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SACRAMENTO RIVER SETTLEMENT
17 CONTRACTORS CORPORATION, et al.

18
19 BEFORE THE
20 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
21

22 In the Matter of the Petition of:

23 Sacramento River Settlement Contractors
Corporation, Glenn-Colusa Irrigation District,
24 Natomas Central Mutual Water Company,
Reclamation District No. 108, and Sutter Mutual
25 Water Company for Reconsideration of
Condition 1 of the Executive Director's May 6,
26 2022 "Conditional Approval" of the U.S. Bureau of
Reclamation's Final Sacramento River
27 Temperature Management Plan.

SWRCB/OCC File _____

PETITION FOR RECONSIDERATION OF
CONDITION 1 OF THE EXECUTIVE
DIRECTOR'S MAY 6, 2022
"CONDITIONAL APPROVAL" OF THE
U.S. BUREAU OF RECLAMATION'S
FINAL SACRAMENTO RIVER
TEMPERATURE MANAGEMENT PLAN

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I. PETITION FOR RECONSIDERATION

(1) Petitioners:

Sacramento River Settlement Contractors Corporation
P.O. Box 150
Willows, CA 95988

Glenn-Colusa Irrigation District
P.O. Box 150
Willows, CA 95988

Natomas Central Mutual Water Company
2601 W Elkhorn Boulevard
Rio Linda, CA 95673

Reclamation District No. 108
975 Wilson Bend Road
Grimes, CA 95950

Sutter Mutual Water Company
15094 Cranmore Road
Robbins, CA 95676

(2) The specific State Water Resources Control Board (State Water Board) actions of which
Petitioners request reconsideration:

The following language included in Condition 1 of the Executive Director’s¹ May 6, 2022
“Conditional Approval” of the U.S. Bureau of Reclamation’s (Reclamation) Final
Sacramento River Temperature Management Plan:

“Reclamation shall take all actions within its reasonable control to improve temperature
conditions for Sacramento River winter and fall-run Chinook salmon this year and
carryover storage levels going into next year are maximized. Reclamation shall
specifically evaluate whether adjustments to hydropower operations could be
implemented to improve temperature management. I reserve continuing authority to
modify my approval of the TMP based on any changed circumstances.”

(3) The dates on which the orders or decisions were made by the State Water Board:
May 6, 2022.

¹ Order WR 90-5 refers to the Chief of Division of Water Rights as the staff person to whom Reclamation must submit its operations plan when moving the temperature compliance location upstream. Under the current delegation of authority, the Chief of the Division of Water Rights is referred to now as the Deputy Director of Water Rights (Deputy Director). However, the May 6, 2022 letter was signed by the Executive Director. This Petition will refer interchangeably to the Executive Director and the Deputy Director.

- 1 (4) The reasons the actions were inappropriate or improper:
- 2 a. Order WR 90-5 does not require Reclamation to take all actions within its
- 3 reasonable control to improve temperature conditions for Sacramento River winter
- 4 and fall-run Chinook salmon or to maximize carryover storage levels when it
- 5 moves the temperature compliance location upstream of Red Bluff Diversion Dam.
- 6 b. Order WR 90-5 does not allow the Deputy Director to approve or conditionally
- 7 approve the temperature management plan that Reclamation submits when it
- 8 moves the temperature compliance location upstream of Red Bluff Diversion
- 9 Dam; the role of the Deputy Director is limited to objecting or not objecting to the
- 10 change.

- 11 (5) The specific action which Petitioners request:

12 Removal of the following language from the Executive Director’s May 6, 2022

13 Conditional Approval of Reclamation’s Final Sacramento River Temperature

14 Management Plan:

15 “Reclamation shall take all actions within its reasonable control to improve temperature

16 conditions for Sacramento River winter and fall-run Chinook salmon this year and

17 carryover storage levels going into next year are maximized. Reclamation shall

18 specifically evaluate whether adjustments to hydropower operations could be

19 implemented to improve temperature management. I reserve continuing authority to

20 modify my approval of the TMP based on any changed circumstances.”

- 21 (6) A statement that copies of the petition and any accompanying material have been sent to
- 22 all interested parties:

23 Copies of this Petition and accompanying materials have been sent to the State Water

24 Board, California Department of Water Resources, and Reclamation.

25 **II. MEMORANDUM OF POINTS AND AUTHORITIES IN**

26 **SUPPORT OF PETITION FOR RECONSIDERATION**

27 **A. Petitioners Do Not Seek Reconsideration of the Executive Director’s Decision to Not**

28 **Object to the Final Temperature Management Plan**

On May 2, 2022, Reclamation submitted its Final Sacramento River Temperature Management Plan (TMP) pursuant to Order WR 90-5. This Petition does not ask for reconsideration of the Executive Director’s decision to not object to Reclamation’s TMP. Rather, the Petition seeks reconsideration by the State Water Board of certain conditions² that the

² Petitioners assert that the “approval” and all conditions set forth in the May 6, 2022 letter exceed the authority of Order 90-5. However, for purposes of this Petition, Petitioners seek reconsideration of only Condition 1.

