

June 12, 2001

**STATE WATER RESOURCES CONTROL BOARD MEETING
WORKSHOP SESSION – DIVISION OF WATER RIGHTS
JULY 3, 2001**

ITEM:

SUBJECT:

PROPOSED ORDER TAKING FINAL ACTION ON PETITIONS FOR RECONSIDERATION OF DECISION 1635, MODIFYING DECISION 1635, AND AFFIRMING THE DECISION AS MODIFIED. DECISION 1635 APPROVED EL DORADO IRRIGATION DISTRICT'S AND EL DORADO COUNTY WATER AGENCY'S (EL DORADO) PETITION FOR PARTIAL ASSIGNMENT OF STATE-FILED APPLICATION 5645

DISCUSSION:

During June 1993 and October 1995, the SWRCB held a hearing to consider competing petitions for partial assignment of state-filed Application 5645 and related water right applications. On October 2, 1996, the SWRCB adopted Decision 1635. Decision 1635 approved El Dorado Irrigation District's (EID) and El Dorado County Water Agency's (hereafter collectively referred to as El Dorado) petition for partial assignment of state-filed Application 5645. The approval authorized El Dorado to divert to storage a total of 32,931 acre-feet per annum (afa) at Lake Aloha, Silver Lake and Caples Lake, and to redivert water released from upstream storage and to directly divert a total of 17,000 afa at Folsom Reservoir. Decision 1635 denied all other applications and petitions for assignment, except the applications by Kirkwood, Inc., which had already been approved.

Five parties filed timely petitions for reconsideration of Decision 1635: the State Water Contractors (SWC), Westlands Water District (Westlands), the U.S. Bureau of Reclamation (USBR), Pacific Gas & Electric Company (PG&E), and the League to Save Sierra Lakes et al. (the League). The Department of Water Resources (DWR) filed an untimely petition. The petitioners raised the following issues:

- The SWC, Westlands and DWR argue only that El Dorado's permit should include Standard Permit Term 91.
- The USBR argues that El Dorado's permit should include Term 91 and that the month of July should be excluded from the authorized season of diversion.
- The League's petition contains a number of arguments, including the following: (1) the lake level requirements imposed by Decision 1635 do not adequately protect recreational uses at the lakes, (2) the SWRCB should have addressed EID's alleged unlawful water use under claimed pre-1914 appropriative rights,

(3) the SWRCB approved an improper season of diversion and should have included Term 91 in El Dorado's permit, (4) the SWRCB violated the California Environmental Quality Act (CEQA) because it approved a project that is different from that addressed in the project EIR, (5) the SWRCB violated the California Endangered Species Act, and (6) Decision 1635 failed to reserve sufficient water for future local uses around the lakes.

- PG&E contends that: (1) the SWRCB's authority to impose lake level requirements is preempted by federal law, and (2) the SWRCB improperly commented on PG&E's claimed pre-1914 appropriative rights to supply water for consumptive use to EID.

On November 21, 1996, the SWRCB adopted Water Right Order WR 96-06. Order WR 96-06 held that the petitions raised substantial issues that merited reconsideration, and granted reconsideration of Decision 1635 without ruling on the merits of the issues raised by the petitioners.

Prior to the SWRCB adopting Decision 1635, El Dorado, as lead agency under CEQA, certified an Environmental Impact Report for the project. Litigation was filed on the adequacy of the EIR. Acting as a responsible agency under CEQA, the SWRCB presumed the EIR was adequate pursuant to Public Resources Code section 21167.3 despite the pending litigation. Subsequently, the Third District Court of Appeal invalidated El Dorado's EIR. On July 12, 1999, EID's Board of Directors certified a new final EIR. On October 29, 1999, the SWRCB admitted the 1999 EIR into the administrative record for this proceeding.

The proposed order concludes that El Dorado should be required to curtail diversions when natural and abandoned flows in the Delta watershed are insufficient to meet water quality objectives in the San Francisco Bay and Sacramento-San Joaquin Delta Estuary and other inbasin entitlements. Accordingly, the order modifies Decision 1635 to require El Dorado to comply with Standard Permit Term 91.

The order also makes certain modifications to Decision 1635 in light of the 1999 EIR. The order revises the lake level requirements imposed by Decision 1635 to protect recreational uses at Caples Lake and Silver Lake to incorporate the Lake Level Operational Commitment set forth in EID's 1999 EIR, subject to certain modifications. In addition, the order makes new findings, as required by CEQA, and imposes new requirements, based on the 1999 EIR.

The order finds that the remaining issues that were raised in the petitions for reconsideration filed by the USBR, PG&E and the League lack merit. Except to the extent that the order modifies Decision 1635, the order denies the petitions. With the modifications described above, the order finds that Decision 1635 was appropriate and proper, and affirms the decision.

POLICY ISSUE:

Should the proposed order taking final action on petitions for reconsideration of Decision 1635, modifying Decision 1635, and affirming the decision as modified be adopted?

FISCAL IMPACT:

None. This proposed decision is budgeted within existing resources.

RWQCB IMPACT:

None

RECOMMENDATION:

Staff recommends adoption of the proposed order.