

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

*amended by  
order attached  
dated 12-17-70*

In the Matter of Applications 18721,  
18722, 18723, 21636, and 21637 by  
UNITED STATES BUREAU OF RECLAMATION,

Applicant

M. V. and W. E. HOLTHOUSE, et al.,

Protestants

and

Decision 1356

In the Matter of the Request of  
UNITED STATES BUREAU OF RECLAMTION  
for Release from Priority of Appli-  
cation 7936 in Favor of Applications  
18723 and 21636 and of Application  
7937 in Favor of Applications 18721,  
18722, and 21637

DECISION APPROVING APPLICATIONS IN PART  
AND GRANTING RELEASE FROM PRIORITY

United States Bureau of Reclamation having filed Applications 18721, 18722, 18723, 21636, and 21637 for permits to appropriate water and a request for release from priority of Application 7936 in favor of Applications 18723 and 21636 and of Application 7937 in favor of Applications 18721, 18722, and 21637; protests having been received; a consolidated public hearing of the two matters having been held before the State Water Rights Board on January 10, 11, 12, 18, and 19, 1967; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1-a. Application 18721, as amended, is for a permit to appropriate 100 cubic feet per second (cfs) by direct diversion from November 1 of each year to August 1 of the succeeding year and 1,700,000 acre-feet per annum (afa) by storage from November 1 of each year to July 1 of the succeeding year for irrigation, recreational, incidental domestic, and water quality control purposes from North Fork American River and Knickerbocker Creek in Placer County. The points of diversion are Auburn Dam and Knickerbocker Dam.

1-b. Application 18722, as amended, is for a permit to appropriate 100 cfs by direct diversion from November 1 of each year to August 1 of the succeeding year and 800,000 afa by storage from November 1 of each year to July 1 of the succeeding year for municipal, industrial, incidental recreational, and domestic purposes from North Fork American River and Knickerbocker Creek in Placer County. The points of diversion are Auburn Dam and Knickerbocker Dam. The water applied for in this application is the same 100 cfs of direct diversion and a portion of the 1,700,000 acre-feet of storage applied for in Application 18721.

1-c. Application 18723, as amended, is for a permit to appropriate 6,300 cfs by direct diversion from January 1 to December 31 of each year and 1,700,000 afa by storage from November 1 of each year to July 1 of the succeeding year for power and incidental recreational and domestic purposes from North Fork American River and Knickerbocker Creek in Placer County. The points of diversion are Auburn Dam and Knickerbocker Dam.

1-d. Application 21636 is for a permit to appropriate 600 cfs by direct diversion from January 1 to December 31 of each year and 800,000 afa by storage from November 1 of each year to July 1 of the succeeding year for power purposes from North Fork American River and Knickerbocker Creek in Placer County. The points of diversion are Auburn Dam and Knickerbocker Dam.

1-e. Application 21637, as amended, is for a permit to appropriate 900 cfs by direct diversion from November 1 of each year to July 1 of the succeeding year and 800,000 afa by storage from November 1 of each year to July 1 of the succeeding year for irrigation, municipal, industrial, domestic, recreational, fish and wildlife enhancement, and water quality control purposes from North Fork American River and Knickerbocker Creek in Placer County. The points of diversion are Auburn Dam and Knickerbocker Dam.

1-f. Applications 7936 and 7937 were filed by the state in 1934 for a proposed Auburn Dam and Reservoir on North Fork American River. Application 7936 is for 2,500 cfs by direct diversion and 831,000 afa by storage, for power purposes. Application 7937 is for 831,000 afa by storage for irrigation, domestic, saline and flood control, and navigation.

2. Based on the evidence presented in this matter and on Decision D 1275, as modified in Decision D 1291, substantial quantities of unappropriated water will be available for diversion as proposed in the applications except during the month of July. USBR Exhibit 23 is a tabulation of the computed quantities of unappropriated water available

to supply the subject applications. From that exhibit it can be readily seen that unappropriated water would have been available in July in only 3 years of the 30-year period shown. In Decision D 1275 we held that there was no water available in July, August and September for diversion by the state from the Delta under applications that have earlier priority dates than the subject applications. In Decision D 1291, upon reconsideration of Decision D 1275, we held that additional evidence demonstrated there would be some water available in the Delta in July, August, and September, temporarily, which the State should be allowed to divert. As the unappropriated water available in the Delta in July is less than the State could divert through existing facilities and less than authorized in its permits, there will be no water available for diversion by the applicant in July, and the season of diversion will be restricted to the period of November 1 to July 1 in permits for purposes other than direct diversion for power.

