



# State Water Resources Control Board



Alan C. Lloyd, Ph.D.  
Agency Secretary

## Executive Office

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Arnold Schwarzenegger  
Governor

SEP 21 2005

Cathy Crothers, Senior Staff Counsel  
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Amy Aufdemberge, Assistant Regional Solicitor  
Office of the Regional Solicitor  
U.S. Bureau of Reclamation  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

Dear Ms. Crothers and Ms. Aufdemberge:

### RULING ON MOTION TO CONSOLIDATE AND CONTINUE HEARINGS REGARDING COMPLIANCE WITH SALINITY OBJECTIVES IN THE SOUTHERN DELTA

This letter is a ruling on the motion you filed on behalf of the Department of Water Resources (DWR) and the Bureau of Reclamation (Bureau) requesting that the State Water Resources Control Board (State Water Board) conduct a joint hearing on three related proceedings concerning the salinity objectives in the interior southern Delta. The three proceedings address the requirement that the DWR and the Bureau meet the agricultural salinity objective of 0.7 mmhos per centimeter electrical conductivity (0.7 mmhos/cm EC) in the southern Delta for the April through August period. You also are requesting that the State Water Board delay the hearing so that it is conducted no earlier than January 2006.

The three proceedings are (1) a hearing scheduled for October 24, 2005, on draft cease and desist orders against the DWR and the Bureau for threatened violations of the objective; (2) a hearing on reconsideration of the recent approval of a Water Quality Response Plan for use by the DWR and the Bureau of each other's points of diversion; and (3) a hearing on long-term change petitions filed by the DWR and the Bureau seeking a change in the effective date of the requirement to meet the objective.

The State Water Board has received three letters opposing or partially opposing the motion, from the prosecutorial team prosecuting the hearing on the draft cease and desist orders for the Division of Water Rights, from the San Joaquin River Group Authority (Authority), and from South Delta Water Agency. Regarding the requested delay in the hearing, the prosecutorial team, the Authority, and South Delta oppose a delay in the cease and desist hearing to accommodate adding the other proceedings.

Regarding the request to conduct a joint hearing on the three proceedings, both the prosecutorial team and the Authority argue that although the proceedings are related, they should not be heard together because of their procedural differences, and only the cease and desist proceedings should be heard on October 24, 2005. South Delta, on the other hand, argues that the cease and desist proceedings and the reconsideration of the approval of the Water Quality Response Plan deal with enforcement of existing requirements and should be heard together, while the long-term change petition and the State Water Board's periodic review of the 1995 Bay-Delta Plan should be heard separately because they address the issue of whether the requirements should be changed.

I agree with the parties commenting on the motion that the cease and desist hearing should not be delayed. It is important that an order be issued on this matter as early as possible so that the DWR and the Bureau know what their responsibilities are before April 1, 2006. Accordingly, I will not order that the hearing be delayed in commencing. Based on the large number of parties filing notices of intent to appear, however, the State Water Board may add an additional day or two to the hearing.

Regarding the request to conduct a joint hearing on the three proceedings, I believe that it would be possible to conduct a hearing on all three water right issues regarding the 0.7 mmhos/cm EC objective, and for reasons of administrative efficiency it might be desirable to hold a hearing on all issues. However, there are two reasons why the long-term change petition should not be added to the hearing. First, the long-term change petition is not ready for the State Water Board's consideration, because full documentation of its potential effects has not yet been completed. Documentation under the California Environmental Quality Act (CEQA) (Public Resources Code section 21000, et seq.) is required before the State Water Board can take action to approve the long-term change petitions. The State Water Board generally does not conduct a hearing on a petition for change that requires CEQA documentation until a draft or final environmental document is available to be offered in evidence during the hearing. DWR has advised the State Water Board that it will prepare a draft Initial Study and Negative Declaration. Originally, the DWR expected to file these draft documents with the State Clearinghouse by the middle of September this year. DWR's attorney, however, has recently advised the State Water Board's staff that the draft CEQA documentation has been delayed and will not be filed until early October. With this delay, the CEQA documentation will not be available in time to be submitted on or before the September 29, 2005 deadline for exhibits in the hearing scheduled for October 24, 2005.

