

Reporting Week – September 30, 2015

Delta Ops/Change Petitions

- ***Delta Change Petition:***

- The Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) submitted a change petition to the State Water Board on August 26, 2015 for the project known as “California Water Fix.” Under this project, DWR and Reclamation are proposing to construct and operate facilities on the Sacramento River that will divert water near Courtland and route it around the Delta through two tunnels to the existing State and federal pumping facilities in Tracy. In addition to other federal, State and local approvals, DWR and Reclamation must request changes to the water right permits and license of the State Water Project (SWP) and federal Central Valley Project (CVP) to authorize the new points of diversion. A provision of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) also prohibits construction from beginning on this project until the State Water Board has approved a change in points of diversion for the SWP and CVP. DWR has submitted an errata and addendum for the change petition on September 16, 2015. DWR submitted an application for water quality certification pursuant to Clean Water Act section 401 on September 24, 2015.

The petition, errata, addendum, application and other information, including a fact sheet, can be found at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/

On September 18, 2015, staff posted a Lyris message informing the receivers that a status report on the plan for processing of the California Water Fix change petition that will include a joint public notice of the petition and notice of a hearing on the petition for late October or early November. In addition, the status report stated that a pre-hearing conference to organize the conduct of the hearing and to discuss procedural matters is currently being planned for late January or early February; a hearing on some of the key issues could begin as early as April of 2016. Subsequent status reports will be posted approximately every two weeks starting this week and will include a summary of recent and upcoming actions.

The status reports can be found at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/change_petition_updates.shtml

SWRCB Weekly Drought Updates - Current and Hot Topics

- **2015 Emergency Drought Barrier Project Update:**
 - The Department of Water Resources (DWR) commenced removal of the 2015 Emergency Drought Barrier Project (Project) on September 8, 2015. The barrier will be removed no later than November 15, 2015. DWR commenced in-water work on the Project on May 6, 2015. Additional information on the Project, including a copy of the water quality certification issued by the State Water Board, is available online at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/ceqa_projects.shtml#dbwfr

- **Sacramento River Temperature Management Plan:**
 - On May 14, 2015, the Executive Director approved the U.S. Bureau of Reclamation's (Reclamation) April 2015 Temperature Management Plan for the Sacramento River (Plan) to protect winter-run Chinook salmon and other species this year. The April Plan indicated that temperature control could be maintained throughout the temperature control season this year. However, at the end of May, data on actual cold water pool volumes in Shasta Reservoir was made available by Reclamation that indicated that temperatures could not be met at the optimal 56 degree Fahrenheit level through the temperature control season at the designated location. Accordingly, the Plan was updated in June of 2015 to meet a temperature of 57 to 58 degrees at the designated temperature control location. The changes in the Plan were planned to be facilitated through a combination of water transfers, borrowing from the State Water Project (SWP) and other operational modifications. On July 7, 2015, the Executive Director approved the revised Plan. That plan was also approved by the National Marine Fisheries Service (NMFS) to address Endangered Species Act requirements related to winter-run Chinook salmon. On September 8, 2015, Reclamation requested that NMFS approve revisions to the July 7 plan to allow for planned transfers and repayment of debts to the SWP related to the original plan while at the same time providing for protection of winter-run and fall-run Chinook salmon. Reclamation has been implementing a modified version of the revised plan with concurrence from the fisheries agencies and State Water Board staff. NMFS is expected to consider approval of the revised plan in the near future. Following approval by NMFS, Reclamation plans to request approval of the revisions by the Executive Director. The revised Plan would maintain higher flows during September and October while winter-run are still in their redds and once fish emergence has been established, flows will gradually be ramped down so that spawning fall-run would spawn at low flows that can be maintained throughout the incubation period.

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Curtailments

- ***Curtailments Issued:***
 - No curtailment notices were issued.
- ***Curtailments Anticipated:***
 - Diversion demands declined further in October which may result in additional releasing of senior rights.
- ***Voluntary Agreement for Conservation in lieu of Potential Enforcement of Riparian Curtailments:***
 - There are no new updates to report this week.