3. After this matter was submitted for decision, a hearing was opened to consider terms and conditions to be included in permits affecting the Delta, including those issued pursuant to Decisions D 893, 990, 1275, and 1291, and permits to be issued pursuant to the subject applications. The issues in that hearing, which is still in progress, include what terms and conditions should be contained in permits affecting the Delta to control salinity, protect and enhance fish life, and coordinate the terms of the various permits. Sufficient evidence concerning these issues was not available at the time of the hearing in this proceeding for the board to finally determine appropriate permit

terms. Therefore, final permit terms relating to these subjects will not be included in this decision, and the permits issued pursuant to this decision will be subject to the terms and conditions hereinafter set forth and, in addition, such other terms and conditions to control Delta salinity, protect and enhance fish life in the Delta, and coordinate permit terms, as shall be specified in the decision which will be issued in the proceeding entitled "In the Matter of Application 5625 and 38 other Applications to Appropriate from the Sacramento-San Joaquin Delta Water Supply."

4. Several parties requested that jurisdiction be reserved to protect and enhance fish and wildlife, recreation, and other uses of the American River downstream from Nimbus Dam. The Department of Fish and Game requested that the reach from Auburn Dam to Folsom Dam be included. The Bureau of Reclamation acknowledged that studies were being conducted by federal, state and local agencies to determine flow requirements for fish and wildlife, recreation, and other beneficial uses and did not object to a reservation of jurisdiction to impose minimum flow requirements from Nimbus Dam to the mouth of the American River, but objected to including the reach from Auburn Dam to Nimbus Dam. If jurisdiction should be retained for recreational uses and to protect and enhance fish and wildlife, it should be for the entire reach of the river from the proposed Auburn Dam to the river's mouth. Otherwise there would be no opportunity under the permits to provide for these uses between Auburn and Nimbus Dams, should studies determine such to be desirable. Therefore, jurisdiction will be reserved for

that purpose because of the lack of sufficient information to finally determine the terms and conditions which would reasonably protect such uses in that reach of the river.

5. The Department of Water Resources requested a permit condition (DWR Exh. 9, Paragraph 2) which in substance would restrict the appropriation authorized to water which could be used by presently authorized projects and would reserve jurisdiction to authorize appropriation of additional water for projects, such as the East Side Division of the Central Valley Project, which may in the future be authorized or included in an agreement coordinating the operation of such projects with the State Water Project. A permit will be issued for a prospective or intended use if there is a reasonable possibility that the permittee will proceed with diversion and use of water as proposed. The Board concludes that there is reasonable possibility that the water will be used as proposed by the Bureau for the East Side Division and, therefore, the condition requested by the Department of Water Resources in its Exhibit 9 should not be included in the permits issued.

6. The Federal Water Pollution Control Administration points out that the East Side Division provides one of the last remaining opportunities to achieve satisfactory water quality conditions through flow regulation in the San Joaquin River Basin (letter of FWPCA, dated November 1, 1966, to the Regional Director, USBR, Subject: Water Quality Control -- East Side Division, Initial Phase, Central Valley Project, California). The regional director of the U. S. Bureau of Sport Fisheries and Wildlife also reports, in a similar letter dated March 24,

1965, that the possibility of enhancing fisheries in streams and reservoirs which are not directly associated with the East Side Division shows promise, that in addition to establishment of salmon runs in the mainstream of the San Joaquin River below Friant Dam, the East Side Division offers a great opportunity to rehabilitate all anadromous fish runs and offers enhancement of the resident fishery of that river system. The State Department of Fish and Game (letter of February 9, 1965, to the U. S. Bureau of Sport Fisheries and Wildlife) concurs in these conclusions of its federal counterpart. (The three letters referred to in this paragraph are contained in the feasibility report and the reevaluation of the feasibility report on the East Side Division, Initial Phase, which are background information for USBR Exh. 5.)

The Board strongly urges that sufficient studies be made by the Bureau, including further studies such as those suggested by the Department of Water Resources Bulletin No. 143-5 "Lower San Joaquin River Water Quality Investigation," dated August, 1969, to determine the merits of water quality and fishery enhancement through water releases from the proposed East Side Canal into the natural stream channels in order that Congress may have the benefit of such a study in its authorization proceedings. In the meantime, the Board will reserve jurisdiction pending completion of studies and action by the Congress.