Second, as South Delta points out, the long-term change petition is a petition to change the requirements applicable to the DWR and the Bureau, whereas the cease and desist proceeding and the reconsideration of the Water Quality Response Plan are proceedings to determine whether and how the State Water Board should enforce the existing requirements on the water rights of the DWR and the Bureau. The long-term change petition therefore is a sufficiently

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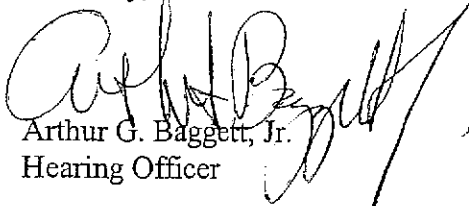
different issue that it could require a substantial increase in the amount of time required to complete the hearing.

The State Water Board will decide on September 22, 2005, whether or not to adopt an order provisionally granting reconsideration of the approval of the Water Quality Response Plan, subject to further action by the State Water Board after a hearing. If State Water Board adopts the order, the State Water Board will conduct the hearing on reconsideration of the Water Quality Response Plan concurrently with the cease and desist hearing on October 24, 2005.

The Authority did not indicate in its letter whether it was serving a copy of its letter on the parties on the service list for the cease and desist hearing. In the absence of service on the other parties this letter is in effect an *ex parte* communication. The Authority's letter has been made a part of the record in the cease and desist proceeding and a copy is attached to this letter, which is being sent to the parties on the service list.

If you have questions about this ruling, please contact Barbara Leidigh, Staff Counsel IV, at (916) 341-5190.

Sincerely,



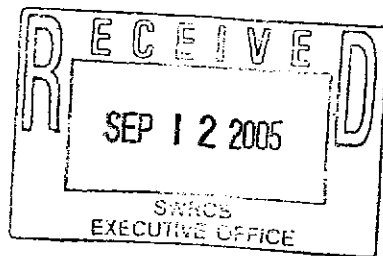
Arthur G. Baggett, Jr.  
Hearing Officer

cc: Tam M. Doduc, Jr., Exec.  
Richard Katz, Exec.  
Gerald D. Secundy, Exec.  
Celeste Cantu, Exec.  
Tom Howard, Exec.  
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Service list



O'Laughlin & Paris LLP



Attorneys at Law

September 12, 2005

Art Baggett, Jr.  
Celeste Cantu  
State Water Resources Control Board  
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Re: DWR/USBR Motion to Consolidate and Continue the CDO hearing

Dear Mr. Baggett and Ms. Cantu:

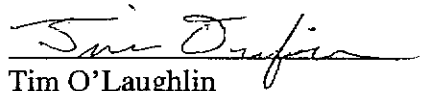
The San Joaquin River Group Authority is opposed to DWR/USBR's Motion to Consolidate and Continue the CDO, etc.... We believe the hearing on the CDO should move forward as planned. The parties have filed their Notices of Intent to Appear. We have prepared our testimony. There is no reason to delay this important hearing.

We also believe the matters should not be consolidated. While these items are interrelated, they are not the same. Although the substantive issues are slightly different, the procedural issues are entirely different. For this reason alone we are of the opinion that due process requires that these three processes remain separate.

Very truly yours,

O'LAUGHLIN & PARIS LLP

By:

  
Tim O'Laughlin  
Attorneys for  
San Joaquin River Group Authority

cc: Victoria Whitney  
Gita Kapahi  
SJRG

MAILING LIST FOR RULING ON MOTION TO CONSOLIDATE  
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Delta Salinity Draft CDO Hearing  
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(petition for reconsideration of WQRP)*

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*(signed 1700 petition)*