

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the)
WATER AVAILABILITY HEARING,)
U. S. BUREAU OF RECLAMATION,)
Petitioner)

Order: 83-5

ORDER DENYING PETITION TO DEFER
HEARING ON WATER AVAILABILITY

BY THE BOARD:

The State Water Resources Control Board (Board) having scheduled a hearing to receive testimony concerning the season of diversion to be specified in water right permits which contain standard water right permit Term 80; the Board having received a petition from U. S. Bureau of Reclamation on March 18, 1983, requesting the Board to defer the hearing; the petition having been duly considered; the Board finds as follows:

Background

1. Beginning in the mid-1960's, the Board, recognizing the uncertainty over water availability, began placing standard water right Term 80 in water right permits issued within the Sacramento-San Joaquin Delta watershed. This term reserves jurisdiction for the Board to change the season of diversion at a future time when water availability is known with greater certainty.

2. The Board authorized a water availability study in a resolution adopted on April 17, 1980. In 1981, the Board retained a consultant to review previous water availability studies and to make recommendations regarding the scope of the Board's current study. On January 19, 1982, the Board held a hearing to discuss the consultant's recommendations and the scope of the study. Between June 8, 1982 and January 17, 1983, Board staff held a series of four

technical sessions with interested parties to discuss the methods available for determining water availability.

3. The Board staff has analyzed water availability and has presented the results in a prehearing staff report.

4. A hearing is scheduled for April 11, 12, 13 and 25, 1983 at which testimony will be received concerning the season of diversion that should be allowed in Term 80 permits. Over 1,200 parties have been notified of the hearing. A Board decision based upon the record developed at the hearing is expected by January 1984.

Substance of Petition to Defer Water Availability Study

5. The Bureau of Reclamation has requested that the Board "defer the Water Availability Study until such time as the legal issues to be addressed in Judicial Council Coordination Proceeding No. 548 are resolved". The proceeding to which the Bureau refers consists of several lawsuits (hereinafter "Delta Water Cases") challenging Board Decision 1485. That decision established water quality standards for the Sacramento-San Joaquin Delta. The matter is being litigated before the Superior Court in San Francisco County. As an alternative to delay of the water availability hearing, the Bureau requests that the Board "proceed with the April evidentiary hearings but delay any final determination pending the outcome" of the Delta Water Cases.

6. The Bureau's statement in support of the petition states that many of the legal issues identified in the Delta Water Cases will have an effect upon the availability of water in the Sacramento-San Joaquin Delta watershed. The Bureau argues that it is premature for the Board to adopt a methodology for determining water availability when some of the legal assumptions on which the methodology is based may be found to be incorrect. The Bureau also contends that Term 91, adopted as a "temporary solution" in 1978,

provides a means for the Board to continue to act upon applications until the legal issues involved in the Delta Water Cases have been ruled upon.

Discussion

7. Since a staff analysis of water availability has been completed, the Bureau's "Petition to Defer Water Availability Study" will be treated as a request to continue the hearing on water availability scheduled to begin on April 11. As stated above, the Bureau's alternative request is that the Board proceed with the hearing but delay issuance of a decision pending resolution of the Delta Water Cases.

8. A pretrial order dated February 18, 1983 identifies the issues to be briefed in the Delta Water Cases. Oral argument is tentatively scheduled for December 3, 1983. The trial judge has requested that the parties consider the advisability of seeking a final judgment on legal issues "in time to secure appellate guidance for the reopened 1485 hearings". The Delta water quality hearings before the Board may be reopened as early as 1984 or 1985. Although it is hoped that the legal issues will be resolved by that time, it is apparent that an ultimate resolution of the issues could take considerably longer.

9. The methods used in the staff analysis of water availability are based upon the assumptions that the "watershed protection statutes" (Water Code Sections 11128, 11460-11463) apply to the operation of the Central Valley Project and that the water quality standards established in Decision 1485 represent a valid exercise of the Board's authority. These assumptions are consistent with applicable statutes and past Board decisions. Therefore, the Bureau's challenge of these assumptions in the Delta Water Cases provides insufficient reason for delaying Board action until that litigation is resolved.

10. Section 1375 of the Water Code provides that a prerequisite to the issuance of a permit to appropriate water is that unappropriated water must be available to supply the applicant. In making a determination of the availability of unappropriated water the Board should rely upon the best information available.

11. The season during which water is available for diversion by Term 80 permittees has been determined primarily on the basis of studies performed in 1956 and 1957. In exercising its reserved jurisdiction to revise the season of diversion for Term 80 permittees, the Board should consider current information on water availability. A Board decision establishing a season of water availability at various locations which takes into account the findings of the current study will provide an improved basis for determining the season of availability for new water right permittees.

12. In the unlikely event that any underlying legal assumption of the study is ultimately determined to be incorrect in a judicial proceeding, the methods developed for determining the season of water availability can be modified at that time.

Conclusion

13. The Board concludes that the petitioner has presented insufficient cause to postpone the hearing on water availability scheduled to begin on April 11, 1983. The alternative request to delay issuance of a Board decision on water availability pending the outcome of the Delta Water Cases need not be acted upon at this time.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition to defer the water availability hearing is denied. The request to delay the Board decision on water availability pending the outcome of the Delta Water Cases is taken under consideration, but will not be acted upon until after the water availability hearing.

Dated: April 6, 1983


Carole A. Onorato, Chairwoman


Warren D. Noteware, Member


Kenneth W. Willis, Member


F. K. Aljibury, Member