7. A permit condition similar to Condition No. 14 of Decision D 893 was requested which would give Placer, Sacramento, and San Joaquin counties prior rights to contract for water from the Auburn Project. San Joaquin County requested that the counties be given until the completion

of the Folsom South Canal to enter into water supply contracts; the Bureau of Reclamation and Sacramento River and Delta Water Users Association stipulated (SRDWA Exh. 2) that the condition be included with the period allowed for the counties to enter into contracts extended to December 31, 1975. The Bureau of Reclamation, SRDWA, Central Valley East Side Project Association, and East Bay Municipal Utility District agreed to the addition of specific language as a proviso to Condition No. 14 (USBR Exh. 29). It is concluded that a condition as stipulated to by the interested parties (SRDWA Exh. 2 and USBR Exh. 29) should be included in the permits issued.

8. The Bureau of Reclamation, El Dorado County Water Agency, and Georgetown Divide Public Utility District stipulated to a condition (El Dorado-Georgetown Divide Exh. 1) substantially the same as Condition No. 11 of Decision D 893 protecting future development in the watershed tributary to Auburn and Folsom Dams. Placer County withdrew its protests to the subject applications. DWR submitted as a proposal (DWR Exh. 9, Paragraph 1) to protect the counties of origin a recommended condition which is substantially a restatement of Water Code Section 10505. However, the Board finds that the condition stipulated to by El Dorado County Water Agency and Georgetown Divide Public Utility District, and the Bureau of Reclamation should be included in any permits issued but no other condition regarding the counties or areas of origin need be included. The permits issued for the Auburn Project will be consistent with those issued for the Folsom Project which is appropriate considering the close relationship between the two.



9. Mr. Holthouse, a protestant, testified in substance that his land is riparian to the Mokelumne River, six miles upstream from where it enters the Sacramento River, that his use of water has increased in recent years while the flow of the Mokelumne River has decreased because of upstream diversions, that his supply at times is Sacramento River water which is backed up into the channel of the Mokelumne River by tidal action, that he believes the Auburn Project will reduce the flow of the Sacramento River at the mouth of the Mokelumne River, and that this will result in reducing the distance Sacramento River water is backed up in the Mokelumne Channel by tidal action and the time such water is available to him. No evidence or argument was offered to support the conclusion that Mr. Holthouse, as an owner of land riparian to the Mokelumne River, has a right to have water from the Sacramento River flow up the Mokelumne River Channel when the natural flow of the Mokelumne is reduced by upstream appropriations. No evidence was offered to show the effect of the Auburn Project on the flow of the Sacramento River at the mouth of the Mokelumne or the effect of a reduction of such flow on the distance Sacramento River water will be backed up the Mokelumne Channel by tidal action. The record will not support findings that this protestant has a right to water from the Sacramento River nor does it support a finding that the Auburn Project would interfere with any such right if it does exist. Therefore, the applications will not be denied on the basis of this protest.

10. It is clear from the exhibits and testimony presented that the federal Auburn Project is a development not in conflict with a general

or coordinated State Water Plan. Therefore, pursuant to Section 10504 of the Water Code, the priority of State Applications 7936 and 7937 may be released in favor of the subject applications. The Board finds that there are a number of applications for water to be used in the counties of origin with priority dates prior to the Bureau of Reclamation's applications for the Auburn Project; that there are other sources of water in the counties of origin; that all objections by the counties of origin or local interests to the subject applications or to the petition for release from priority were withdrawn pursuant to agreements with the Bureau of Reclamation; and that the permits in favor of which the releases are requested will contain provisions adequately protecting future use in the counties of origin. (See Paragraphs 19 and 20 of the order following.) For these reasons, the Board finds that the releases requested will not deprive the counties of origin of water necessary for future development. Pursuant to Section 10504.5(a) of the Water Code, all permits issued pursuant to the subject applications will contain terms conditioning such permits upon compliance with that subdivision.

11. Unappropriated water is available to supply the applicant during the season requested except during the month of July for purposes other than power and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

12. Subsequent to the submission of this matter for decision, the applicant filed a petition for permission to change the purpose of use specified in Application 18721 by adding municipal and industrial

uses and for cancellation of Application 18722. The change in purpose of use, coupled with the cancellation as requested, will make no change in the quantity of water, season of diversion, point of diversion, place or purpose of use; therefore the board finds it will not operate to the injury of any legal user of the water involved. The change requested will be allowed, Application 18721 will be amended accordingly, and Application 18722 will be canceled.

13. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 21636 and Applications 18721, 18723 and 21637, as amended, should be approved in part, that the request for releases from priority should be granted, and that permits and releases from priority should be issued to the applicant subject to the limitations and conditions set forth in the order following.

#### ORDER

IT IS HEREBY ORDERED that the petition to change the purpose of use specified in Application 18721 is approved, that Application 18721 be amended to specify municipal and industrial as additional purposes of use, that Application 18722 be cancelled, that Applications 18721, 18723 and 21637, as amended, and Application 21636 be, and they are, approved in part, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1-a. The water appropriated in the permit issued pursuant to Application 18721 shall be limited to the quantity which can be beneficially

used and shall not exceed 100 cubic feet per second by direct diversion to be diverted from about November 1 of each year to about July 1 of the succeeding year and 1,700,000 acre-feet per annum by storage to be collected from about November 1 of each year to about July 1 of the succeeding year, to be used for irrigation, municipal, industrial, recreational, incidental domestic, and water quality control purposes.

1-b. The water appropriated in the permit issued pursuant to Application 18723 shall be limited to the quantity which can be beneficially used and shall not exceed 6,300 cubic feet per second by direct diversion to be diverted from about January 1 to about December 31 of each year and 1,700,000 acre-feet per annum by storage to be collected from about November 1 of each year to about July 1 of the succeeding year, to be used for power and incidental recreational and domestic purposes.

1-c. The water appropriated in the permit issued pursuant to Application 21636 shall be limited to the quantity which can be beneficially used and shall not exceed 600 cubic feet per second by direct diversion to be diverted from about January 1 to about December 31 of each year and 800,000 acre-feet per annum by storage to be collected from about November 1 of each year to about July 1 of the succeeding year, to be used for power purposes.

1-d. The water appropriated in the permit issued pursuant to Application 21637 shall be limited to the quantity which can be beneficially

used and shall not exceed 900 cubic feet per second by direct diversion to be diverted from about November 1 of each year to about July 1 of the succeeding year and 800,000 acre-feet per annum by storage to be collected from about November 1 of each year to about July 1 of the succeeding year, to be used for irrigation, municipal, industrial, domestic, recreational, fish and wildlife enhancement, and water quality control purposes.

2. The total amount of water to be diverted under permits issued pursuant to Applications 18721 and 21636 shall not exceed 2,000,000 acre-feet per year.

3. The total amount of water to be diverted under permits issued pursuant to Applications 18723 and 21637 shall not exceed 2,500,000 acre-feet per year.

4. These permits do not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

5. The State Water Resources Control Board reserves jurisdiction over these permits for the purpose of conforming the season of diversion to later findings of the Board on prior applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

6. The maximum quantity herein stated may be reduced in the license if investigation warrants.

7. Actual construction work shall begin on or before December 1, 1970, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

8. Said construction work shall be completed on or before December 1, 1975.

9. Complete application of the water to the proposed uses shall be made on or before December 1, 2000.

10. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.

11. All rights and privileges under these permits, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

12. The quantity of water diverted under these permits and under any licenses issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect

to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

13. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

14. Permittee shall install and maintain an outlet pipe of adequate capacity in its dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights.

15. Permittee shall install and maintain measuring devices satisfactory to the State Water Resources Control Board in order that accurate measurement can be made of the quantity of water flowing into and out of its reservoir.

16. In accordance with the requirements of Water Code Section 1393, permittee shall clear the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

17. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall

submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).

18. The State Water Resources Control Board reserves continuing jurisdiction over these permits for the purpose of formulating terms and conditions relative to flows to be maintained from Auburn Dam downstream to the mouth of the American River for recreational purposes and for protection and enhancement of fish and wildlife.

19. Deliveries of water from the American River Division of the Central Valley Project shall be limited to deliveries for beneficial use within Placer, Sacramento, and San Joaquin Counties and shall not be made beyond the westerly or southerly boundaries thereof, except on a temporary basis, until the needs of those counties, present or prospective, are fully met; provided, however, that agreements in accordance with federal reclamation laws between permittee and parties desiring such service within said counties are executed by December 31, 1975; and provided further that, subject to the terms and conditions of the agreement between the United States, Sacramento River and Delta Water Users Association, Central Valley East Side Project Association, and East Bay Municipal Utility District, dated October 21, 1968, nothing herein provided shall preclude the United States from entering into a contract with East Bay Municipal Utility District in accordance with federal reclamation law for delivery of not more than 150,000 acre-feet of water on other than a temporary basis for beneficial municipal, domestic, and industrial purposes within the counties of Alameda and Contra Costa.



