



# State Water Resources Control Board



Alan C. Lloyd, Ph.D.  
*Agency Secretary*

**Division of Water Rights**  
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**Arnold Schwarzenegger**  
*Governor*

May 3, 2005

In Reply Refer to:  
LL:262.31-17

## CERTIFIED MAIL

Carl A. Torgersen, Chief  
Division of Operations and Maintenance  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236-001

Dear Mr. Torgersen:

### **NOTICE OF CEASE AND DESIST ORDER PURSUANT TO PERMITS OF THE DEPARTMENT OF WATER RESOURCES, SACRAMENTO RIVER, SAN JOAQUIN RIVER AND SACRAMENTO-SAN JOAQUIN DELTA CHANNELS**

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) hereby gives notice of its intent to issue a Cease and Desist Order (CDO) consistent with the facts and required corrective actions identified in the attached draft CDO. Under California Water Code section 1831, subdivision (a), when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in section 1831, subdivision (d), the State Water Board may issue a CDO to that person to cease and desist from that violation. Under section 1831, subdivision (d), 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) 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 board issued under part 2 (commencing with section 1200) of division 2, 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.

The Division is recommending this formal enforcement action against the Department of Water Resources (DWR) because of a threatened violation of the conditions of its permits related to water salinity standards in the south Delta as described in Table 2, of revised Water Right Decision 1641. The basis of the CDO is detailed in the facts and information section of the attached draft order.

If you disagree with the facts or time schedules for corrective actions of the attached draft CDO, you may request a hearing before the State Water Board no later than 20 days from the date you receive this notice. Please note that unless a written request for hearing, signed by or on behalf of the DWR, is delivered to or received by mail by the State Water Board within 20 days after your receipt of this letter, the State Water Board may adopt the CDO, with the statement of facts and information set forth in the attached draft order, without a hearing. (Wat. Code § 1834, subd. (a) and (b).)

This matter requires your immediate attention. Under California Water Code section 1845, upon the failure of any person to comply with a CDO issued by the State Water Board, 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. Any person or entity that violates a CDO may be liable for a sum not to exceed \$1,000 for each day that the violation occurs. (Wat. Code, § 1845, subd. (b)(1).)

If there are any questions concerning this matter, please telephone Larry Lindsay of my staff at (916) 341-5345.

Sincerely,

*Original signed by*

Victoria A. Whitney  
Division Chief

Enclosure

cc: Donna E. Tegelman  
Regional Resources Manager  
U.S. Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1098

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

DIVISION OF WATER RIGHTS

ORDER WR 2005 – xxx – DWR

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In the Matter of Permits<sup>1</sup> of the  
**DEPARTMENT OF WATER RESOURCES**  
**Cease and Desist Order 262.31-17**

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

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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.<sup>2</sup>
- 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 Department of Water Resources (DWR) 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 DWR 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.

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<sup>1</sup> Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively).

<sup>2</sup> 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."

## FACTS AND INFORMATION

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

1. The DWR currently owns the water right permits identified in footnote 1. These permits 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 the DWR's permits, revised Decision 1641 requires the DWR 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 DWR and United States Bureau of Reclamation (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 DWR 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 DWR's threatened violation of the conditions of its permits requiring the DWR 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 DWR, in cooperation with the USBR, shall take the following corrective actions and satisfy the following time schedule:

1. The DWR 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 DWR 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 DWR 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 DWR shall submit any additional information or revisions to the schedule requested within the period specified by the Executive Director. The DWR shall implement the schedule as approved by the Executive Director.
2. In the event that the DWR 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 DWR 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 State Water Project (Project) facilities, reduction in exports, 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 DWR 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. DWR 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 DWR shall submit to the State Water Board a status report on the construction of each barrier and an updated projection of the permanent barrier project's final completion date and initial operational date.

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).)

STATE WATER RESOURCES CONTROL BOARD

*Victoria A. Whitney, Chief  
Division of Water Rights*

Dated:

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