Transfers and Other TUCPs

- ***Provision 19 Reporting – Projects Pending Over 90 days:***
 - On August 19, 2015, the Division of Water Rights submitted to the Governor's Office tables of pending drought related projects that we are tracking per Provision 19 of the Governor's April 2015 Executive Order B-29-15. An updated table will be submitted on October 2, 2015.
- ***Pending Wastewater Change Petitions per Water Code 1211:***
 - Staff continues to process eight Wastewater Change Petitions that have been pending action for more than 90 days. During the period of September 21-25, staff focused on internal activities such as drafting noticing materials and approval orders.
- ***Pending Temporary Transfers per Water Code 1725:***
 - A Temporary Transfer petition was received on August 19 from South Feather Water and Power Agency. Transfer is proposed for 5,000 acre-feet from Sly Creek Reservoir and 5,000 acre-feet from Little Grass Valley Reservoir to State Water Contract Agencies (County of Kings, Kern County Water Agency, Dudley Ridge Water District, and Metropolitan Water District of Southern California). Public notice occurred on August 28, and comments were received. State Water Board action as soon as possible (no later than October 12).
 - On September 28, the State Water Board approved a Temporary Transfer petition from U.S. Bureau of Reclamation. The transfer is part of an exchange of 5,000 acre-feet involving Alameda County Water District, Alameda County Flood Control and Water Conservation District (Zone 7), Department of Water Resources and Contra Costa Water District

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- **Pending Temporary Urgency Change per Water Code 1435:**
 - There are currently no active Urgency Changes per Water Code 1435 awaiting action.

EO Tasks (barriers should be discussed under Delta Ops/Change Petitions)

- **Conservation Regs.:**
 - There are no new updates to report this week.
- **Water Pricing:**
 - There are no new updates to report this week.
- **Water Rights Holders Increased Reporting/Use of Inspection Warrant Authority (Directive 10):**
 - The Division is seeking warrant authority from the Calaveras County Superior Court, Sacramento County Superior Court and the San Joaquin County Superior Court to gain access to three properties where owners have either been unavailable or reluctant to provide staff access for inspection. The Sacramento County Superior Court issued a warrant, 24-hour notice of inspection served to the property owner, an inspection was made on September 23, 2015. No water diversion was observed.
- **Russian River Tributaries Emergency Regulation:**
 - The Russian River Tributaries Emergency Regulation went into effect on July 6, 2015. The emergency regulation applies to four watersheds within the Russian River watershed: Dutch Bill Creek; Green Valley Creek; portions of Mark West Creek; and Mill Creek. The emergency regulation requires: (1) users of water sourced from the critical upper watershed areas in the four watersheds to implement enhanced water conservation measures; and (2) landowners and water suppliers to provide information on surface and subsurface (i.e., groundwater) water use if requested by the State Water Board.

On August 24, 2015, the State Water Board's Deputy Director for Water Rights signed Order WR 2015-0026-DWR: Order for Additional Information in the Matter of Diversion of Water from Dutch Bill Creek, Green Valley Creek, Portions of Mark West Creek, and Mill Creek Watersheds, as Defined in California Code of Regulations, Title 23, Section 876(c)(1) (Order). Landowners and water suppliers are required to provide the requested information within 30 days of receipt of the Order. Landowners and water suppliers are required to provide the requested information via an online form available on the State Water Board's webpage.

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The State Water Board mailed the Order to all landowners in and suppliers of water from the four tributary watersheds. The Order was mailed in phases, alphabetically by tributary watershed, as follows: Dutch Bill Creek (mailed August 26; submittal deadline October 9, 2015); Green Valley Creek (mailed August 31; submittal deadline October 14, 2015); Mark West Creek (mailed September 15; submittal deadline October 20, 2015); and Mill Creek (mailed September 18; submittal deadline October 23, 2015). Due to technical difficulties, the State Water Board deactivated the Online Informational Order Form on the afternoon of September 2, 2015 in order to make repairs. The online form was reactivated on September 11, 2015. The State Water Board extended the deadline for landowners and water suppliers in the Dutch Bill Creek and Green Valley Creek watersheds to complete the Online Informational Order Form by nine days, the number of days the online form was unavailable to the public.

