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By FRANK TEMMERMAN
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CENTRAL DELTA WATER AGENCY, et al., Petitioners, v. **CALIFORNIA DEPARTMENT OF WATER RESOURCES,** Respondent, **ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ZONE 7, et al.,** Real Parties in Interest	Case No. 34-2010-80000561 Case No. 34-2010-80000703 [consolidated for CEQA Trial] **[PROPOSED] FINDINGS AND PEREMPTORY WRIT OF MANDATE (Public Resources Code § 21168.9)** Trial Date: January 31, 2014 [CEQA only]
ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, et al., Petitioners, v. **CALIFORNIA DEPARTMENT OF WATER RESOURCES,** Respondent, **KERN WATER BANK AUTHORITY, et al.,** Real Parties in Interest.	

In accordance with the Court's Rulings on Submitted Matter (March 5, 2014) and the Court's Joint Ruling on Submitted Matter (October 2, 2014) in the above-entitled actions, the Court hereby finds and orders with respect to the "Monterey Amendments to the State Water Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of the Settlement Agreement" (the Monterey Plus EIR) and the Monterey Plus Project, as follows:

FINDINGS

1. Except as provided below, the Department of Water Resources (DWR) complied with the California Environmental Quality Act (CEQA) with respect to the Monterey Plus EIR and the Monterey Plus Project. All prior project approvals and decisions, including the Monterey Amendment, the Kern Fan Element Transfer Agreement, and the *PCL v. DWR* Settlement Agreement, as well as DWR's May 2010 decision to continue operating the State Water Project pursuant to the Monterey Amendment and *PCL v. DWR* Settlement Agreement at issue in this case, shall remain in place and undisturbed by the Court's rulings and this writ.

2. The Monterey Plus EIR is deficient (i) because it fails to adequately describe the development, use and operation of the Kern Water Bank lands as a water banking and recovery project, and (ii) in its discussion, analysis, and (if appropriate) mitigation of the potential impacts – particularly to groundwater hydrology and water quality – associated with the Kern Water Bank Authority's (KWBA) anticipated use and operation of the Kern Water Bank lands as a water banking and recovery project.

3. The use and operation of the Kern Water Bank lands as a water banking and recovery project is severable from the other portions of the Monterey Plus Project.

4. Severance of the use and operation of the Kern Water Bank lands as a water banking and recovery project from the other portions of the Monterey Plus Project will not prejudice complete and full compliance with CEQA.

5. DWR shall be allowed to correct the deficiencies identified in the Court's Rulings on Submitted Matter (March 5, 2014) and Joint Ruling on Submitted Matter (October 2, 2014) and recertify a revised Monterey Plus EIR without reopening the non-defective portions of the

Monterey Plus EIR. Upon recertification, only those portions of the revised Monterey Plus EIR that are new or changed shall be subject to challenge under CEQA by petitioners or other interested parties.

PEREMPTORY WRIT OF MANDATE

Pursuant to Public Resources Code section 21168.9, the Court commands as follows:

1. The use and operation of the Kern Water Bank is severed from the remainder of the Monterey Plus Project.

2. DWR shall vacate its February 1, 2010 certification of the Monterey Plus EIR.

3. DWR shall revise the Monterey Plus EIR's project description to include the development, use and operation of the Kern Water Bank as a water banking and recovery project, and revise the Monterey Plus EIR as necessary to correct the CEQA error with respect to the analysis of the potential impacts associated with the transfer, development, use and operation of the Kern Water Bank as a water banking and recovery project as identified in the Court's Rulings on Submitted Matter (March 5, 2014). DWR's preparation of the revised Monterey Plus EIR shall be in accordance with the Court's rulings in the *Rosedale* and *Central Delta* matters.

4. DWR's May 2010 Monterey Plus Project decision as it related to the Kern Water Bank's use and operation will remain in place on an interim basis pending preparation of an adequate EIR. At the conclusion of the revised Monterey Plus EIR process, DWR (as lead agency) and KWBA (as responsible agency) shall make a new determination regarding whether to continue the use and operation of the Kern Water Bank by KWBA.

