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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2013-0030-EXEC

In the Matter of the Diversion and Use of Water by

Monterey County Water Resources Agency

ORDER APPROVING SETTLEMENT AGREEMENT AND PARTIAL REVOCATION

BY THE EXECUTIVE DIRECTOR[1]

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the issuance of a Notice of Proposed Revocation to the Monterey County Water Resources Agency (Agency). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights prosecution team (Division Prosecution Team) and the Agency have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

The Agency originally submitted Application 13225 (and Application 13226 that was combined into Permit 11043) in response to the problems of seawater intrusion in the Salinas Valley Groundwater Basin that were examined in the California Department of Public Works, Division of Public Works' Bulletin 52 published in 1946. Bulletin 52 ascertained the extent and cause of seawater intrusion into the Basin and proposed the

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[1] State Water Board Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

diversion of Salinas River water for delivery to the East Side Area and Pressure Areas of the Basin to alleviate groundwater pumping in those areas. The express intent of Applications 13225 and 13226 was to implement the solution outlined in Bulletin 52 to combat seawater intrusion.

Permit 11043 authorizes Monterey County Flood Control and Water Conservation District (now known as Monterey County Water Resources Agency) to divert 400 cubic feet per second from the Salinas River for municipal, industrial and agricultural uses. The maximum amount of water diverted under Permit 11043 is not to exceed 168,538 acre-feet per year. The permit required that construction work be completed by July 1, 1962 and that the water be applied to the authorized use by July 1, 1967.

Permittee has been granted five time extensions. Time extensions were approved by orders dated March 22, 1968, April 2, 1964 and October 24, 1963, and by Orders WR 76-12 and WR 82-13.

In 2010, the Agency, together with funding assistance and policy support from the Board, successfully implemented Phase I of the Salinas Valley Water Project to stop seawater intrusion in the Basin by delivering water for agricultural use in the areas identified in Applications 13225 and 13226 in lieu of groundwater pumping. Phase II of the Project will provide the additional surface water needed based on actual monitoring data of the effectiveness of Phase I, to bring complete resolution to seawater intrusion by the delivery of surface water to the areas identified in Applications 13225 and 13226. Permit 11043 is an important part of the Phase II solution to seawater intrusion.

On January 6, 2010, the Division Prosecution Team issued a Notice of Proposed Revocation of Permit 11043. The Division Prosecution Team asserted that the Agency had failed to commence, prosecute with due diligence and complete the work necessary to appropriate water under Permit 11043. Upon request by the Agency, the Board, on

November 21, 2012, issued a Notice of Public Hearing for the proposed revocation of Permit 11043.

The Agency and the Division Prosecution Team have agreed to settle the matters identified in the Notice of Proposed Revocation through the attached Settlement Agreement in lieu of a hearing on said matters. On July 5, 2013, at the request of the Division Prosecution Team, the hearing was postponed. A number of parties requested copies of the Settlement Agreement, which was provided by the Division Prosecution Team on July 10, 2013. Pursuant to the November 21, 2012 hearing notice, the Board, by email dated July 11, 2013, provided the parties to the hearing an opportunity to comment on the settlement. Seven comments were received from parties to the hearing and two from non-parties; all were considered.

3.0 SETTLEMENT AGREEMENT

The Agency and the Division Prosecution Team engaged in settlement discussions and reached an agreement on language that is mutually acceptable and is contained in the Settlement Agreement that is attached hereto. The general terms of the settlement are: (1) the Agency agrees to partial revocation of the face value of Permit 11043 to 135,000 acre-feet per year; (2) the Agency agrees to bypass flows, as specified in paragraph 1.b. of the Settlement Agreement, prior to diverting any water pursuant to Permit 11043; (3) the Agency agrees to the identified milestones towards implementation of Phase II of the Salinas Valley Water Project; and (4) the Division Prosecution Team agrees to withdraw the Notice of Proposed Revocation dated January 6, 2010. The parties recognize that approval of the Settlement Agreement does not constitute State Water Board approval of any petitions for change or extension of time that may be required for completion of the Project.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and the Agency is approved and is incorporated by reference into this Order.

