

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2005 – xxx – DWR

In the Matter of Permits and License¹ of the
UNITED STATES BUREAU OF RECLAMATION
Cease and Desist Order 262.31-16

SOURCE: Sacramento and San Joaquin Rivers and Sacramento-San Joaquin Delta Channels

COUNTY: San Joaquin

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831, subdivision (a), to issue a Cease and Desist Order (CDO) when it determines that any person is violating, or threatening to violate, any requirement described in section 1831, subdivision (d). Under section 1831, subdivision (d) of the Water Code, the State Water Board may issue a CDO in response to a violation or threatened violation of any of the following:

- 1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code.²
- 2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- 3) Any decision or order of the State Water Board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On **[DATE]**, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board provided notice of the CDO to the United States Bureau of Reclamation (USBR) for the threatened violation of a term or condition of a license or permit issued under division 2 of the Water Code. The Division of Water Rights (Division) did not receive a request for hearing within 20 days from the date when the USBR received the notice of the CDO. In accordance with State Water Board Resolution 2002-0106, attachment, section 2.8.1, the Chief of the Division is authorized to issue a CDO pursuant to Water Code section 1831 when a notice of cease and desist has been issued and no hearing has been requested within the period provided under Water Code section 1834.

FACTS AND INFORMATION

¹ License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively).

² Water Code section 1052, subdivision (a) states that “The diversion or use of water subject to this division other than as authorized in this division is a trespass.”

The facts and information upon which this CDO is based are the following:

1. The USBR currently owns the permits and license identified in footnote 1. These permits and license are subject to conditions imposed by Water Right Decision 1641, revised March 15, 2000, in accordance with Order WR 2000-02, (hereinafter revised Decision 1641).
2. As a condition of USBR's permits and license, revised Decision 1641 requires the USBR to meet water quality objectives, which are identified in Table 2 of the decision, in the southern Delta at the following locations:
 - 1) San Joaquin River at Airport Way Bridge, Vernalis (Interagency Station No. C-10);
 - 2) San Joaquin River at Brandt Bridge (Interagency Station No. C-6);
 - 3) Old River near Middle River (Interagency Station No. C-8); and
 - 4) Old River at Tracey Road Bridge (Interagency Station No. P-12).
3. Table 2 currently requires a maximum 30-day running average of mean daily EC (mmhos/cm) of 0.7 in April through August and 1.0 in September through March at the four locations listed above during all types of water years. Table 2 further specifies that the 0.7 EC objective for Interagency Stations number C-6, C-8, and P-12, which became effective on April 1, 2005, may be replaced by the 1.0 EC objective from April through August after April 1, 2005. The 1.0 EC objective is authorized if permanent barriers are constructed, or equivalent measures are implemented, in the southern Delta and an operations plan that reasonably protects southern Delta agriculture is prepared by the Department of Water Resources (DWR) and USBR and approved by the Executive Director of the State Water Board.
4. The DWR and the USBR currently install a temporary barrier at the head of Old River near the confluence with the San Joaquin River in the spring and fall of most years for the protection of fish. In order to mitigate the effects of the Head of Old River temporary barrier on water levels and circulation patterns in the southern Delta, the DWR and the USBR install three temporary barriers on other Delta channels during the growing season.
5. As of the date of this order, the permanent barriers planned for the South Delta Improvements Program (SDIP) have not been constructed and no equivalent measures have been implemented. The DWR provided information at the March 14, 2005 State Water Board workshop that the permanent barriers would not be operational until 2008. The DWR and USBR have not prepared an operations plan for approval by the Executive Director of the State Water Board. Therefore, the EC standard at Interagency Stations number C-6, C-8, and P-12 from April through August and during all types of water years is now a maximum 30-day running average mean daily EC (mmhos/cm) of 0.7.
6. On February 14, 2005, the DWR and USBR jointly submitted two change petitions to the Division: (1) a Petition for Change under Water Code section 1700; and (2) a Petition for Temporary Urgency Change under Water Code section 1435. Both petitions state that the permanent barriers are not complete and request that the State Water Board extend the effective date for the southern Delta salinity objective of 0.7 EC from April 1, 2005 to December 31, 2008. The accompanying cover letter addressed to Ms. Victoria Whitney, Chief, Division of Water Rights, states that if the 0.7 EC objective is imposed, then DWR and USBR could be forced to release large quantities of water to meet the objective and that it is unlikely that the releases alone would result in compliance. The USBR and DWR also acknowledge that they may be subject to State Water Board enforcement action if the petitions are not approved. On February 24, 2005, the

State Water Board issued Order WRO 2005-009, which denied the Petition for Temporary Urgency Change. Neither the USBR nor any other party petitioned the State Water Board to reconsider Order WRO 2005-009.

7. The DWR provided information about the SDIP at the March 14, 2005 State Water Board workshop. The presentation included actual data and estimated data indicating that mean daily EC (mmhos/cm) may exceed 0.7 in April through August during some years, even with temporary barriers installed.
8. The USBR's threatened violation of the conditions of its license and permits requiring the USBR to meet the 0.7 EC objective between April and August, as required by revised Decision 1641, is subject to issuance of a Cease and Desist Order in accordance with California Water Code section 1831.

IT IS HEREBY ORDERED that the USBR, in cooperation with DWR, shall take the following corrective actions and satisfy the following time schedule:

1. The USBR shall ensure the SDIP permanent barriers are installed and operational, or equivalent measures are implemented by January 1, 2009. Within 60 days of issuance of this CDO, the USBR shall submit to the Division Chief a detailed schedule, including planned completion dates for key events leading to completion of the permanent barriers by January 1, 2009. If the schedule provides for implementation of equivalent measures, the USBR shall submit information establishing that those measures are equivalent to the installation of permanent barriers. The schedule is subject to approval by the Executive Director of the State Water Board in regard to its completeness and inclusion of significant project milestones. The USBR shall submit any additional information or revisions to the schedule within the period specified by the Executive Director. The USBR shall implement the schedule as approved by the Executive Director.
2. In the event that the USBR projects a potential violation of the 0.7 EC objective for Interagency Stations C-6, C-8, and P-12, prior to construction of the permanent barriers or implementation of the approved equivalent measures, the USBR shall timely inform the State Water Board of the potential violation and describe the corrective actions being initiated to avoid the violation. Corrective actions may include additional releases from Central Valley Project (Project) facilities, reduction in exports, recirculation of diverted water to the San Joaquin River, or purchases of water under transfers from other entities.
3. If a violation of the 0.7 EC objective for Interagency Stations C-6, C-8, and P-12 occurs, the USBR shall report to the State Water Board (1) the length of time over which the violation occurred, (2) the corrective actions taken to curtail the violation, and (3) the amount of water bypassed or released from Project supplies, the net reduction in exports, or measured quantity of other actions, if any, taken specifically to correct the violation. The USBR shall also identify the amount of its Project supplies remaining for beneficial uses.
4. Every three months, commencing on the month following the date of this order, the USBR shall submit to the State Water Board a status report on construction of each barrier and an updated projection of the permanent barrier project's final completion date and initial operational date.
5. If the ability to collect EC data at Interagency Station Nos. C-8 or C-10 is lost for more than 7 consecutive days for any reason, this event should be reported in writing to the Executive Director. The report should include the reason for the loss of data, a plan to restore data collection, and the anticipated date that data collection will resume.

6. The USBR shall timely submit the annual report required by Term 11, paragraph c, on page 149 of revised Decision 1641, beginning with the report required by December 1, 2005.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter, the Attorney General, upon the request of the State Water Board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).) Any person or entity who violates a CDO may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b)(1).)