1 Executive Director included in the May 6, 2022 letter, which are not authorized by Order
2 WR 90-5.

3 **B. Order WR 90-5 Does Not Require Reclamation to Take All Action Within Its**
4 **Reasonable Control to Improve Temperature Conditions and Does Not Authorize**
5 **the Deputy Director to Require this Action**

6 Under Order WR 90-5, Reclamation must operate Shasta Dam and Keswick Dam to meet
7 a daily average water temperature of 56°F in the Sacramento River at Red Bluff Diversion Dam
8 during periods when higher temperatures will be detrimental to the fishery. During periods when
9 daily average temperatures above 56°F will be detrimental to the fishery and factors beyond the
10 reasonable control of Reclamation prevent Reclamation from maintaining 56°F at Red Bluff
11 Diversion Dam, after consultation with state and federal resource agencies, Reclamation “shall”
12 designate a location upstream of Red Bluff Diversion Dam where it will meet a daily average
13 temperature of 56°F. “Factors considered to be beyond the reasonable control of the Permittee at
14 a given location include, but are not limited to, (1) conditions where protection of the fishery can
15 best be achieved by allowing a higher temperature in order to conserve cool water for later
16 release, and (2) conditions where allowing a higher temperature is necessary to implement
17 measures to conserve winter run Chinook salmon.” (Order WR 90-5, at p. 55.)

18 Upon moving the temperature compliance location upstream, Reclamation must file an
19 “operation plan” with the Deputy Director, showing Reclamation’s strategy to meet the objective
20 at the upstream location. Reclamation “may then meet the temperature requirement [56°F] at the
21 new location until it is within [Reclamation’s] reasonable control to meet it at the Red Bluff
22 Diversion Dam, unless within 10 days after submission of the report the [Deputy Director] of
23 Water Rights objects to the change.” (Order WR 90-5, at p. 55.)

24 In the May 6, 2022 letter, the Executive Director turned this language on its head by
25 adding a condition to the “approval” of the TMP that Reclamation “take all actions within its
26 reasonable control to improve temperature conditions for Sacramento River winter and fall-run
27 Chinook salmon this year and going into next year.” This conditional language grossly exceeds
28 the scope of the Deputy Director’s role under Order WR 90-5. “Factors beyond the reasonable
control of Reclamation” are to be considered when evaluating whether Reclamation can maintain

1 compliance with 56°F at the Red Bluff Diversion Dam throughout the temperature control season
2 or whether the compliance location should be moved upstream to best maintain conditions for the
3 fishery. The language is not a basis for requiring Reclamation to take affirmative actions to
4 improve temperature conditions, especially into the next water year after the end of the current
5 temperature management season.

6 The error is compounded when this language is turned into a condition of “approval”
7 when Order WR 90-5 only includes the ability for the Deputy Director to “object” to the change
8 in compliance location. The “conditional approval” is confirmed in the last sentence in
9 Condition 1 where the Executive Director states “I reserve continuing authority to modify my
10 approval of the TMP based on any changed circumstances.” Again, the Deputy Director is not
11 authorized under Order WR 90-5 to require an action of Reclamation; the Deputy Director’s role
12 is limited to an objection to the change in compliance location.

13 **C. Order WR 90-5 Does Not Require Reclamation to Maximize Carryover Storage**

14 Condition 1 also includes language that conditions the Executive Director’s “approval” of
15 the TMP on Reclamation maximizing “carryover storage levels going into next year.” For the
16 same reasons stated above, Order WR 90-5 does not allow the Executive Director (or the Deputy
17 Director) to place conditions on carryover storage as part of compliance with the temperature
18 objective. Reclamation’s decision on a compliance location is limited to whether factors beyond
19 its reasonable control prevent Reclamation from maintaining 56°F at the Red Bluff Diversion
20 Dam, and the operations plan is limited to demonstrating whether Reclamation can maintain 56°F
21 at the upstream compliance location. Introducing concepts of carryover storage is beyond the
22 scope of the process set forth in Order WR 90-5, and imposing conditions on the upstream
23 compliance location on maximizing carryover storage is beyond the Deputy Director’s authority
24 under Order WR 90-5. Similarly, Reclamation’s demonstration of whether its operations plan
25 will meet the temperature requirement at the new location is limited to the period until “it is
26 within [Reclamation’s] reasonable control to meet it at the Red Bluff Diversion Dam.” Placing
27 conditions on the TMP for the current temperature management season based on Reclamation’s
28

1 operations for the next year again exceeds the authority granted to the Deputy Director to “object”
2 or not object to a change in temperature compliance location.

3 **III. CONCLUSION**

4 For the foregoing reasons, Condition 1 in the Executive Director’s May 6, 2022 letter for
5 the Final TMP exceeds the authority granted to the Executive Director or the Deputy Director
6 under Order WR 90-5. Petitioners request that the State Water Board strike Condition 1 of the
7 May 6, 2022 letter.

8 SOMACH SIMMONS & DUNN
9 A Professional Corporation

10 Dated: June 6, 2022

By: 

Andrew M. Hitchings
Attorneys for Petitioner Glenn-Colusa Irrigation
District

14 DOWNEY BRAND LLP
15 A Professional Corporation

16 Dated: June 6, 2022

By: 

Meredith E. Nikkel
Attorneys for Petitioners Sacramento River
Settlement Contractors Corporation, Natomas
Central Mutual Water Company, Reclamation
District No. 108, and Sutter Mutual Water Company

SOMACH SIMMONS & DUNN
A Professional Corporation

DOWNEY BRAND LLP

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On June 6, 2022, I served the following document(s):

PETITION FOR RECONSIDERATION OF CONDITION 1 OF THE EXECUTIVE DIRECTOR’S MAY 6, 2022 “CONDITIONAL APPROVAL” OF THE U.S. BUREAU OF RECLAMATION’S FINAL SACRAMENTO RIVER TEMPERATURE MANAGEMENT PLAN

X (electronically) by electronically transmitting a true copy to the person(s) at the electronic mailing addresses as set forth below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on June 6, 2022, at Sacramento, California.



Crystal Rivera

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DOWNEY BRAND LLP