

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



September 1, 2005

Debbie Irvin,
Clerk to the Board
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814

Electronically Delivered and Hand Delivered

Subject: COMMENT LETTER - September 7, 2005 Workshop, ITEM NUMBER 11
Consideration of a Proposed Order Granting Reconsideration of the Water Quality
Response Plan submitted by the Department of Water Resources and the U.S. Bureau
of Reclamation.

Dear Ms. Irvin,

The Department of Water Resources (DWR) and the U.S. Bureau of Reclamation have reviewed the proposed order regarding reconsideration of the Water Quality Response Plan (WQRP) noticed for consideration at the September 7, 2005 State Water Resources Control Board Workshop. The proposed order indicates that the State Water Board will hear evidence on changes, if any, that should be made to the Division Chief's July 1, 2005, approval of the WQRP at a public hearing on October 24, 2005, concurrent with the scheduled hearing on Draft Cease and Desist Orders against DWR and Reclamation. DWR and Reclamation request that the State Water Board consolidate and continue this hearing with a hearing on the Change Petitions of their water rights submitted by DWR and Reclamation on February 18, 2005. The basis for this request is described in the attached "Motion to Consolidate and Continue Hearings Regarding Cease and Desist Order of Alleged Threatened Violation of Permits, Reconsideration of Approval of 2005 Water Quality Response Plan, and Change Petition of Effective Date of South Delta Salinity Objective."

If you would like additional information or have questions regarding this matter, please contact me at (916) 653-5613 or email at crothers@water.ca.gov.

Sincerely

A handwritten signature in cursive script that reads "Cathy Crothers".

Cathy Crothers
Senior Staff Counsel

Attachment

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



September 1, 2005

Peter S. Silva
Hearing Officer
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814

Tam M. Doduc
Hearing Officer
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814

Hand Delivered

Subject: Public Hearing to Determine Whether to Adopt Draft Cease and Desist Orders against the U.S. Bureau of Reclamation and California Department of Water Resources

Dear Mr. Silva and Ms. Doduc:

Enclosed for your consideration is a Motion by the Department of Water Resources and the U.S. Bureau of Reclamation to "Consolidate and Continue Hearings Regarding Cease and Desist Order of Alleged Threatened Violation of Permits, Reconsideration of Approval of 2005 Water Quality Response Plan, and Change Petition of Effective Date of South Delta Salinity Objective."

As indicated on the attached Certificate of Service, the Motion for Consolidation and Continue Hearings has been mailed to the list of interested parties.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Crothers".

Cathy Crothers
Senior Staff Counsel

Enclosures

Amy Aufdemberge, Assistant Regional Solicitor
Office of the Regional Solicitor
2800 Cottage Way, room E-1712
Sacramento, CA 95825
Attorney for U. S. Bureau of Reclamation

Cathy Crothers, Senior Staff Counsel
California Department of Water Resources
Office of the Chief Counsel
1416 Ninth Street
Sacramento, CA 95814

State of California State Water Resources Control Board

Motion to Consolidate and Continue Hearings Regarding Cease and Desist Order of Alleged Threatened Violation of Permits, Reconsideration of Approval of 2005 Water Quality Response Plan, and Change Petition of Effective Date of South Delta Salinity Objective.

The U.S. Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) submit this Motion to the State Water Resources Control Board (SWRCB) to request consolidation of three proposed hearings on the same matter, namely decisions regarding the agriculture salinity objective (or standard) in the Southern Delta during April through August. The SWRCB has noticed a hearing on the Draft Cease and Desist Orders (Draft CDOs) and is scheduled to consider Petitions on Reconsideration regarding DWR and Reclamation's 2005 Water Quality Response Plan (WQRP). In addition, DWR and Reclamation have filed a change petition requesting a delay in the effective date of the southern Delta agricultural water quality requirement. The Reclamation and DWR believe it would be efficient and more effective if the SWRCB would consolidate the hearings on these three matters. In addition, for the reasons given below, we request that the hearing on the consolidated matters be set no earlier than January 2006 to enable the parties to prepare the appropriate testimony and exhibits so these matters can be fully briefed and argued before the SWRCB.