Additional information on the Russian River Tributaries Emergency Regulation, including the Informational Order, is available online at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/water_action_russianriver.shtml.

- **Enforcement Hearings:**

- **Mark Hodgetts Cease and Desist Order Administrative Civil Liability Hearing**

The State Water Resources Control Board, Division of Water Rights prosecution team and Mr. Mark Hodgetts have entered into a settlement agreement (Agreement), in Enforcement Action ENF01003 – an Administrative Civil Liability Complaint (ACL) and a draft Cease and Desist Order (CDO) issued to Mr. Hodgetts. The parties have entered into the Agreement which includes full payment of the proposed penalty amount of \$35,000 and cease and desist terms as memorialized in the Agreement. The settlement agreement does not, however, take effect unless and until approved by the State Water Board's Executive Director.

- **Byron-Bethany Irrigation District Administrative Civil Liability Hearing**

The State Water Board is scheduled to hold a pre-hearing conference on September 25, 2015 and a public hearing on October 28, 29, and 30, 2015 to determine whether to impose administrative civil liability (ACL) on Byron-Bethany Irrigation District (BBID). On July 20, 2015, the Assistant Deputy Director for the Division of Water Rights issued an ACL complaint to BBID for alleged unauthorized diversions from June 13 to June 25, 2015. BBID is alleged to have diverted 2,067 acre-feet of water under its claimed pre-1914 appropriate right when water was not available under its water right priority. BBID diverts from the Intake Channel to the Banks Pumping Plant in Contra Costa County. The proposed liability amount is \$1,553,250. On August 6, 2015,

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a representative of BBID requested a hearing on the ACL complaint. Following receipt of the hearing notice, BBID and other parties requested that the hearing be delayed. The hearing officer requested additional information related to that request. Following receipt of that information, the hearing officer will rule on whether the hearing will be rescheduled.

- **West Side Irrigation District Cease and Desist Order Hearing**

The State Water Board is scheduled to hold a pre-hearing conference on October 19, 2015, and a public hearing on November 12, 13, and 16, 2015, to determine whether to adopt, with or without revision, the July 16, 2015 draft cease and desist order (draft CDO) against West Side Irrigation District (WSID). On July 16, 2015, the Assistant Deputy Director for the Division of Water Rights issued a draft CDO against WSID for the violation and threatened violation of the prohibition against unauthorized diversion or use of water. WSID holds water right License 1381 (Application 301), originally issued on September 29, 1933, which has a priority date of April 17, 1916, and which authorizes the direct diversion of 82.5 cfs (April 1 to October 31) from Old River in San Joaquin County for irrigation, municipal, domestic and industrial uses. By letter dated August 7, 2015, WSID requested a hearing on the draft CDO.

- **G. Scott Fahey and Sugar Pine Spring Water LP Administrative Liability and Cease and Desist Order Hearing**

On September 1, 2015, the Assistant Deputy Director of the Division of Water Rights issued notice of a draft Cease and Desist Order (draft CDO) against G. Scott Fahey and Sugar Pine Spring Water LP (Fahey) for the violation and threatened violation of the prohibition against unauthorized diversion or use of water and an administrative civil liability complaint (complaint) alleging that Fahey committed a trespass through the unauthorized diversion of water. The draft CDO orders Fahey to immediately cease the unauthorized diversion of water from Unnamed Spring (AKA Cottonwood Spring), Deadwood Spring and Two Unnamed Springs (AKA Marco and Polo Springs), until the State Water Board determines that there is sufficient water in the system to support water use at the priority of Fahey's permits. The complaint proposes that liability be imposed upon Fahey in the amount of **\$224,875**. By letter dated September 8, 2015, Fahey requested a hearing on the complaint and draft CDO. A public notice for the hearing is expected shortly.

- ***Other Water Rights Actions:***

- There are no new updates to report this week.