5. Except as otherwise provided herein, DWR may continue to implement the Monterey Plus Project and operate the State Water Project pursuant to the Monterey Amendment and the *PCL v. DWR* Settlement Agreement without limitation.

6. Until this writ is discharged, KWBA may continue to use and operate the Kern Water Bank lands as a water banking and recovery project subject to the following conditions: (i) existing Kern Water Bank operations shall be maintained, but not expanded; and (ii) the Kern Water Bank shall be subject to and operated in compliance with the "Interim Operations Plan" (a

copy of which is attached hereto as Exhibit A and, by this reference, incorporated herein) and the existing Kern Environmental Permits (as defined in the *PCL v. DWR* Settlement Agreement).

7. On or before December 31, 2014, DWR shall file an initial return reporting to the Court the steps and schedule it proposes to comply with this writ. Unless the Court orders otherwise for good cause shown, DWR must correct the deficiencies in the Monterey Plus EIR and recertify a revised Monterey Plus EIR by December 31, 2015.

8. DWR shall, by way of final return to this peremptory writ of mandate, lodge with this Court: (i) the revised Monterey Plus EIR, (ii) DWR's certification of and findings regarding same, and (iii) the record of proceedings for that administrative action. The Court will conduct a substantive review of the same for compliance with this peremptory writ of mandate. Only those portions of the revised Monterey Plus EIR that are new or changed shall be subject to challenge under CEQA by petitioners or other interested parties. No other challenges that were raised or could have been raised with respect to the Monterey Plus EIR may be raised in any challenge to the revised Monterey Plus EIR.

9. Except as provided herein, this peremptory writ of mandate shall not limit or constrain DWR's lawful jurisdiction and discretion.

10. The Court shall retain jurisdiction over this proceeding until DWR files a final return demonstrating compliance with this peremptory writ of mandate and as necessary CEQA, and this Court issues an order discharging this peremptory writ of mandate.

Dated: November 24, 2014

Timothy M. Frawley
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

INTERIM PROJECT RECOVERY
OPERATIONS PLAN
REGARDING KERN WATER BANK AUTHORITY (KWB) AND ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT (ROSEDALE) PROJECTS

Purpose.

Consistent with the MOUs governing their respective projects, this interim Operations Plan ("Plan") designates measures to be employed to "... *prevent, eliminate or mitigate significant adverse impacts*" resulting from project operations within areas of concern (AOC's).

Projects included within this Plan are the following:

1. Kern Water Bank Project.

2. All Rosedale Projects which are subject to an MOU wherein the KWBA is a signatory as an "adjoining entity."

Plan Components:

A. Establish a separate KWB/Rosedale Operations Plan Implementation Committee ("Joint Operations Committee") for the following purposes.

1. The Joint Operations Committee will be separate from the Kern Fan Monitoring Committee. Rosedale and the KWBA will jointly participate in the Joint Operations Committee. Each party will have equal representation on the Joint Operations Committee and an equal voice in its determinations. The Parties will agree on an appropriate level of Director participation.

2. The Committee will not duplicate the water quality and water level monitoring conducted by the Kern Fan Monitoring Committee, but conduct additional monitoring as needed.

3. The Committee will regularly update and compare the AMEC and Harder Models to actual conditions; and for purposes of making determinations hereunder an average of the output for the two models shall be utilized. The Joint Operations Committee may, based on experience gained, select and regularly update a mutually agreeable groundwater model capable of accurately predicting groundwater impacts resulting from project operations ("Model"). As a matter of practice, the Committee will use the best and latest science and information available in all modeling and technical matters. In case of a dispute concerning a model or its application, the Parties shall consult with a third party to resolve the matter.

4. Provide status of groundwater conditions, pumping rates and volumes, and model projections to each entity to identify any developing problems.