STATE WATER RESOURCES CONTROL BOARD

Thomas Howard
Executive Director

Dated: August 7, 2013

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is entered into and effective this 1st day of ~~June,~~ July 2013 by and among the Prosecution Team of the State Water Resources Control Board's ("State Water Board" or "Board") Division of Water Rights ("**Division Prosecution Team**"), and the Monterey County Water Resources Agency ("**Agency**"). Each of the parties to this Agreement is sometimes referred to as a "**Party**" and are collectively sometimes referred to as the "**Parties**."

Recitals

A. Permit 11043 (Application 13225) authorizes Monterey County Flood Control and Water Conservation District (now known as Monterey County Water Resources Agency) to divert 400 cubic feet per second from the Salinas River for municipal, industrial and agricultural uses. The maximum amount of water diverted under Permit 11043 is not to exceed 168,538 acre-feet per year.

B. The Agency originally submitted Application 13225 (and Application 13226 that was combined into Permit 11043) in response to the problems of seawater intrusion in the Salinas Valley Groundwater Basin that were examined in the California Department of Public Works, Division of Public Works' Bulletin 52 published in 1946. Bulletin 52 ascertained the extent and cause of seawater intrusion into the Basin and proposed the diversion of Salinas River water for delivery to the East Side Area and Pressure Areas of the Basin to alleviate groundwater pumping in those areas. The express intent of Applications 13225 and 13226 was to implement the solution outlined in Bulletin 52 to combat seawater intrusion.

C. In 2010, the Agency, together with funding assistance and policy support from the Board, successfully implemented Phase I of the Salinas Valley Water Project to stop seawater intrusion in the Basin by delivering water for agricultural use in the areas identified in Applications 13225 and 13226 in lieu of groundwater pumping. Phase II of the Project will provide the additional surface water needed, based on actual monitoring data of the effectiveness of Phase I, to bring complete resolution to seawater intrusion by the delivery of surface water to the areas identified in Applications 13225 and 13226. Permit 11043 is an important part of the Phase II solution to seawater intrusion.

D. On January 6, 2010, the Division Prosecution Team issued a Notice of Proposed Revocation of Permit 11043. The Division Prosecution Team asserted that the Agency had failed to commence, prosecute with due diligence and complete the work necessary to appropriate water under Permit 11043. Upon request by the Agency, the Board, on November 21, 2012, issued a Notice of Public Hearing for the proposed revocation of Permit 11043. The hearing is currently scheduled to commence on August 13, 2013.

E. The Parties have engaged in settlement negotiations seeking to set aside the proposed revocation of Permit 11043 in light of the important public interest in solving seawater intrusion in the Salinas Valley. The Parties believe that the provisions of this Agreement serve the public

interest and so believe that proceeding with the proposed revocation and hearing is not in the best interests of any Party or the public.

F. This Settlement Agreement will be submitted to the State Water Board's Executive Director for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement and will become effective when the State Water Board's Executive Director issues an order approving the settlement.

G. The Parties wish to resolve the issues identified in the Notice of Proposed Revocation by means of this Agreement, as follows:

Agreements

1. Amendments to Permit 11043.

a. *Face Amount.* The maximum amount of water diverted under Permit 11043 shall be reduced to a quantity not to exceed 135,000 acre-feet per year.

b. *Bypass Flows.* The Agency will refrain from diverting under Permit 11043 unless the natural flow of the Salinas River at the Eastside Canal Intake point of diversion under Permit 11043, which shall be calculated by subtracting releases by the Agency from Nacimento and San Antonio Reservoirs from total flows at the Soledad gaging station on a three-day running average, is greater than the following amounts:

Month	Amount (cfs)
January	3.30
February	6.20
March	6.41
April	16.43
May	17.21
June	20.62
July	24.02
August	18.89
September	20.97
October	10.51
November	4.56
December	2.64

These amounts are to be bypassed before any water is diverted pursuant to Permit 11043. These amounts are based on the best available information of recent diversions from the Salinas River downstream of the Eastside Canal Intake point of diversion under Permit 11043 as reported to the Board.

c. *Other terms.* All other terms of Permit 11043 will remain unchanged. In particular, the purpose of use of the water appropriated under Permit 11043 will continue to be for municipal and industrial and agricultural purposes and the points of diversion and places of use identified in Permit 11043 will remain unchanged.

