



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:
MP-460
WTR 4.10

MAR 07 2008

STATE WATER RESOURCES CONTROL BOARD
OFFICE OF THE CHIEF
2008 MAR -7 PM 2:50
BUREAU OF RECLAMATION
SACRAMENTO

Ms. Victoria Whitney
Chief, Division of Water Rights
Attn: Mr. Charles A. Rich
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Subject: Complaints Filed by Felix Smith and the California Salmon and Steelhead Association

Dear Ms. Whitney:

By letter dated February 8, 2008, from the Division of Water Rights, Mr. Rich forwarded the subject complaints to the Bureau of Reclamation. These complaints pertain to Reclamation's water rights for operating the Central Valley Project (CVP). The complaint by Mr. Smith alleges that irrigating high salinity seleniferous soils is creating and will continue to create conditions of pollution and nuisance. The complaint by the California Salmon and Steelhead Association (CSSA) alleges that water transfers compound the adverse impacts already occurring to fisheries in the Sacramento-San Joaquin Delta (Delta). Reclamation assumes that, in referring to transfers, CSSA is also referring to export pumping, in general, from the Delta.

Mr. Rich requests that Reclamation provide responses to these complaints.

Response to Complaint by Felix Smith

Mr. Smith filed a complaint with the State Water Resources Control Board (Board), dated November 14, 1995, claiming the unreasonable use of CVP water delivered by Reclamation to the San Luis Unit and the Exchange Contractors under its water right permits for the CVP. That complaint was dismissed by the Division of Water Rights by letter dated December 17, 1996. By letter dated April 14, 2000, Mr. Smith requested from Chairman Stubchaer an updated review of his November 14, 1995, complaint. By letter to Mr. Smith dated May 24, 2000, the Executive Director denied the requested review. By letter dated December 11, 2002, Mr. Smith again requested an updated review of his November 14, 1995, complaint. By letter to Mr. Smith dated January 31, 2003, Chairman Baggett denied the requested review.

Mr. Smith asserts that his recent complaint, dated January 10, 2008, "continues and reenergizes" his dismissed November 14, 1995, complaint. Reclamation has conducted Delta-Mendota Canal

(DMC) water quality monitoring for numerous years. In July 2002, Reclamation modified the monitoring program to include continuous sampling of the DMC to better capture the mean concentrations and daily loads of salts, selenium, and boron in the DMC. Since July 2002, Reclamation has provided a copy of the monthly data report to the Board and the Central Valley Regional Water Quality Control Board for review to demonstrate the lack of impairment of the DMC due to salt, selenium, or boron. Mr. Smith's recent complaint does not supply sufficient new information or data to the Division of Water Rights that would warrant modifying Reclamation's CVP water rights.

Therefore, the Division of Water Rights should dismiss the complaint filed by Mr. Smith, dated January 10, 2008.

Reclamation believes that it may be beneficial to provide a brief recap of other activities regarding other drainage and Delta fisheries issues that have occurred over the past few recent years.

Following the court order, issued in *Firebaugh Canal Co. v. United States*, 203 F.3d 568 (9th Cir. 2000), to provide drainage service, Reclamation developed a Plan of Action in April 2001 outlining proposed efforts to provide that service. In December 2001, Reclamation published a Preliminary Alternatives Report, San Luis Unit Drainage Feature Re-evaluation. In December 2002, Reclamation published a Plan Formulation Report (PFR). The PFR identified the In-Valley Disposal Alternative as the proposed action to provide drainage service. In May 2003, a Westside Regional Drainage Plan was redeveloped as a collaborative effort between the San Luis Unit water districts and the San Joaquin River Exchange Contractors Authority to provide drainage relief in portions of the San Luis Unit and adjacent areas. This plan called for identification of sound and effective projects to manage drainage and an accelerated implementation schedule to comply with impending regulatory constraints. In February 2004, Reclamation submitted to the Court an Amended Plan of Action for Drainage to the San Luis Unit. Subsequently, a draft Environmental Impact Statement (EIS) including PFR alternatives was made available for public review and comment during May 2005. A Final EIS was completed in May 2006 on seven drainage service action alternatives for the San Luis Unit. In March 2007, Reclamation signed a Record of Decision (ROD) to select the In-Valley/Water Needs Land Retirement Alternative, as fully described in the Final EIS. The ROD states that, assuming Congress provides appropriate authorization and appropriations, principles and actions discussed in the ROD will guide implementation of the selected alternative.

Response to Complaint by CSSA

As noted above, the complaint by CSSA refers to water transfers that use CVP and State Water Project conveyance facilities. Since these transfers involve exports of water from the Delta, this response will address the topic of exports in general. Currently, Reclamation is operating the CVP in accordance with a December 14, 2007, order issued by Federal District Court Judge Wanger, of the Eastern District of California. The terms of the order are temporary and will remain in place until the U.S. Fish and Wildlife Service (Service) completes a new

biological opinion for impacts of the CVP and State Water Project (SWP) operations on the delta smelt. Reclamation is also in consultation with the National Marine Fisheries Service (NMFS) regarding project impacts on listed species of salmon, steelhead, and green sturgeon. During the consultation period, Reclamation and the California Department of Water Resources are charged with operating the CVP and SWP, respectively, to protect delta smelt pursuant to the export criteria in Judge Wanger's order, as well as studying and monitoring how operating to the export criteria impacts delta smelt.

Once the Service and NMFS issue new biological opinions, either may require new export limitation criteria for the CVP and SWP to address sensitive fishery entrainment effects. These criteria may differ from past operations and those under Judge Wanger's order. Also, it is possible that the interim operations outlined in that order, or similar operational limitations, could become permanent for the foreseeable future.

Reclamation currently expects to issue a biological assessment by the end of April 2008. Reclamation also expects that the Service will issue a final biological opinion for the delta smelt by September 15, 2008, and that the NMFS will issue a final biological opinion for listed salmon, steelhead, and green sturgeon by the end of December 2008.

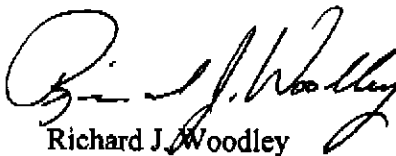
Based upon any new or similar export limitation criteria recommended in the new biological opinions, the Board may ultimately be in a position to consider whether the new long-term CVP and SWP export criteria conflict with the percent-of-inflow export limitations that the Board currently requires pursuant to Reclamation's water rights and Revised Water Right Decision 1641 (D-1641).

Reclamation's position is that, given the lack of impairment of the DMC, the current obligations imposed by Judge Wanger, the pending status of the consultations and related impact evaluations, as well as the Board's ability to reconsider the export criteria of D-1641 based upon future recommendations by the Service and NMFS, CSSA's complaint is without merit.

Therefore, the Division of Water Rights should dismiss the complaint filed by the CSSA, dated January 18, 2008.

Please refer any questions to Mr. Bob Colella, Water Rights Specialist, at 916-978-5256.

Sincerely,


Richard J. Woodley
Regional Resources Manager