5. Provide a forum for and facilitate discussions within any localized area of concern ("AOC").

6. Fund the actions described below at D, E, F and G in recognition of the joint impact (both positive and possibly negative) on landowners by both the KWB and Rosedale banking projects.

B. Implement Proactive Measures (in addition to A. above).

1. KWBA and Rosedale will be obligated to contribute funds to meet mitigation obligations hereunder ("Action Fund"), which shall be $2.00/AF of recovered water from future project operations (actually pumped, not exchanged), until the Action Fund balance reaches $1.0 million. If the Action Fund balance drops below $500,000 contributions shall be resumed until the Action Fund balance again reaches $1.0 million. In addition, KWBA and Rosedale shall initially provide $250,000 and $50,000, respectively. Rosedale shall maintain an accounting of funds obligated by the parties and shall serve as fiscal agent for the Action Fund. As actions are taken by the Joint Operations Committee pursuant to D, E, F and G, the fiscal agent shall invoice to the extent funds are obligated to the Action Fund, and each shall remit the requested funds within 30 days of invoice.

2. KWBA and Rosedale will use the Models as a tool to evaluate groundwater impacts as well as the With Project verses Without Project groundwater levels. For purposes of this Plan, the Parties have agreed the Without Project Condition shall assume no farming on the KWB lands and the KWB shall receive a basin credit of 6,000 acre-feet per year. The Models will be periodically run and updated as the Parties projected recovery plans become known or change and With Project conditions will assume such conditions. Recovery in any calendar year shall not commence until the Models have been run for the projected operations and the Committee has met to review the results.

3. The models have been and will be used to:

   (a) forecast groundwater levels.

   (b) forecast when With Project water levels become deeper than Without Project water levels (with both KWB and Rosedale projects). For purposes of this plan a condition shall be considered a negative project impact ("NPI") for which the measures described at D, E, F and G may be

operative where the With Project water level is 45 feet deeper than the Without Project water level, as forecasted by the Model.

(c) forecast any localized areas for special attention and/or monitoring, i.e., AOC's.

(d) identify domestic wells at risk of impacts.

4. KWBA and Rosedale will jointly research potential emergency response for domestic well health and safety issues within Rosedale and Buena Vista and jointly respond as described below at F.

5. The Joint Operations Committee will:

(a) establish a process to respond to and evaluate landowner claims associated with Project operations.

(b) determine whether landowner outreach should be proactive, reactive or both.

6. In the event the Joint Operations Committee cannot agree on the implementation of this agreement or the proper action in response to a landowner claim, such dispute shall be submitted to binding arbitration before a single neutral arbitrator appointed by the Parties, and in absence of such consent, appointed by the presiding judge of the Kern County Superior Court. The arbitration shall be called and conducted in accordance with such rules as the Parties shall agree upon, and if the absence of such agreement, in accordance with the procedures set forth in California Code of Civil Procedure section 1282, et seq.. The parties shall attempt to jointly appoint the neutral arbitrator within ten days after a dispute arises, and in the event the parties cannot agree to a neutral arbitrator within said ten-day period, either party may make a request to the presiding judge of the Kern County Superior Court immediately thereafter. Notwithstanding the time periods prescribed by the Code of Civil Procedure section 1282, et seq., all arbitration conducted hereunder shall be commenced within thirty days of the selection of the neutral arbitrator, unless agreed to otherwise by the Joint Operations Committee and the affected landowner, if any. The dispute resolution process selected by the Parties shall be the exclusive remedy for landowners agreeing to participate in and receive the benefits hereunder.

7. With respect to the interpretation and enforcement of this Plan, and with respect to the resolution of any matter left for future determination or implementation, the Parties agree to carry out such duties and responsibilities in good faith and in cooperation with one another, to the end that the objectives and purposes of this agreement will be achieved and/or carried out to the greatest extent practicable.

