

State Water Resources Control Board

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August 20, 1999

Mr. Kevin O'Brien

Downey, Brand, Seymour & Rohwer, LLP

555 Capitol Mall, Tenth Floor

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Mr. David Sandino

Department of Water Resources

1416 Ninth Street, #1118

Sacramento, CA 95814

Mr. Andrew Hitchings

DeCuir & Somach

400 Capitol Mall #1900

Sacramento, CA 95814

Dear Messrs. O'Brien, Hitchings, and Sandino:

WATER RIGHT HEARING REGARDING NATOMAS CENTRAL MUTUAL
WATER COMPANY'S PETITION FOR A TEMPORARY WATER TRANSFER --
RULING ON OBJECTIONS TO EVIDENCE SUBMITTED BY DEPARTMENT OF
WATER RESOURCES

Natomas Central Mutual Water Company's (Natomas) and Western Water Company's objections to the testimony of the Department of Water Resources' witness, Mr. Larry Gage, are overruled. Mr. Gage's testimony appears to be relevant and its admission into evidence would not violate constitutional due process requirements.

Mr. Gage's written testimony addresses the question whether there is sufficient capacity in the State Water Project's conveyance facilities to effectuate the proposed transfer. While I recognize that the State Water Resources Control Board (SWRCB) could approve the transfer even if there were no capacity, a lack of capacity for the transfer may be relevant to the question whether the transfer should be approved or what the conditions of approval should be.

In addition, admitting Mr. Gage's testimony would not violate any person's due process rights. All persons who received the hearing notice were on notice that any issue relevant to the SWRCB's approval of the transfer, including the issue of capacity, could be addressed in this proceeding. Moreover, the SWRCB's order in this case will address only Natomas's proposed transfer. Any finding regarding the availability of capacity in the order will not be conclusive as to the availability of capacity in future transfer cases.

Finally, while a final order in this case may be treated as precedential, due process requirements do not obligate the SWRCB to notify every person potentially affected by a precedential decision or order. The SWRCB may also depart from its own precedent in future cases if warranted under the circumstances.

I have already ruled on Natomas's objections to the United States Bureau of Reclamation's (USBR) testimony and exhibits. In light of those objections, however, I would like to remind the parties that with a few exceptions SWRCB proceedings are not conducted in accordance with the technical rules of evidence. SWRCB proceedings are governed by most of chapter 4.5 of the Administrative Procedure Act (Gov. Code, §§ 11400-11470.50), Evidence Code sections 801-805, and Government Code section 11513. (Cal. Code Regs., tit. 23, § 648.)

Generally speaking, those provisions allow for the admission of any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, even if the evidence could be excluded in a court of law. (See Gov. Code, § 11513, subd. (c).) Among other things, the rules governing SWRCB proceedings allow for the admission of hearsay evidence, nonexpert opinion testimony, and legal conclusions, although, depending on the circumstances, such evidence may be entitled to little weight, or in some cases no weight at all. The hearing officer also has discretion to exclude evidence

"if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time." (Gov. Code, § 11513, subd. (f).)

In accordance with my prior ruling, Natomas's objections to the USBR's evidence will be applied to the weight to be given the evidence. In addition, when this proceeding resumes on August 25, 1999, Natomas will have the opportunity to cross-examine the USBR's witnesses on their qualifications, among other things. Natomas will also have the opportunity to fully address the question of the weight that should be afforded to the USBR's evidence in Natomas's closing brief.

If you have any questions regarding this ruling, please contact Dana Differding, Staff Counsel, of SWRCB's Office of Chief Counsel, at (916) 657-2086.

Sincerely,

/s/ by

James M. Stubchaer

Hearing Officer

cc:

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