

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

	)	<b>ORDER:</b>	<b>WR 96-06</b>
	)		
In the Matter of	)	<b>SOURCES:</b>	Silver Lake
	)		tributary to
Petitions for Reconsideration	)		Silver Fork
of Decision 1635	)		American River;
Approving a Partial Assignment	)		Caples Lake
of State Filed Application 5645	)		tributary to
	)		Caples Creek and
<b>EL DORADO IRRIGATION DISTRICT AND</b>	)		Silver Fork
<b>EL DORADO COUNTY WATER AGENCY.</b>	)		American River;
	)		and Lake Aloha
	)		tributary to
	)		Pyramid Creek all
	)		three being
	)		tributary to
	)		the South Fork
	)		American River
	)		
	)	<b>COUNTIES:</b>	Alpine, Amador,
	)		and El Dorado

ORDER DIRECTING RECONSIDERATION OF DECISION 1635

BY THE BOARD:

**1.0 INTRODUCTION**

On October 2, 1996, the State Water Resources Control Board (Board) adopted Decision 1635 approving El Dorado's petition for partial assignment of state filed Application 5645. Among other matters, the decision grants El Dorado Irrigation District and El Dorado County Water Agency (El Dorado) the right to directly divert water from the South Fork American River and the right to divert water to storage at Lake Aloha and Silver and Caples Lakes, and to redivert water released from storage at Folsom Reservoir.

In accordance with Water Code section 10507, petitions for reconsideration may be filed within 30 days after the Board acts on a decision or order which involves a state filed application;

no later than November 1, 1996, in this instance. The Board may order or deny reconsideration within 30 days and thereafter it is without jurisdiction to act on petitions.

## 2.0 PETITIONS FOR RECONSIDERATION

The following persons filed timely petitions:

- State Water Contractors (Contractors)
- Westlands Water District (Westlands)
- U.S. Bureau of Reclamation (Bureau)
- Pacific Gas & Electric Company (PG&E)
- League to Save Sierra Lakes, et al. (League)

The Department of Water Resources (DWR) also filed a petition for reconsideration. The petition was filed on November 4, 1996, and is not timely.

## 3.0 SECTION 10507

Water Code section 10507 correctly provides, in part:<sup>1</sup>

"The board may order a reconsideration of all or part of a decision or order pursuant to this part, on its own motion or on petition of any person interested in the application. Any such petition must be filed within 30 days after adoption by the board of a decision or order. The power of the board to order reconsideration on its own motion shall expire 30 days after it has adopted a decision or order. The board shall order or deny reconsideration on a petition therefor within 30 days after the date of filing of such petition. The decision or order may be reconsidered by the board on all the pertinent parts of the record and such argument as may be permitted, or a hearing may be held, upon notice to all interested

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<sup>1</sup> Effective January 1, 1977, Water Code section 10507 will be repealed and petitions for reconsideration of decisions and orders involving state filed applications will be subject to the same procedures as apply to all other water right decisions and orders (stats. 1996, ch. 659, §§ 2, 20; pp. 3016, 3018).

persons, for the purpose of receiving such additional evidence as the board may, for cause allow."

#### 4.0 CAUSES FOR RECONSIDERATION

The Board may be petitioned for reconsideration upon any of the following causes:

1. Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
2. The decision or order is not supported by substantial evidence;
3. There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; and
4. Error in law.  
(23 CCR § 768.)

#### 5.0 ISSUES RAISED BY PETITIONS FOR RECONSIDERATION

The petitions for reconsideration filed by the Contractors, Westlands, and DWR address only the issue of whether the permit for El Dorado's project should be subject to Term 91.<sup>2</sup> The Bureau's petition also addresses the issue of whether the permit for El Dorado's project should be subject to Term 91.

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<sup>2</sup> Under Term 91, water is not available for diversion when satisfaction of inbasin entitlements require the Central Valley Project (CVP) and the State Water Project (SWP) to release supplemental Project water. Inbasin entitlements include senior water rights and water required by the Board to maintain water quality and fish and wildlife. Supplemental Project water includes water imported to the basin and water released from CVP and SWP storage which exceeds export diversions, carriage water in the Delta, and deliveries of project water within the basin.

In addition, the Bureau's petition asserts that it possesses a water right which precludes the Board from issuing a permit for El Dorado to divert water to storage at Lake Aloha and at Silver and Caples Lakes for rediversion at Folsom Reservoir. Both the Bureau and the League contend that Decision 1635 approves an improper season of diversion.

PG&E contends that: (1) the Board adopted conditions which attempt to regulate matters which are the sole province of the Federal Regulatory Energy Commission, and (2) the Board inappropriately commented on PG&E's claimed pre-1914 appropriative rights to supply water for consumptive use to EID.

The League raises numerous issues including the following:  
(1) Decision 1635 does not include conditions which adequately protect lake levels, (2) the Board violated CEQA because it approved a project which is different from that addressed in the project EIR, (3) the Board did not comply with the California Endangered Species Act, and (4) Decision 1635 fails to reserve sufficient water for future local use around the lakes.

**6.0 DWR'S PETITION WILL BE CONSIDERED IN REVIEWING OTHER PETITIONS**

The Board cannot accept DWR's petition because it was not timely filed. Nevertheless, because the petitions by the Contractors, Westlands, and the Bureau address the same issue, the Board will address the points and authorities set forth in DWR's petition in considering whether El Dorado's project should be subject to Term 91.

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**7.0 CONCLUSION**

The petitions raise substantial issues which merit reconsideration and the Board should order that Decision 1635 be reconsidered. This conclusion does not reflect a judgement, at this time, on the merits of the issues raised by the petitioners.

**ORDER**

NOW THEREFORE, IT IS ORDERED that the petitions for reconsideration of Decision 1635 by the Contractors, Westlands, Bureau, PG&E, and the League are granted. The arguments raised in DWR's petition shall be considered in reviewing the petitions. El Dorado shall have until December 6, 1996, to file a response to the issues raised in the petitions. The issues raised in the petitions for reconsideration shall be resolved based on the

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existing administrative record, the points and authorities in the petitions, and any response filed by El Dorado.

**CERTIFICATION**

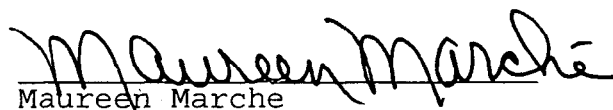
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 21, 1996.

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

NO:         None.

Absent:    None.

Abstain:   None.

  
Maureen Marche  
Administrative Assistant to  
the Board