Financial Assistance

- ***Public Water System Drought Emergency Response Program (PWSDER) - \$15 Million (SB103)***: The following is a weekly report of the Public Water System Drought Emergency Response (PWSDER) Program as of September 28, 2015.
 - The SWRCB is tracking a total of \$14,661,532 in grants to emergency drought projects that are in various stages of the funding process. There is approximately \$338,468 remaining in emergency drought grant funding.
 - The SWRCB has reserved funding through fourteen (14) oral contracts for a total of \$99,010.
 - The SWRCB has executed sixty four (64) PWSDER Program funding agreements for a total of \$14,270,590.
 - The SWRCB has issued one (1) PWSDER Program funding agreements (County of Tulare) for a total of \$170,101.
 - The SWRCB has approved one (1) PWSDER Program funding request for a total of \$95,000.
 - We are working with the Division of Drinking Water District Offices on other projects and are considering a total of \$26,831 in funding requests pending approval.

- ***Cleanup and Abatement Account Interim Emergency Drinking Water Program - \$19 Million (AB91)***: The following is a weekly report of the Cleanup and Abatement Account Interim Emergency Drinking Water Program as of September 28, 2015:
 - The SWRCB is tracking a total of \$4,977,095 in grants to emergency drought or contamination projects that are in various stages of the funding process. There is approximately \$14,022,905 remaining in emergency drought grant funding.
 - The SWRCB did not approve any oral funding requests this week. To-date, the SWRCB has reserved funding through three (3) oral contracts for a total of \$63,000.
 - This past week, the SWRCB did not receive any new funding request/applications.
 - This past week, the SWRCB executed one (1) funding agreements for Cloverdale Mutual Water Company in the amount of \$15,000. To-date, the SWRCB has executed five (5) funding agreements for a total of \$385,139.
 - This past week, the SWRCB issued four (4) new funding agreements (Cantua Creek-\$348,675, El Porvernir-\$259,226, County of Tulare for Bottled Water-\$750,000, and Amargosa Conservancy-\$90,356). The SWRCB has issued five (5) funding agreements that are pending execution, at a total of \$1,948,257.
 - This past week, the SWRCB approved two (2) funding requests/applications. Below are brief descriptions of the projects:
 1. Madera County MD-7 Marina View Heights (Madera County): Project is for bottled water due to arsenic contamination. \$339,658
 2. Madera County MD-6 Lake Shore (Madera County): Project is for bottled water due to arsenic contamination. \$188,763
 - To-date and including the oral and executed funding agreements, the SWRCB has approved nineteen (19) funding requests for a total of \$3,617,926 under this funding program.

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- We are working with the Division of Drinking Water District Offices on many other projects and are considering a total of \$1,359,169 in funding requests pending approval.
- **Cleanup and Abatement Account Interim Emergency Drinking Water Program - \$6.1 Million (SB103):** Approved projects in the CAA total \$5.28 million. No additional funding requests are pending review under this funding program at this time.

Upcoming Press

- On October 1, 2015, the State Water Board announced the August conservation rate for more than 400 urban water suppliers throughout California. The Office of Public Affairs hosted a morning media telephone press conference and a high level of media and stakeholder attention is expected.

Board Members' Speaking Events/Apearances on Drought

Chair Felicia Marcus

- On October 1, 2015, Chair Marcus will give a keynote speech on the drought and outlook on Southern CA communities at the Southern CA Energy and Water Summit in Palm Springs. Chair Marcus will also participate in a panel discussion on California policy and its impact.
- On October 3, 2015, Chair Marcus will be participating in a discussion on California water policy and the drought at UC Berkeley's homecoming festivities.
- On October 8, 2015, Chair Marcus will be participating in a discussion with investors regarding California water policy at the Westley Group's Annual Meeting in Atherton.
- On October 9, 2015, Chair Marcus will be participating in an informal discussion regarding current water issues at the Association of Women in Water, Energy and the Environment's Luncheon in San Francisco.

Vice-Chair Frances Spivy-Weber

- On October 1, 2015, Vice-Chair Spivy-Weber will give a keynote address regarding Board's response to drought and desal at CalDesal conference in Ontario.
- On October 9, 2015, Vice-Chair Spivy-Weber will be attending the water issues on drought forum for elected officials in Culver City.

Board Member Dorene D'Adamo

- On October 2, 2015, Board Member D'Adamo will be speaking at the Risk Management Association, Central Valley Chapter in Stockton, regarding the drought, water rights, etc.