

**ORDER RE ORAL ARGUMENTS:
MOKELUMNE RIVER, IMPLEMENTATION EIR, DUE PROCESS**

To be Held November 14-15, 2002

*State Water Resources Control Board Cases
No. JC 4118, Sacramento Superior Court*

Judge Roland L. Candee, *Presiding*

SCHEDULE FOR ORAL ARGUMENTS		
Thursday Morning, November 14 (9:00-12:00)		
Mokelumne River Issues	San Joaquin County Petitioners	35minutes (a reply period may be reserved out of this total)
	Central Delta Water Agency Petitioners	35 minutes (a reply period may be reserved out of this total)
	State Respondents	50 minutes
	East Bay Municipal Utility Dist. (Real Party-in-Interest)	20 minutes
	Department of Water Resources (Real Party-in- Interest)	10 minutes
	Woodbridge Irrigation Dist. (Real Party-in-Interest)	10 minutes
Thursday Afternoon, November 14 (1:30-4:30)		
Implementation EIR Issues	Central Delta Water Agency Petitioners	40 minutes (a reply period may be reserved out of this total)
	Anderson Petitioners	20 minutes (a reply period may be reserved out of this total)
	State Respondents	60 minutes
	Department of Water Resources (Real Party-in- Interest)	10 minutes
	State Water Contractors (Real Party-in-Interest)	10 minutes
	Westlands Water Dist. (Real Party-in-Interest)	10 minutes
Friday Morning, November 15 (9:00-12:00)		
Due Process Issues	Central Delta Water Agency Petitioners	60 minutes (a reply period may be reserved out of this total)
	State Respondents	60 minutes
	Westlands Water Dist. (Real Party-in-Interest)	10 minutes
	State Water Contractors (Real Party-in-Interest)	10 minutes
	Department of Water Resources (Real Party-in- Interest)	10 minutes

QUESTIONS

During the week of November 11th, parties may wish to consult the web site maintained for this case for additional questions that may be posted.

Mokelumne River Settlement:

1. The San Joaquin County entities argue that the agreement will deprive them of existing water rights, and future water uses, but do not delineate how this will occur. Please identify evidence from the administrative record indicating such injury.
2. The San Joaquin County entities argue that the SWRCB should have revised past water right allocations, including a reinstatement of the NSJWCD's priority. It does not appear that any petition was before the Board concerning the NSJWCD's water rights, and such actions were not noticed. How could these actions have taken place in the context of the D-1641 proceeding?

Implementation EIR:

3. Are the Central Delta agencies are "for-profit" entities like Waste Management? *See* 79 Cal. App. 4th 1223 (2000). Do State Respondents argue that farmers who have worked and perhaps live on the land have no "demonstrable interest in or commitment to the environmental concerns" addressed by CEQA?

Due Process Issues:

4. In developing the 1995 Plan, the SWRCB apparently was engaged in a quasi-legislative function. Legislative bodies receive information from a range of sources including staff, lobbyists, public hearings, private meetings, and personal experience. If there was any impermissible activity in the development and approval of the plan, was there a remedy at that time to challenge the plan or to invoke applicable public records/public meetings statutes? However, once the plan is approved, it is readily available as public policy for all to see. So long as the quasi-judicial D-1641 process was conducted without impermissible communications, that proceeding seems one or two steps removed from any pre-plan communications. Since the Water Code vests both functions in the Board, do we have a "rule of necessity" requiring the same officials to proceed?
5. State Respondents argue that the Central Delta petitioners have shown no actual bias. Central Delta argues that it was denied a requested hearing on the impartiality issue. Is the denial of that hearing now before the Court? How can petitioners attempt to demonstrate actual bias if they are denied such a hearing?
6. At the time of the 1995 Plan and D-1641, did the SWRCB have rules concerning member and staff communications with non-agency persons during the performance of the Board's quasi-legislative and quasi-judicial functions?

OTHER LINGERING QUESTIONS

(To be discussed as time permits)

7. Have the parties been able to find any other relevant legislative history concerning Water Code § 1702, not previously presented to the Court?
8. Has the EPA's final rule concerning Bay-Delta water quality, 60 Fed. Reg. 4664, been withdrawn? If not (and without getting into the substance of the rule), what is the relationship between the final rule and D-1641? Is D-1641 superceded by the federal rule?