20. The quantities of water which may be diverted or rediverted under rights acquired or to be acquired under these permits, to the extent such rights are exercised by the permittee for water to be applied to beneficial use outside of the watershed tributary to Folsom and Auburn Reservoirs, are and shall remain subject to reduction by future appropriation of water for reasonable beneficial use within the watershed tributary to Folsom and Auburn Reservoirs.

21. The Board reserves jurisdiction to impose such additional terms and conditions, including a further reservation of jurisdiction, as shall be specified in connection with these permits in the decision which will be issued in the proceeding entitled "In the Matter of Application 5625 and 38 Other Applications to Appropriate from the Sacramento-San Joaquin Delta Water Supply," relative to (1) salinity control in the Sacramento-San Joaquin Delta, (2) coordinating terms and conditions of these permits with terms and conditions which have been or which may be included in permits issued pursuant to applications of the United States in furtherance of the Central Valley Project and applications of the State of California in furtherance of the State Water Project, and (3) flows to be maintained in the Delta for the protection of fish and wildlife.

22. Until the East Side Division of the Central Valley Project has been authorized by Congress and further hearing held, the Board reserves continuing jurisdiction over these permits for the purpose of formulating terms and conditions to provide, as necessary, in the public interest, release of water from the proposed East Side Canal into the natural stream channels crossed by said East Side Canal and south of

Lone Tree Creek located in San Joaquin County for the maintenance and enhancement of fish and wildlife and to carry out water quality control plans which have been or may be established pursuant to Division 7 of the Water Code.

IT IS FURTHER ORDERED that the priority of Application 7936 is released in favor of Applications 18723 and 21636 and the priority of Application 7937 is released in favor of Applications 18721 and 21637.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Palm Springs, California.

Dated: February 5, 1970

KERRY W. MULLIGAN  
Kerry W. Mulligan, Chairman

E. F. DIBBLE  
E. F. Dibble, Vice Chairman

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

W. W. ADAMS  
W. W. Adams, Member

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DECISION AMENDING AND AFFIRMING,  
AS AMENDED, DECISION 1356

Petition for reconsideration of this decision was filed, pursuant to Water Code Section 1357, by Contra Costa County Water District (CCCWD) on March 6, 1970. The District petitioned the Board to reconsider paragraph 7 on page 7, and paragraph 19 on page 16, of Decision 1356 which accord a prior right, until December 31, 1975, to the counties of Placer, Sacramento and San Joaquin to contract for project water before it is committed, except on a temporary basis, to more remote areas.

Board Action on Petition and Submission of Briefs

The Board, on April 2, 1970, granted the petition for reconsideration and allowed CCCWD 30 days within which to file an opening brief in support of its position, including an offer of proof covering the specific evidence in the

Delta water right hearing (hearing on "Application 5625 and 38 Other Applications to Appropriate from the Sacramento-San Joaquin Delta Water Supply") which it wished the Board to consider. Following receipt of the opening brief, other parties were allowed 30 days to file reply briefs. An opening brief was submitted by the petitioner and reply briefs were received from the United States, County of Sacramento and Sacramento River and Delta Water Association, East Bay Municipal Utility District, Central Valley East Side Project Association and Friant Water Users Association, San Joaquin County Flood Control and Water Conservation District and Metropolitan Water District of Southern California. A closing brief was filed by petitioner.

CCCWD did not suggest that Condition 19 be eliminated, but instead asked that the area defined in the condition be enlarged to include CCCWD. It appearing to the Board that, if CCCWD's position is correct, a viable alternative solution would be to eliminate the condition from the decision, the parties were invited to submit written comments on that proposal. Comments were received from the parties in opposition to elimination of the condition except CCCWD, which responded by stating that it had no further comments to submit.

#### Discussion of the Issues

CCCWD contends that Condition 19 is invalid because it violates the watershed protection provisions of the Central Valley Project Act (Water Code Secs. 11460-11463 and 11428). CCCWD reasons that the law accords a preferential right to the entire

watershed of the American River and adjacent areas which can be conveniently supplied with water therefrom, whereas the condition limits such right to only a portion of that area. CCCWD further contends that the provision is invalid because the preference under the law is timeless and the condition purports to impose a time limit without statutory sanction.