Background

On February 18, 2005, pursuant to Water Code Section 1700, DWR and Reclamation jointly filed a Petition to change the effective date of the southern Delta agricultural water quality requirement of 0.7 Electrical Conductivity (EC) from April 1, 2005 to December 31, 2008 (Change Petition). Since the issuance of Decision 1641 (D-1641) in December 1999, this salinity requirement to protect agricultural beneficial uses has been 1.0 EC year-round. On April 1, 2005, as required by D-1641, the 1.0 EC was replaced with the lower salinity objective of 0.7 EC during the months of April through August until permanent operable barriers (or gates) are constructed (or equivalent measures are implemented) and an operation plan is approved by the SWRCB Executive Director. As described under D-1641, the 0.7 EC water quality standard is an interim requirement until the permanent barriers are constructed, at which time, the standard will again be 1.0 EC. Through the Change Petition, DWR and Reclamation request a temporary change in their water rights for this interim period until the permanent operable barriers are constructed.

On May 3, 2005, the SWRCB Enforcement Division notified DWR and Reclamation of the Division's intent to issue a cease and desist order because of a threatened violation of the conditions of their water right permits, namely exceedance of the 0.7 EC in the Southern Delta during April through August. In late May, the Reclamation and DWR requested a hearing on the Draft CDOs. On August 4, 2005, the SWRCB issued a Notice of Public Hearing to determine whether to adopt the Draft CDOs. The hearing is scheduled for October 24, a Notice of Intent to Appear is due by September 8, and the parties must submit proposed testimony and exhibits by September 29, 2005.

On April 25, 2005, DWR and Reclamation submitted to the SWRCB, Division of Water Rights, a 2005 WQRP for approval, as required by D-1641 for purposes of implementing Joint Point of Diversions at their Delta pumping plants. On July 1, 2005, the Division Chief of Water Rights approved the WQRP subject to certain conditions. Several entities, including Contra Costa Water District and South Delta Water Agency, petitioned the SWRCB to reconsider the approval of the WQRP because of a condition related to the southern delta salinity standard. The SWRCB has announced that it will consider the petitions for reconsideration at its monthly workshop on September 7 and will consider holding a public hearing on the matter on October 24, concurrent with the Draft CDO hearing.

In addition to the above petitions and orders, the SWRCB has been conducting workshops regarding potential amendments or revisions to the 1995 Bay-Delta Water Quality Control Plan (WQCP). One of the issues considered during this process is potential revision to the southern Delta agricultural objective of 0.7 EC. The San Joaquin River Group Authority recommended during the March 14, 2005 Workshop the SWRCB revise the agricultural objective to 1.0 EC. In

contrast, SDWA recommended that the objective remain at 0.7 EC but extend the period of implementation from March through September. DWR recommended that the SWRCB revise the Program of Implementation to recognize the critical role of the permanent operable barriers in achieving the south Delta objectives, delay implementation of the 0.7 EC objective until the gates are constructed, and conduct an evaluation of what is an appropriate agricultural salinity objective. At this time, DWR and Reclamation believe that the SWRCB may have a draft revised WQCP available in January 2006, although it is not known when the SWRCB will conclude the process. The outcome of the revision could influence decisions made regarding the Change Petition, the WQRP, the Draft CDO.

Consolidation of the Proposed Hearings on the South Delta Agricultural Salinity Objective is Necessary to Avoid Conflicting Outcomes on the Same Issue

Consolidation of the three hearings is appropriate and necessary as these hearings all require presentations by the same parties on the same issues. The main issue of the hearings is whether implementation of the southern Delta agricultural objective of 0.7 EC should be replaced with the 1.0 EC objective because implementation of 0.7 EC may not be achievable under dry conditions absent operation of the permanent operable gates. Testimony by the parties would probably include whether a change in DWR and Reclamation's water rights to allow 1.0 EC in lieu of the 0.7 EC would adversely impact agricultural water users in the southern Delta. DWR and Reclamation would provide testimony regarding SWP and CVP operations and the limitations of these operations on achieving the 0.7 EC absent the operable gates.

DWR and Reclamation believe that, as noticed, the hearings are scheduled out-of-order. The scheduled hearing on the Change Petition should precede the hearings on the 2005 WQRP and the Draft CDOs because the Change Petition of DWR and Reclamation's water rights is key to resolving matters to be addressed. In the Change Petition hearing the SWRCB would consider whether a change in the objective would harm other legal users of water or have an affect on fish and wildlife (Water Code Section 1700 et seq., and Title 23 CCR Section 791 et seq.). In addition, the SWRCB would consider whether implementation of the changed standard is reasonable and whether it would reasonably protect the agricultural beneficial uses. If the Change Petition hearing resulted in a change from 0.7 EC to 1.0 EC, the Draft CDO would need to be revised to be consistent with this outcome. In addition, such an outcome in the Change Petition would resolve the issue of the conditions for the 2005 WQRP. One consolidated hearing on these matters would avoid having to notice multiple hearings, especially because currently the Change Petition will be heard last.