C. Establish Triggers and Actions within any identified AOC.

As described below at sections D, E, F, and G, these actions will be implemented in consultation with the Parties through the Joint Operations Committee. The triggers and actions below are for wells within any identified AOC, subject to the following:

1. These actions would not occur in years when average water levels (measured at the following wells: 29S/25E-27N1&2, 29S/25E-25M1&2, 29S/26E-31H1&2, and 29S/25E-35G01) are less than 140 feet from the surface as measured on March 31 of a given year because it is expected that water levels will not decline during such year to an extent resulting in an NPI.

2. It is the intent of the Parties to mitigate and/or compensate for legitimate Project impacts; it is not the intent of the Parties or the Plan to generate a windfall for landowners. Accordingly, reasonable adjustments in the form or level of mitigation and/or compensation will be made where it can be demonstrated that the affected well requires remediation for reasons other than temporary groundwater level declines resulting from Project operations (i.e., general overdraft conditions, lack of well maintenance, normal wear and tear, failure of well equipment, etc.).

3. For agricultural wells to be eligible for mitigation as provided below, the affected landowner shall provide information concerning the condition of the well and casing and pumping equipment, as determined appropriate by the Joint Operations Committee.

D. Action for Ag Wells – Well Adjustment Needed and Available

1. Trigger: When the Model predicts NPI for an operational ag well outside the current operating range of the pump but within the potential operating range of the well.

2. Actions:

   (a) Jointly field verify static depth to groundwater levels within the well and compare to Model values.

   (b) Compare pump setting information with Model projected pumping water levels throughout the year to determine pump submergence levels and evaluate the necessity and feasibility of lowering the well pump to meet the landowner's needs.

   (c) Secure an estimate to complete the necessary work.

(d) Using the Action Fund, pay all costs associated with the landowner claim, including the cost to complete the necessary work (less negotiated offsets), upon the landowner executing a release.

E. Action for Ag Wells – Well Adjustment Unavailable

1. Trigger: When the Model predicts NPI for an operational ag well outside the current and potential operating range of the well.

2. Actions:

(a) Jointly field verify static depth to groundwater levels within the well and compare to Model values.

(b) Supply equivalent water supply to the affected landowner from an alternate source at no greater cost to the affected landowner; or

(c) With the consent of the affected landowner, provide other acceptable mitigation; or

(d) Reduce or adjust pumping as necessary to prevent, avoid or eliminate the NPI. Use the Model(s) to identify the well or wells that may require reduction or adjustment in pumping. The Parties agree to share available Project water supplies in a manner such that the burden of reduced pumping shall be borne by the Parties in proportion to the Model(s) projection of their respective impacts.

F. Action for Domestic Wells.

1. Trigger: Emergency health and safety concerns exist because a domestic submersible pump production ceases or is likely to cease as a result of pumping by either or both of the Parties' Projects.

2. Actions:

(a) Jointly field verify if flow stoppage is due to groundwater level decline.

(b) Obtain joint right-of-entry permit and well data release from well owner.

(c) Collect pump manufacture data, the in-situ pump setting and the casing depth information.

(d) If flow stoppage is due to causes unrelated to groundwater level decline (i.e., pump failure, casing degradation, etc.) repairs are the responsibility of the landowner.

(e) If flow stoppage is due to groundwater level decline in the aquifer proximate to the impacted well, regardless of cause, offer to fund from the Action Fund one of the following, as determined by the Joint Operations Committee, if possible, in order to provide the least cost short and long term solution:

(1) Lower the domestic submersible pump bowl setting sufficient to restore and maintain service.

(2) Provide a one-time permanent connection to the nearest water service provider.

(3) Drill and equip a new domestic well. Joint Operating Committee to decide if the landowner should contribute based on betterment.

(4) If necessary, provide interim in-home water supplies until action (1), (2) or (3) above is completed.

(f) Using the Action Fund, pay all costs associated with the landowner claim, including the cost to complete the necessary work (less negotiated offsets), upon the landowner executing a release.