Condition 19 in Decision 1356 was not an effort by the Board to define the area which is entitled to protection under Water Code Section 11460. As indicated in paragraph 7 on page 7 of the decision, the condition was based on a similar term in Decision D 893 and was responsive to a request by the counties of Placer, Sacramento and San Joaquin as modified by agreement of other interested parties -- the Bureau, Sacramento River and Delta Water Association, Central Valley East Side Project Association and East Bay Municipal Utility District.

Reference to Decision D 893 shows that the similar condition in permits issued to the Bureau for the Folsom project was also not an attempt to interpret or apply Section 11460 of the Water Code although the decision refers to that section and notes that the condition would be consistent with it. The condition reflected a determination by the State Water Rights Board, based upon the evidence in that proceeding, that giving to the three counties a preferential right to contract with the United States within a limited period of time for sufficient water to meet their future requirements was in the public interest and was an exercise of the Board's authority under Water Code Sections 1253, 1255 and 1257 (see page 52 of Decision D 893).

The facts upon which the Board's determination was based were these: In the hearing leading up to Decision D 893, several entities within the three counties had pending applications to appropriate water from Folsom Reservoir, each seeking permits in its own name. Some of the applications had earlier priorities than the applications of the United States. However, the project works were owned and operated by the Federal Government, and, obviously, permits to those agencies would have been meaningless in view of the patent necessity of contracting for a supply of water from the federal facilities. The service areas which those applicants desired to supply could be supplied equally well by contract with the Federal Government rather than pursuant to independent permits. Permits were therefore issued to the United States to appropriate sufficient American River water to supply those who were then seeking permits and who were naturally dependent on that source, and availability of water to such applicants was to be assured, for a reasonable period, by the terms imposed in the United States' permits. The applications of others more remote from the river, such as Hollister Irrigation District and City of San Jose, were denied in their entirety. The Board stated that they "must, if necessary, seek water from other sources" (page 54).

In neither of the hearings which preceded adoption of Decision D 393 and Decision 1356 did representatives of areas outside the specified counties object to the conditions in question. The petition of CCCWD for reconsideration of Decision 1356 was the first such objection.

The Board agrees with CCCWD that Condition 19 in its present form is subject to an interpretation which is inconsistent with the Watershed Protection Law and concludes that the condition is unnecessary and should be omitted from the decision.

Water Code Section 11460 provides:

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

Water Code Section 11128 makes these provisions applicable to the United States.

Whatever meaning this law has with respect to the area to be protected, the Board cannot impose limitations upon that area and, as previously stated, has not intended to do so. To simply modify Condition 19 by including CCCWD in the protected area would not cure the fault that CCCWD has called to our attention, for the decision would still contain an apparent limitation on the time of and area entitled to preferential water service. Other areas might subsequently assert similar claims. The only complete solution, without attempting to

delineate the entire area entitled to watershed protection, is to delete the condition from the decision. Contrary to the contention of some parties, deletion of the condition is within the scope of the petition for reconsideration and the order granting the petition because it is directly responsive to the issue which the Board undertook to reconsider. The Board is not limited to the precise action that a petition for reconsideration of a decision requests.

Deletion of Condition 19 will not prejudice any of the parties in any real sense. The Bureau states that it will honor the two agreements referred to in the condition whether or not the condition is retained. The counties referred to in the condition are clearly within the area entitled to the benefits of the Watershed Protection Law and, if necessary, can assert their rights independently of any terms in the Bureau's permits. Furthermore, the federal law which authorized the Auburn Project includes the three counties as beneficiaries of the project which are to receive water from project facilities (P.L. 89-161). Placer County has already contracted for as much water as it will need in the foreseeable future and the Bureau has been negotiating contracts with those public agencies in the other counties which have expressed a desire for project water. The agencies have had a period of 12 years since Decision D 893 was adopted within which to contract with the Bureau for water.

The Board's action is not to be construed in any sense as a "repudiation" of the agreements that have been executed



with the United States nor is it to be construed as giving preference to more remote areas to contract for water from the subject project.

Deletion of Condition 19 from the decision will render unnecessary augmentation of the record as requested by CCCWD.

IT IS HEREBY ORDERED that Decision 1356 be, and it is hereby, amended by deleting the last sentence of paragraph 7 on page 8 and deleting paragraph 19 on page 16 and by renumbering the subsequent paragraphs in sequence beginning with paragraph 19.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held in Sacramento, California.

Dated: December 17, 1970

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Kerry W. Mulligan, Chairman

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E. F. Dibble, Vice Chairman

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Norman B. Hume, Member

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Ronald B. Robie, Member

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W. W. Adams, Member