

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of)
)
LLOYD CARTER AND PATRICK PORGANS,)
BAY INSTITUTE OF SAN FRANCISCO,)
ET AL., AND UNITED STATES FISH AND)
WILDLIFE SERVICE)
)
For Review of Waste Discharge)
Requirements Adopted by and)
Environmental Impact Reports)
Certified by the California Regional)
Water Quality Control Board, Central)
Valley Region, for 14 Tulare Lake)
Basin Agricultural Drainage)
Dischargers. Our File Nos. A-858,)
A-858(a), and A-858(b).)
)
_____)

ORDER NO. WQ 96-07

BY THE BOARD:

I. BACKGROUND

On August 6, 1993, the California Regional Water Quality Control Board, Central Valley Region (CVRWQCB), adopted waste discharge requirements and certified environmental impact reports (EIRs) for 14 operators of agricultural drainage evaporation ponds in the Tulare Lake Basin.¹ In August and September 1993 Patrick Porgans and Lloyd Carter, the Bay

¹ The operators include: (a) Acme Drainage, Inc., Cal-Clark Farms, Inc. and John and Carol Van Curen (Acme Drainage, Inc.); (b) Bowman Farms, Inc. and Barbara L. Bowman (Bowman Farms, Inc.); (c) Britz, Inc.; (d) Church of Jesus Christ of Latter-Day Saints; (e) 4J Corp.; (f) Lost Hills Water District; (g) Steve W. Martin Ranch, Inc. and Wayne W. Martin (Steve W. Martin Ranch, Inc.); (h) G & C Meyer Farms, Inc.; (i) Morris and Sons Farms and Louise D. Smith (Morris and Sons Farms); (j) Pryse Farms, Inc.; (k) Rainbow Ranches, Inc.; (l) Stone Land Co., Inc.; (m) Tulare Lake Drainage District; and (n) Westlake Farms, Inc.

Institute of San Francisco, et al.² (Bay Institute), and the United States Fish and Wildlife Service (USFWS) filed petitions with the State Water Resources Control Board (SWRCB or Board) for review of the action of the CVRWQCB. All of the petitioners and pond operators requested that the Board conduct an evidentiary hearing on the issues raised in the petitions.

The SWRCB determined that an evidentiary hearing would be appropriate but that the hearing could not be conducted prior to the expiration of the 270-day regulatory deadline for final action on the petitions. SWRCB Order No. WQ 94-6; see 23 CCR § 2052(d). Due to the Board's decision to hold a hearing, on September 22, 1994, the SWRCB, in Order No. WQ 94-6, decided to review the waste discharge requirements and EIRs at issue on the Board's own motion.

Evidentiary hearings were subsequently conducted on April 3 and 4 and May 1, 4, 25 and 26, 1995. During the pendency of the Board's administrative proceedings, the USFWS, Bay Institute, and several of the pond operators conducted settlement discussions. These discussions resulted in four settlement agreements affecting seven of the pond operators.³ On June 22 and July 20, 1995, the Board adopted Resolution Nos. 95-37 and

² The following organizations were also included in the Bay Institute petition: Natural Resources Defense Council, Environmental Defense Fund, California Waterfowl Association, National Audubon Society, and the Tulare County Audubon Society.

³ One agreement is between the USFWS, Bay Institute, and Westlake Farms, Inc. The remaining three agreements are between the USFWS and the following pond operators: (a) Pryse Farms, Inc., Bowman Farms, Inc., Steven W. Martin Ranch, Inc., and 4-J Corporation; (b) Britz, Inc.; and (c) Rainbow Ranches, Inc.

95-46, respectively, implementing the settlement agreements.⁴ In these resolutions, the Board determined to forego review of the issues raised in the petitions as they related to the pond operators who were signatories to the settlement agreements. Unfortunately, one of the settlement agreements never became effective.⁵

Subsequent to the CVRWQCB's adoption of waste discharge requirements for the pond operators, two of the operators decided to close.⁶ In March 18, 1996, one additional pond operator entered into a settlement agreement with the USFWS.⁷ This order addresses the remaining five pond operators who are not covered by effective settlement agreements and who have not otherwise decided to close. These operators are Tulare Lake Drainage District, Lost Hills Water District, Stone Land Co., Inc., Rainbow Ranches, Inc., and Morris and Sons Farms. This order remands the waste discharge requirements and EIRs for these five operators to the CVRWQCB for reconsideration.

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⁴ Resolution No. 95-37 accepted the settlement agreement regarding Westlake Farms, Inc. Resolution No. 95-46 accepted the remaining three agreements. See fn. 3, supra. Resolution No. 95-46 was subsequently amended on March 21, 1996, by Resolution No. 96-020.

⁵ This was the agreement between the USFWS and Rainbow Ranches, Inc.

⁶ These are Church of Jesus Christ of Latter-Day Saints and Acme Drainage, Inc.

⁷ This operator is G & C Meyer Farms, Inc.