G. Action for Other Landowner Claims.

1. Trigger: A landowner makes a claim of impact on his groundwater use (which could be due to the projects, adjacent landowners, or a combination)

2. Actions:

(a) Refer claim to the Joint Operations Committee to evaluate and respond to landowner claim.

(b) Process claim according to agreed upon dispute resolution process (see B.6., above) in the event the Joint Operations Committee does not agree on an appropriate response.

H. Additional Actions and Miscellaneous.

1. Subject to H.3, this interim operations Plan will become effective on September 5, 2014.

2. The Joint Operations Committee will evaluate and, if appropriate, mitigate 2010 landowner claims according to the process set forth in this Plan, provided the claims have not been dismissed or are intended to be dismissed in the pending Pioneer Litigation.

3. Petitioners Rosedale and Buena Vista Water Storage District shall support and not object to this Plan in any and all of its filings and argument for the remedies hearing(s) in *Rosedale v. DWR* and *CDWA v. DWR*, currently set for September 5, 2014. The effectiveness of this Plan is conditioned on issuance of a remedy order by the Court pursuant to CEQA and Public Resources Code section 21168.9 that does not restrict KWB operations, while DWR is conducting further CEQA review of same, provided the operations are conducted subject to the Plan. This Plan shall be in effect until DWR's certification of its environmental document prepared in response to the Court's order in *Rosedale v. DWR* and *CDWA v. DWR*, and filing of its Return to Writ in such proceeding. The parties have negotiated a remedy order in the form of a peremptory writ which incorporates this Operations Plan and which will be jointly presented to the Court for signature. If the Court accepts the negotiated peremptory writ in the form presented and issues a judgment consistent with the same in both cases, then the Kern Water Bank Authority and its member entities waive any right to appeal or challenge both (i) the peremptory writ and (ii) the order on which it is based (i.e., March 5, 2014 decision in *Rosedale-Rio Bravo Water Storage District, et al. vs. Department of Water Resources, et al.*).

4. This interim Plan is not intended to and shall not establish any precedent for the supplemental environmental document DWR is required to prepare in *Rosedale v. DWR* and *CDWA v. DWR*, or its compliance with CEQA, including, but not limited to, with respect to the appropriate baseline(s), significance threshold(s), and what appropriate mitigation measure(s), if any, should apply following the term of this interim Plan. Nothing in this Plan is intended to act or be construed as a waiver of the parties respective rights to challenge any increase in facilities or operations of the other parties, either in the *Rosedale v. DWR* action (pursuant to the continuing jurisdiction of the Court), or in other legal proceedings, as appropriate.

5. While this Plan is in effect, KWBA may repair or replace existing facilities but shall not take any action that would increase or augment their ability to recover water beyond their existing capacity, as of the date of this Plan, to and including not increasing the horsepower of any well beyond that currently in place. KWBA shall provide Rosedale and Buena Vista a copy of energy statements demonstrating the horsepower of each well operational on the KWBA and provide access to Buena Vista and Rosedale to physically inspect each well. Additionally, the three new wells to be constructed by the KWBA as part of the IRWMP grant program shall be replacement wells with the KWBA to eliminate production from at least one well located within 1.5 miles of Stockdale Highway. Further, the three replacement wells shall be not be constructed within 1.5 miles of Stockdale Highway, and shall not be subject to the horsepower limitations provided above.

6. This agreement will not prejudice petitioners' (Rosedale and/or Buena Vista's) right to claim costs and reasonable attorneys' fees incurred in connection with the *Rosedale v. DWR* litigation. Nothing herein shall be construed as a waiver of any party's right to appeal from any order regarding the recovery of attorneys' fees.

APPROVED this ___day of _____, 2014

KERN WATER BANK AUTHORITY

By_____

ROSEDALE-RIO BRAVO WATER STORAGE DISTIRCT

By_____

BUENA VISTA WATER STORAGE DISTRICT

By_____