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CLERK, US DIST. COURT
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FIREBAUGH CANAL COMPANY and CENTRAL CALIFORNIA IRRIGATION DISTRICT, Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants, And WESTLANDS WATER DISTRICT Defendant-In-Intervention.	CIV-F-88-634 OWW CIV-F-91-048 OWW ORDER MODIFYING PARTIAL JUDGMENT ON FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: STATUTORY DUTY TO CONFORM TO NINTH CIRCUIT OPINION
SUMNER PECK RANCH, INC., a California corporation, et al., Plaintiffs, v. BUREAU OF RECLAMATION, et al., Defendants.	

The parties' cross-motions for modification of the Partial Judgment on Findings of Fact and Conclusions of Law Re: Statutory Duty ("Partial Judgment") to conform to the United States Court of Appeals for the Ninth Circuit opinion in *Firebaugh Canal Co. v. United States*, 203 F.3d 568, 578 (9th Cir. 2000) came on for hearing September 12, 2000, at 9:00 a.m. Plaintiffs Firebaugh Canal Water District, et al., were represented by Minasian, Spruance, Baber, Meith, Soares & Sexton, through Michael V. Sexton, Esq. Plaintiffs Sumner Peck Ranch, Inc., et al., were represented by Smiland & Khachigian, through William M. Smiland, Esq. Defendant-in-Intervention and Defendant Westlands Water District was represented by Kronick, Moskovitz, Tiedemann & Girard, through Thomas W. Birmingham, Esq. Defendants United States Department of the Interior, et al., were represented by the U.S. Department of Justice Environment & Natural Resources Division, through Maria A. Iizuka, Esq., and Yoshinori H.T. Himel, Esq., Assistant U.S. Attorney. Intervenors County of Contra Costa, et al., were represented by Laurens H. Silver, Esq. After consideration of the briefs and arguments of counsel, and all other matters presented:

ON REMAND, THE PARTIAL JUDGMENT ON FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED March 12, 1995, IS MODIFIED AS FOLLOWS:

1. The Secretary of the Interior's failure to provide drainage to the San Luis Unit of the Central Valley Project, as is mandated by section 1(a) of the San Luis Act, 74 Stat. 156, constitutes agency action unlawfully withheld.

2. Unless ordered by this court, the Secretary of the Interior and the United States Department of the Interior, Bureau of Reclamation, on the Secretary's behalf, will not provide drainage to the San Luis Unit of the Central Valley Project, as is mandated by section 1(a) of the San Luis Act.

3. Congressional actions subsequent to enactment of the San Luis Act have supplemented the means available to the Department of the Interior's discretion to meet its drainage obligation.

4. Now the time has come for the Department of the Interior and the Bureau of Reclamation to bring the past two decades of studies, and the $50 million expended pursing an "in valley" drainage solution, to bear in meeting its duty to provide drainage under the San Luis Act.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED:

1. The portion of the Partial Judgment that provides "FURTHER ORDERED that the Secretary of the Interior, the United States Department of the Interior, the United States Bureau of Reclamation, and each of them, and their officials and employees, shall, without delay, take such reasonable and necessary actions to promptly prepare, file, and pursue an application for a discharge permit for the San Luis Drain to comply with section 1(a) of the San Luis Act to provide drainage to the San Luis Unit" is vacated.

2. The Partial Judgment is amended to provide:

FURTHER ORDERED that the Secretary of the Interior, the

United States Department of the Interior, the United States Bureau of Reclamation, and each of them, and their officials, and employees, shall, without delay, provide drainage to the San Luis Unit pursuant to the statutory duty imposed by section 1(a) of the San Luis Act. The Secretary of the Interior, the United States Department of the Interior, the United States Bureau of Reclamation, and each of them, shall no later than January 29, 2001, submit to this court a detailed plan describing the action or actions, whether short term or long term, they will take to promptly provide drainage to the San Luis Unit, which plan shall contain a schedule of dates by which the action or actions described in the plan will be accomplished. Nothing contained herein is intended to divest the Secretary of the Interior, the United States Department of the Interior, or the United States Bureau of Reclamation of any discretion they have to select means other than an interceptor drain to provide drainage to the San Luis Unit. Nor is anything contained herein intended to excuse the Secretary of the Interior, the United States Department of the Interior or the United States Bureau of Reclamation from complying with any applicable law.

3. Federal Defendants' Motion to Vacate any Portion of Injunction Remaining After Ninth Circuit Decision in Firebaugh is DENIED.

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4. The Court reserves jurisdiction to enforce the provisions of the Partial Judgment, as amended herein.

DATED: November 29, 2000.

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

firebaugh order one