DWR and Reclamation believe it is necessary to continue the currently-scheduled hearing from October 24 to January 2006 for two reasons. First, DWR

is preparing a draft Initial Study and Negative Declaration on the proposed Change Petition, a project under the California Environmental Quality Act (CEQA). DWR will file the CEQA document with the State Clearinghouse in September and the document will be available for 30-days for public comment. DWR will notify the SWRCB as soon as it has submitted the CEQA document to the State Clearinghouse. DWR believes that the SWRCB could notice a consolidated hearing on the Change Petition, the WQRP, and the Draft CDOs after its CEQA document is filed with the Clearinghouse. Prior to the hearing, DWR would prepare a final CEQA document which would be entered into evidence for the hearing. Therefore, DWR believes the consolidated hearing should be continued to provide time for the public to comment on the CEQA document so it can be part of the record for the hearing.

Second, DWR and Reclamation believe a consolidated hearing should be continued so that all the parties can have time to address the issues as they relate to the different SWRCB actions: the Change Petition, the WQRP, and the Draft CDOs. Although the issues are the same, discussing the three matters in one hearing may make the arguments more complicated. The parties would need time to prepare testimony that is more cohesive as to how the issues relate to the three matters.

Consolidation and Continuance Will Not Prejudice the Parties and Will Make Efficient Use of the SWRCB's Time.

DWR and Reclamation believe that none of the parties will be prejudiced by the consolidation and continuance of the hearing. The period of time when the 0.7 EC standard is implemented occurs April through August. If the hearing is postponed until January 2006, this will allow parties time to best prepare testimony and witnesses during months when the objective is not a concern. At this time, none of the parties have yet submitted testimony or witness lists and all would be given the same opportunity to prepare for a future consolidated hearing. Although the other parties, such as SDWA should not be affected by a delay of the hearing, DWR and Reclamation take a risk that the SWRCB may not issue an order prior to April. In such case, DWR and Reclamation may be potentially at risk of exceeding a standard that may not be achievable under present conditions and would be required to report to the SWRCB pursuant to D-1641 (See Condition 11(d) of D-1641 at 149). DWR and Reclamation are willing to take such a risk in the interest of having one hearing on all the matters to resolve the issues concurrently.

Conclusion

For the above reasons, DWR and Reclamation believe it is in the interest of the SWRCB and the interested parties to consolidate and continue the hearings on

the Change Petition, the reconsideration of approval of the 2005 WQRP, and the Draft CDOs. DWR and Reclamation recommend that, subject to the SWRCB schedule, the SWRCB notice a consolidation of the hearings for January 2006 to give the parties necessary time to prepare testimony and witnesses.

By:

 9/1/05

Cathy Crothers Date

 9/1/05

Amy Auldernberg Date

CERTIFICATE OF SERVICE

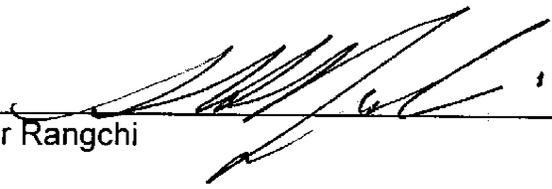
I, the undersigned, hereby certify that I am over the age of eighteen (18) years of age and an employee of the State of California Department of Water Resources, 1416 Ninth Street, Sacramento, California 95814.

On September 1, 2005, I served true and correct copies of the attached Department of Water Resources and U.S. Bureau of Reclamation's "Motion to Consolidate and Continue Hearings Regarding Cease and Desist Order of Alleged Threatened Violation of Permits, Reconsideration of Approval of 2005 Water Quality Response Plan, and Change Petition of Effective Date of South Delta Salinity Objective" by personal delivery to the office of Division of Water Rights of the State Water Resources Control Board on the 14th floor of the Environmental Protection Agency Building at 1001 I Street in Sacramento; and by placing said copies in postage paid envelopes in the U.S. Mail to the parties listed on the attached Service List.

Date: September 1, 2005

By:

Amir Rangchi



SERVICE LIST

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