Deputy Director within 60 days of being notified that the plan is not acceptable. Upon approval of the plan by the Deputy Director, the District shall implement the plan.

This requirement should also have been included as part of the Proposed Project and analyzed in the MND.

Term of Permit Extension and Timelines

The District proposes extending time to put water to beneficial use to 2040. The District does not explain, and CSPA does not understand, the need for such an extended period. After many years of delay, the District appears to have gathered the resources to begin the Proposed Project. However, only the Tracy Lakes component is described in any detail. At minimum, the MND should provide greater detail on potential decision points for completion of various

elements of the Proposed Project, and the timelines on which these decision points can reasonably be expected to be reached.

The timeline provided for the construction of the Tracy Lakes infrastructure provided in MND Appendix B, on the contrary, appears to us to be excessively ambitious. Even assuming completion of CEQA, we do not believe permitting could be completed in 2014, let alone construction. An effort to accelerate construction may carry it into the rainy season, thus potentially creating additional construction impacts.

Recommendation

The MND should be revised to include a description of the Proposed Project that incorporates the elements required by the State Water Board in Water Rights Order 2008-0016. The District should issue a new CEQA document that describes how the Proposed Project will achieve the stated purpose of groundwater recharge and reduction of groundwater overdraft.

Please feel free to contact me if you have any questions.

Respectfully submitted,



Chris Shutes
Water Rights Advocate
California Sportfishing Protection Alliance