2. Milestones. The Agency shall make progress towards implementation of Phase II of the Salinas Valley Water Project ("**Project**") by:

a. Submitting a Petition for Extension of Time to the Board within 60 days of the effective date of this Agreement.

b. Issuing a Notice of Preparation for the Project by July 1, 2014.

c. Releasing a Draft Environmental Impact Report for the Project by July 1, 2015.

d. Issuing a draft financing plan for construction and operation of the Project by July 1, 2016.

e. Certifying a Final Environmental Impact Report for the Project by July 1, 2017.

f. Submitting necessary permit applications for regulatory agency approvals for the Project by July 1, 2018.

g. Approving a financing plan for construction and operation of the Project by July 1, 2019.

h. Finalizing Project construction drawings by July 1, 2020.

i. Submitting a financing plan for construction and operation of the Project for public approval by July 1, 2021.

j. Obtaining final permits and other agency approvals for the Project by July 1, 2023.

k. Issue notice to proceed with construction of the Project by July 1, 2024.

l. Complete construction of the Project and make initial diversion of water under Permit 11043 by July 1, 2026.

As required by California Code of Regulations, title 23, section 847, the Agency will file progress reports annually not later than each September 1 with the Board to document progress and completion of each milestone.

3. Withdrawal of Notice of Proposed Revocation. The Division Prosecution Team agrees, within 5 business days of the effective date of this Agreement, to withdraw the Notice of Proposed Revocation of Permit 11043 and support cancelation of the public hearing by the Board.

4. No Admissions. Nothing in this Agreement shall be construed as an admission by any Party regarding any subject matter of this Agreement. Nothing herein shall be interpreted as any endorsement, assertion or rejection of water rights claimed by third parties not subject to this Agreement. The Parties agree that California Evidence Code sections 1152 and 1154, and Federal Rule of Evidence 408, render this Agreement inadmissible as evidence against either of the Parties in any adjudicative or quasi-adjudicative proceeding, except: (i) that either Party may offer this Agreement as evidence in an action that seeks to compel the other Party to perform its obligations under this Agreement, and (ii) this Agreement and the Agency's performance of the terms of this Agreement may be offered as evidence in the event that the Division Prosecution Team seeks to renew its efforts to revoke Permit 11043. Notwithstanding the preceding sentence, the Parties agree that they may jointly offer this Agreement in evidence to support the Board's actions under paragraph 3 in the event that such actions are challenged, either before the Board or in any other administrative, legislative or judicial forum.

5. Costs and Fees. Each Party shall bear its own fees and costs, including attorneys' and experts' fees, associated with the Proposed Revocation and this Agreement, including any dispute or other proceeding regarding this Agreement that may arise in the future.

6. Postpone Hearing. The Agency and the Division Prosecution Team have requested that the hearing in this matter be indefinitely postponed pending approval of this Settlement Agreement by the Executive Director.

7. Waiver of Reconsideration. The Agency waives its right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.

8. General Provisions

   a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.

   b. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.

c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

d. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.

e. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.

f. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.

g. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

h. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

i. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.

j. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.

k. *Compliance with Law.* In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

l. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary. In particular, the Parties explicitly agree and acknowledge that the bypass flows set forth above in Paragraph 1.b do not create a right or other interest in such flows in favor of any third party.

m. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

n. *State Water Board Is Not Liable.* Neither the State Water Board members nor the Board's staff, attorneys or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Agency or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Agency or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

o. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

STATE WATER RESOURCES CONTROL BOARD

Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000
Attention: Assistant Deputy Director, Permitting and Enforcement Branch

MONTEREY COUNTY WATER RESOURCES AGENCY

David Chardavoyne
General Manager
893 Blanco Circle
Salinas, CA 93901

Dated: July 1, 2013

STATE WATER RESOURCES CONTROL BOARD

By: James W. Kassel
James W. Kassel
Assistant Deputy Director
State Water Board, Division of Water Rights

Prosecution Team

Dated: July 1, 2013

Approved As To Form:

By: David Rose
David Rose
Staff Attorney
State Water Board, Division of Water Rights

Prosecution Team

Dated: 28 June 2013

MONTEREY COUNTY WATER RESOURCES AGENCY

By: David Chardavoyne
David Chardavoyne
General Manager

Dated: June 28, 2013

Approved As To Form:

By: _____
David R.E. Aladjem
Counsel

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