II. CONTENTIONS AND FINDINGS

Petitioners have raised numerous challenges to the action of the CVRWQCB. Among other assertions, one or more of the petitioners have alleged that the CVRWQCB acted in violation of the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et seq. (CEQA); the Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq.; the Toxic Pits Cleanup Act, Health and Safety Code Section 25208 et seq.; and other provisions of law.

In response to the Board's decision to review this matter on its own motion, Board staff reviewed the CVRWQCB record and the SWRCB evidentiary record and prepared a technical report, titled "State Water Resources Control Board Staff Technical Report, Petitions Regarding Tulare Lake Evaporation Ponds (March 11, 1996)" (Staff Technical Report). The Staff Technical Report focuses on petitioners' CEQA allegations.

While not addressing each detailed allegation and the responsive staff comments in the Staff Technical Report, the Board concludes that the waste discharge requirements and EIRs for the five remaining operators should be remanded to the CVRWQCB for reconsideration. On remand, the CVRWQCB should consider all relevant information having a bearing on the CEQA issues.

Because the SWRCB has determined that a remand of the waste discharge requirements and EIRs at issue is appropriate for reconsideration of the CEQA issues, the SWRCB finds it

unnecessary to address the remaining issues raised by petitioners at this time.

III. CONCLUSIONS

1. The waste discharge requirements and EIRs for Tulare Lake Drainage District, Lost Hills Water District, Rainbow Ranches, Inc., Stone Land Co., Inc., and Morris and Sons Farms should be remanded to the CVRWQCB for reconsideration.

2. On remand, the CVRWQCB should consider any relevant information having a bearing on the CEQA issues.

IV. ORDER

IT IS HEREBY ORDERED that the waste discharge requirements and environmental impact reports for Tulare Lake Drainage District, Lost Hills Water District, Rainbow Ranches, Inc., Stone Land Co., Inc., and Morris and Sons Farms are remanded to the CVRWQCB for reconsideration.

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IT IS FURTHER ORDERED that, on remand, the CVRWQCB should consider any relevant information having a bearing on the CEQA issues.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 21, 1996.

AYE: John P. Caffrey
 John W. Brown
 Mary Jane Forster
 Narc Del Piero

NO: None.

ABSENT: James M. Stubchaer

ABSTAIN: None.



Maureen Marché
Administrative Assistant to the Board

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 96-020

AMENDING RESOLUTION NO. 95-46 ENTITLED
"ACCEPTANCE OF SETTLEMENT AGREEMENTS AND
REVISION OF WASTE DISCHARGE REQUIREMENTS
FOR SIX OPERATORS OF
AGRICULTURAL SUBSURFACE DRAINAGE EVAPORATION PONDS
IN THE TULARE LAKE BASIN"

WHEREAS:

1. On July 20, 1995, the State Water Resources Control Board (SWRCB) adopted Resolution No. 95-46, accepting settlement agreements and revising waste discharge requirements (WDRs) for six operators of agricultural subsurface drainage evaporation ponds in the Tulare Lake basin.
2. The operators are: (1) Pryse Farms, Inc., Bowman Farms, Inc., Steven W. Martin Ranch, Inc., and 4-J Corporation (known collectively as "The Alpaugh Group"); (2) Britz, Inc.; and (3) Rainbow Ranches, Inc.
3. Resolved Clause No. 6 of Resolution No. 95-46 provided that the SWRCB's acceptance of the settlement agreements and revision of the WDRs for the six operators would not become effective unless, within 30 days of adoption of the resolution, the operators were dismissed, without prejudice, from a lawsuit entitled Bay Institute of San Francisco v. California State Water Resources Control Board, Sacramento County Superior Court Case No. 379765.
4. Pond operators, The Alpaugh Group and Britz, Inc., were dismissed without prejudice from the lawsuit; however, the dismissals did not occur until after the 30-day deadline specified in Resolution No. 95-46.
5. The settlement agreement between the USFWS and Rainbow Ranches, Inc. never became effective.
6. The SWRCB wishes to uphold the settlement agreements which are in effect. It is, therefore, necessary to revise Resolution No. 95-46 to delete Resolved Clause No. 6 and to delete the provisions regarding Rainbow Ranches.

THEREFORE BE IT RESOLVED:

Resolution No. 95-46 is hereby amended to:

1. Delete the reference to Attachment C in Resolved Clauses 1 and 5.

2. Delete Resolved Clause No. 4.

3. Delete Resolved Clause No. 6.

CERTIFICATION

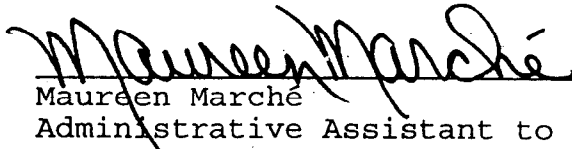
The undersigned, Administrative Assistant of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 21, 1996.

AYE: John P. Caffrey
 John W. Brown
 Mary Jane Forster
 Marc Del Piero

NO: None.

ABSENT: James M. Stubchaer

ABSTAIN: None.



Maureen Marché
Administrative Assistant to the Board