

FINDINGS

Notice of Exemption for Temporary Water Transfer for License # 1405 (Application # 2948)

Project Title: Temporary Water Transfer for License # 1405 (Application # 2948)

Project Location: Bouldin Island, San Joaquin County, California

Lead Agency: Reclamation District 756

Project Description: Reclamation District 756 (Bouldin Island) has requested that the State Water Resources Control Board (SWRCB) approve a temporary urgency change to License 1405 (A002948) to allow the transfer of water from Bouldin Island in the Sacramento River-San Joaquin River Delta to the Metropolitan Water District of Southern California (MWD) from May 1, 2009 to November 1, 2009. If the SWRCB approves the temporary change, the following will occur on Bouldin Island in 2009: water will not be diverted; crops will not be grown; the fields will be disced to control weeds; and water levels in the drainage canals will be maintained at normal levels to preserve perennial aquatic and riparian habitat. The water not applied to Bouldin Island will be available in the Delta for transfer to MWD via the State Water Project (SWP) Banks Pumping Plant and Central Valley Project (CVP) Tracy Pumping Plant. MWD is separately seeking the approval from the California Department of Water Resources (DWR) or United States Bureau of Reclamation (USBR) to convey the water through the SWP or CVP facilities. If DWR or USBR approve the conveyance of water, the water will be conveyed on the same schedule that the water would have been consumptively used in the absence of the transfer, subject to SWP or CVP pumping capacity and regulatory requirements.

The purpose of this project is to facilitate the conservation of water and to help reduce the critical water supply shortfall affecting the MWD service area.

CEQA Provisions for Statutory Exemptions:

Statutory Exemptions

The State CEQA Guidelines designates types of projects for which the California Legislature has provided a blanket exemption from CEQA procedures and policies. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance. (CEQA Guidelines Section 15260).

Specifically, CEQA Guidelines Section 15269 provides that certain emergency projects are exempt from the requirements of CEQA:

The following emergency projects are exempt from the requirements of CEQA.

- (a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or

destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section 180.2 of the Streets and highways Code, Section 180 et seq.

(CEQA Guidelines Section 15269)

CEQA Provisions for Categorical Exemptions:

Categorical Exemptions

The State CEQA Guidelines designates classes that are exempt from CEQA. Pursuant to Section 21084 of the Public Resources Code, the California Resources Agency has adopted 33 classes of projects which have been determined not to have a significant impact on the environment, and therefore, "declared to be categorically exempt from the preparation of environmental documents" (CEQA Guidelines Section 15300).

Specifically, CEQA Guidelines Section 15301 provides that existing facilities may qualify for a categorical exemption from CEQA:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power,

natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(l) Demolition and removal of individual small structures listed in this subdivision;

(1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, or similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

(CEQA Guidelines Section 15301)

CEQA Guidelines Section 15304 provides that minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes are also categorically exempt from CEQA:

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes.

Examples include, but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

(b) New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site;

(d) Minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;

(e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc;

(f) Minor trenching and backfilling where the surface is restored;

(g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies;

(h) The creation of bicycle lanes on existing rights-of-way.

- (i) Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

(CEQA Guidelines Section 15304)

Exceptions to Categorical Exemptions

The State CEQA Guidelines provides six exceptions to categorical exemptions:

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply [in] all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

(CEQA Guidelines Section 15300.2)

General Exemption

The State CEQA Guidelines Section 15061 also provides that a project is exempt from CEQA under the general exemption if:

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(CEQA Guidelines Section 15061(b)(3))

Findings: Reclamation District 756 has determined that the proposed project is statutorily exempt pursuant to CEQA Guidelines Section 15269, is categorically exempt pursuant to CEQA Guidelines Section 15300, qualifies for a Class 1 categorical exemption as provided for in Guidelines Section 15301, qualifies for a Class 4 categorical exemption as provided for in Guidelines Section 15304, qualifies under the general exemption as provided by Guidelines Section 15061(b)(3), and is not barred by one of the exceptions set forth in Guidelines Section 15300.2, for the following reasons:

If the temporary water transfer to MWD is approved, there will be no substantial change in the current conditions on Bouldin Island. The only physical change to the land on Bouldin Island will be occasional discing to control weeds; crops have not yet been planted for the 2009 growing season, and will not be planted if the transfer is approved. By maintaining water levels in the drainage canals, the existing aquatic and riparian habitat will be not affected. The water proposed for transfer will remain in the Delta and, if approved by DWR or USBR, will be conveyed when there is available capacity and in accordance with all existing regulatory requirements. Therefore, there is no possibility that the project will have an effect on the environment. The project qualifies as an existing facility under the Class 1 exemption, qualifies as a Class 4 minor private alteration in the condition of land which does not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes, is not barred by the Sec. 15300.2 exceptions, and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Additionally, in accordance with Executive Order S-06-08 declaring a statewide drought, this project qualifies as an action necessary to prevent or mitigate an emergency.

Reclamation District 756 has determined that a Notice of Exemption (NOE) is the appropriate documentation for the proposed temporary water transfer program. Although Reclamation District 756 is not required to file an NOE, it has decided to prepare an NOE pursuant to the content and posting requirements provided for in Guidelines Section 15062, and will file the NOE with the San Joaquin County Clerk following the adoption of the resolution.