

## **Orders Following Status Conference**

The Court held a case status conference in Coordinated Special Proceeding JC 4118, STATE WATER RESOURCES CONTROL BOARD CASES, on Friday, February 23, 2001. Counsel who appeared were noted on the recorded proceedings which took place in Department 17 on February 23, 2001. Following consideration of the points discussed with counsel, the Court finds that the entry of certain orders is necessary for the orderly progression of the coordinated cases. Accordingly, pursuant to my powers as the Coordination Trial Judge, the following orders are entered and considered binding on all of the parties who appeared on February 23, 2001, in Department 17, Superior Court of California, County of Sacramento.

The Court orders all ten coordinated cases stayed from all procedural and statutory deadlines raised by the claims set forth in the individual ten cases, including but not limited to any deadlines set forth in sections 21167.4, 21167.6 and 21167.8 of the California Public Resources Code, and from filing any responsive pleading to any petition for writ of mandate or complaint for declaratory or injunctive relief, or for damages (except as to demurrers and certain motions for judgement on the pleadings as otherwise set out in this order) until further order of the Court.

Petitioners who have not yet completed service on any real party in interest named in their action are ordered to have service completed by March 5, 2001. In this regard, the Court will consider service completed only if the party has been served so that the attorney for the Petitioner has in hand no later than March 5, 2001, 1) a completed proof of service allowing for proof of service to be shown under Code of Civil Procedure section 417.10 or 2) a completed notice and acknowledgement of receipt of service under Code of Civil Procedure section 415.30 signed by the party acknowledging receipt of service or 3) a formal written waiver of service signed by counsel for the party to be served. Petitioners' liaison counsel in each case is ordered to provide the Court with a list of the names and addresses of all named defendants/respondents or real parties in interest who have been served in their case (and not dismissed out) by March 12, 2001. This will allow the Court to compile a master list of all parties who will need to be served. The Court will compile such a master list and mail it out by March 19, 2001 to everyone who has appeared or been served, and has not been dismissed out. As of the receipt of said master service list, all parties to this coordinated proceeding shall be relieved of any further service obligations on any named real parties in interest who have not been served, absent a further order of the Court specifically requiring such service.

It appears to the Court that all of the actions which name the U.S. Bureau of Reclamation have been served on the U.S. Bureau of Reclamation. It is clear to the Court that the U.S. Bureau of Reclamation has decided not to participate in this coordinated proceeding. All parties to this coordinated proceeding are hereby relieved of any further service obligations on the U.S. Bureau of Reclamation, absent a further order of the Court specifically requiring such service. It appears to the Court that all of the actions which name the U.S. Department of Fish and Wildlife Service, with the exception of County of

San Joaquin, et al. v. SWRCB, et al., San Francisco County Superior Court Case No. 311499, have been served on the U.S. Department of Fish and Wildlife Service. It is clear to the Court that the U.S. Department of Fish and Wildlife Service has decided not to participate in this coordinated proceeding. All parties to this coordinated proceeding, with the exception of the San Joaquin County petitioners, are relieved of any further service obligations on the U.S. Department of Fish and Wildlife Service, absent a further order of the Court specifically requiring such service.

At least one Petitioner has indicated a desire to intervene in the other cases which make up this coordinated proceeding. As the Court believes that moving this coordinated proceeding to resolution will not be expedited by having multiple motions to intervene filed in the near future, the Court hereby notifies the parties that motions to intervene will not be entertained until further order of the Court. Because the Court does recognize the potential cross-interests that a party may have in cases wherein said party is not formally named, the Court will allow any party to this coordinated proceeding to brief and be heard on any issue which is timely before the Court and which that party desires to brief. The parties are expressly put on notice that if a party subsequently successfully intervenes in another case, then the Court will consider that party estopped from bringing demurrers or motions for judgment on the pleadings in cases wherein they did not raise and brief the issue when they first had opportunity to do so.

The State defendants/respondents have suggested, and the Court agrees, that this coordinated proceeding would be best expedited by next litigating any demurrers and preliminary legal issues such as whether any claims pled under the California Environmental Quality Act are time-barred by failure to comply with the statute of limitations set forth in Public Resources Code section 21167(c), whether any of the claims pled under the California Environmental Quality Act are barred by a lack of standing, whether any claims lack ripeness due to a failure to allege any cognizable injury resulting from the State Water Resources Control Board's adoption of Decision 1641, whether any claims are barred by immunities set forth in Sections 818.4 and 821.2 of the Government Code or other immunity doctrines, and whether any claims are barred as arising under Section 1983 of the Federal Civil Rights Act. Accordingly, the Court orders that any demurrers or motions for judgment on the pleadings which do not require citation to the administrative record are to be filed and served by April 6, 2001. Any opposition to such a demurrer or motion to dismiss is to be filed and served by April 24, 2001, with any reply to any opposition to be filed and served by April 30, 2001. Hearings on any such demurrer or motion to dismiss is hereby set by the Court for Friday, May 4, 2001, at 9:30 a.m., Department 17, Superior Court of California, County of Sacramento. The Court's intent is to have tentative rulings issued on all such demurrers or motions to dismiss posted by noon, May 3, 2001, on a web site which the Court will create.

The Court is anticipating receiving funding through the Administrative Office of the Courts that will allow the Court to create a web site for the coordinated proceeding. The Court will notify all parties if and when such a web site is created.

The Court will leave to individual Petitioners and Real Parties in Interest as to whether or not they desire to allow any real parties in interest to participate in individual cases in a limited fashion via Stipulation and Order as suggested by attorneys for Contra Costa Water District. The Court will not commit in advance to approving such arrangements but will certainly consider any proposed stipulations submitted to the Court.

The Court hereby notifies the parties that the Court intends to hold a further status conference in this matter on Friday, May 4, 2001, at 1:30 p.m., in Department 17, Superior Court of California, County of Sacramento. The Court does not anticipate requiring any counsel to submit any further status conference statements prior to the May 4, 2001, status conference.

Any objections to the form or content of this order should be filed on or before March 12, 2001, and served by way of a document clearly designated as "Objections to February 26, 2001 Orders Following Status Conference". Once the Court receives and considers the objection(s), the Court will determine whether to overrule the objection(s), grant the objection(s) in whole or in part and modify the order, or set the matter for further hearing on the objection(s). If no objections are received, then this order will become the Court's final order.

February 26, 2001

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Roland L. Candee, Judge  
Coordination Trial Judge