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**VIA E-MAIL**

Erik Ekdahl  
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State Water Resources Control Board  
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Re: Amended water right permit Application 033190 by Shandon San Juan Water District seeking to appropriate Nacimiento Reservoir water already developed by Monterey County Water Resources Agency and used by 220,000 acres of irrigated farmland and 250,000 people living and working in the Salinas Valley

Dear Mr. Ekdahl:

This letter is submitted on behalf of the Salinas Valley Water Coalition (“Coalition”) in response to amended water right permit Application 033190 filed on or about July 29, 2024, by Shandon San Juan Water District (“SSJWD”).

Nearly three years after its first try, SSJWD’s latest application still seeks to take an existing water supply already developed by the Monterey County Water Resources Agency (“MCWRA”) and already being used to irrigate hundreds of thousands of acres of some of the world’s most productive farmland and as a domestic, municipal and industrial supply already being used by some 250,000 people living and working in the Salinas Valley. Those Salinas Valley farmers, homeowners and employers have been paying for development and use of this water supply for more than half a century and continue to invest in its management and use to sustain the valley’s remarkable agricultural economy.

The amended Application seeks to take more water to irrigate more acreage located outside Monterey County than the original one filed in February 2021, based on the mistaken theory that the 14,000 acre-feet per year (“AFY”) of Nacimiento Reservoir water sought by SSJWD is somehow “available” as excess to the Salinas Valley’s existing and long-term future needs. That contention is patently false, and the amended Application should be rejected for multiple reasons.

First, the State Water Resources Control Board (“SWRCB”) determined in a contested water right proceeding that the water supply yielded by Nacimiento Reservoir already was being used. That is the 2001 finding the SWRCB made in Decision 1642, when the SWRCB approved a water right permit allowing ongoing use of existing Nacimiento Reservoir storage capacity that was uncovered by a new MCWRA bathymetric survey showing the reservoir was 27,900 AF larger than previously believed. The

SWRCB found that Nacimiento Reservoir's water supply already was being used,<sup>1</sup> so it rejected protests contending the permit would increase use, injure prior downstream rights, and harm steelhead trout listed as threatened under the federal Endangered Species Act.

Second, SSJWD's amended Application depends on a water supply availability analysis that is patently inadequate for disregarding the indisputable fact that all Nacimiento Reservoir's water supply yield is required to ensure the long-term sustainability of the Salinas Valley groundwater supply that is now being managed by the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGS") pursuant to the Sustainable Groundwater Management Act ("SGMA"). As explained in Nacimiento Reservoir's water rights (License 7543/A16124 and Permit 21089/A30532), the primary purpose of constructing and operating the reservoir is to recharge groundwater for beneficial use by landowners, farms for agricultural irrigation, workplaces and communities overlying the subbasin composing the overall Salinas Valley Groundwater Basin. The California Department of Water Resources ("DWR") has approved Groundwater Sustainability Plans ("GSPs") for the Upper Valley, Forebay, 180/400-Foot Aquifer, Eastside, Langley and Monterey subbasins, and these GSPs all rely heavily on recharge from Nacimiento Reservoir releases to maintain or achieve sustainability.

Third, the same reservoir yield that recharges the subbasins also supports threatened steelhead trout, which spawn and rear in the Nacimiento River's reservoir releases. The National Marine Fisheries Service is reviewing Nacimiento Reservoir's water releases and steelhead trout status and conditions for preparation of a Habitat Conservation Plan pursuant to Section 10 of the federal Endangered Species Act. The pending HCP will update reservoir release requirements arising from an existing Biological Opinion that the SWRCB amended into Nacimiento Reservoir's water rights.

Finally, SSJWD's amended Application relies upon a dubious legal theory to try to satisfy the need for control over the facilities that would be needed to take Nacimiento Reservoir water under the new water right it seeks. That theory relies on a brief 2-page letter from SSJWD's counsel opining that SSJWD can claim wheeling rights under Water Code section 1810 *et seq.* and can condemn the right to take any property or facilities needed to take Nacimiento Reservoir water developed by MCWRA for the Salinas Valley. (July 2, 2024, letter from Young Wooldridge law firm to SSJWD Director Steve Sinton.) Wheeling rights are to facilitate voluntary water transfers by making surplus capacity in existing transmission systems available and do not extend to use of existing reservoirs to develop and control the water supply to be "wheeled." (See *San Luis Coastal Unified School District v. City of Morro Bay* (2000) 81 Cal.App.4th 1044 [limiting wheeling rights to "distribution systems"].) Wheeling rights have no application to SSJWD's desired use of Nacimiento Reservoir. And it is not reasonably foreseeable that SSJWD would succeed in condemning use of water development and distribution facilities built, owned and operated by public agencies in trust for their existing service area's farmers, homeowners, communities and workplaces. SSJWD's recent realization that it needs more water for its landowners is not a consistent or "more necessary public use" than the existing public uses to which all these facilities already are fully dedicated.

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<sup>1</sup> More specifically, the SWRCB found "the amount of water applied for by MCWRA in Application 30532 is the amount of water that has been used historically" and "there will be no change or expansion of use." (Decision 1642 at pp. 18-19.)



## CONCLUSION

The Salinas Valley’s landowners, farmers, workplaces, communities, and homeowners have paid, and are continuing to pay, hundreds of millions of dollars to study, design, construct, operate, maintain and upgrade Nacimiento Reservoir, San Antonio Reservoir, the Salinas Valley Water Project’s Salinas River Diversion Facility, the Salinas Valley Recycling Project, the related Castroville Seawater Intrusion Project (“CSIP”), and a wide range of critical infrastructure to ensure a long-term sustainable water supply.

The fact that SSJWD suddenly has a vision<sup>2</sup> of Nacimiento Reservoir water balancing its landowners’ groundwater production with hydrogeological reality is no excuse for trying to take existing water supplies away from the Salinas Valley landowners, farmers, homeowners, communities and workplaces that invested in Nacimiento Reservoir as a groundwater recharge solution more than half a century ago.

The Coalition respectfully asks the SWRCB to reject SSJWD’s amended Application as fatally incomplete and inadequate. Should the SWRCB decide to accept the SSJWD amended Application, the Coalition will file a protest and ask the SWRCB to deny it.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation



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<sup>2</sup> See Attachment 1 at p. 5 to amended Application 033190 (presenting “Shandon-San Juan Vision Statement”).

