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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 18733)
of United States Bureau of Recla-)
mation to Appropriate From Fresno)
River in Madera County.)

Decision 1407

DECISION APPROVING APPLICATION IN PART

United States Bureau of Reclamation, hereinafter referred to as "applicant", having filed Application 18733 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on January 13, 1971; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Application

1. Application 18733 is for a permit to appropriate 500 cubic feet per second (cfs) by direct diversion and 100,000 acre-feet per annum (afa) by storage, both year round, for irrigation, flood control, incidental domestic and recreational purposes from the Fresno River in Madera County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 8, T11S, R18E, MDB&M.

Applicant's Project

2. Application 18733 covers use of water by applicant's proposed Hidden Project which has been authorized by Congress (P.L. 87-874). The principal feature of the project is Hidden Dam and Reservoir which is to be constructed by the U. S. Corps of Engineers on the Fresno River approximately four miles above the Madera Canal crossing. The project will be operated by the applicant as a unit of the Central Valley Project. The approximately 23,800 afa conserved by the project will be used for irrigation in the Fresno River Basin downstream from the site of Hidden Dam and it will supplement local groundwater supplies, natural runoff in streams, and water from the applicant's Millerton Lake (RT 7). Also, the project will control flood flows of the Fresno River and the San Joaquin River, to which it is tributary, and provide recreation at proposed Hidden Reservoir (RT 8, 9). A minimum pool of 5,000 acre-feet will be maintained in the reservoir for recreation purposes (USBR Exh. 13).

Applicant's Diversion Should be Limited to Storage

3. The maximum quantity of water the applicant intends to store in Hidden Reservoir during any one year is 74,000 acre-feet (RT 3). No evidence was presented at the hearing to support the direct diversion feature of Application 18733. Any permit issued pursuant to Application 18733 should be limited to diversion to storage not in excess of 74,000 afa.

Protestants

4. Protestant John Sallaberry irrigates approximately 4,700 acres of principally natural pasture approximately 25 miles below the applicant's proposed dam (RT 110). His diversion works limit his rate of diversion to a maximum of approximately 700 cfs. He holds License 4689 (Application 18354) and claims pre-1914 and riparian rights for such use.

Protestant G. D. Turnbow irrigates approximately 11 miles downstream from protestant Sallaberry. He holds License 9073 (Application 1103A) and claims riparian and pre-1914 appropriative rights for such use. He did not appear in support of his protest.

Protestant Menefee Ranch Company, Inc., irrigates approximately 1,900 acres from the Fresno River approximately 10 miles below the protestant Turnbow. It holds Permit 7562 (Application 16136) and claims riparian rights for such use. It supplements its supply from the river by pumping ground water and claims that approval of Application 18733 will interfere with the supply from its wells.

Interested Party

5. The Madera Irrigation District diverts directly from the Fresno River and receives supplemental water from the Central Valley Project through the Madera Canal. The district has contracted to purchase all the water conserved by the applicant's project (RT 6). It appeared at the hearing as an interested party in support of the project (RT 6).

Flows of the Fresno River

6. The flows of the Fresno River are sporadic. As approximately 95 percent of the river's 237-square-mile drainage area lies below an elevation of 5,000 feet, there is very little snow melt for sustaining summer flow (RT 11).

The records of Madera Irrigation District's gaging station on the Fresno River (designated as "8-mile west"), installed approximately two miles above the protestant Sallaberry, show an average of 34,500 afa passing the gaging station during the period 1939 through 1971. This flow includes water foreign to the watershed which was released from the Madera Canal. However, such releases did not commence until the year 1944.

The computed average annual flow of the Fresno River at the site of Hidden Dam for the period 1911-1968 is 75,200 acre-feet (RT 12; Applicant's Exh. 7).

Occurrence of Surplus Water

7. A study by the applicant of pre-project conditions for the years 1922-1951 shows the average annual surplus flow of the Fresno River, which reached the San Joaquin River, was 19,900 acre-feet (U. 1 Routing Study, Column 4; Applicant's Exh. 12). The surplus flows, ranging from 0 to 186,500 afa, occurred during 17 of the 30 years covered by the study. No provision was made in the study for the entitlement of the Menefee Ranch Company, Inc. Also, the study does not reflect the entire quantity of water the Department of Fish and Game is authorized to store at its reservoir approximately three miles below the Madera Canal crossing as authorized by its License 9299 (Application 1733).

A revision of the applicant's study has been made by the Board's staff to conform it with the aforementioned additional rights and to update the study to cover the years 1952 through 1967. The average annual flow of the Fresno River at the site of Hidden Dam during this period approximates the average annual flow at the same point for the period of the applicant's study (Plate I). The revised study shows that the flow in the Fresno River exceeded the face value of prior rights¹ and channel percolation losses in 10 years of the 16 years of record (Table 1; Plate II). The duration of such surplus flow varied from one day (1963, 1966) to 47 days (1967) and varied in quantity from approximately 1,522 acre-feet (1964) to 52,738 acre-feet (1958) (Table 1).

Exchange of Water

8. The applicant has delivered an average of 108,000 afa (total) of class 1 and class 2² water through the Madera Canal to the Madera Irrigation District (Staff Exh. 17, pages 35, 36). Class 2 water delivered in excess of the normal irrigation demand is used for percolation into groundwater storage. Such surplus water cannot be completely controlled by the district facilities and a portion escapes out of the district boundaries (Applicant's Exh. 12). The applicant proposes to integrate the

¹Protestant Sallaberry's diversions under his rights are limited to 700 cfs due to limited diversion facilities.

²"Class 2" water is less available in quantity and time of occurrence. It is available primarily during the spring and early summer months (Decision D 934, page 16).

operation of the Madera Canal with the Hidden Project and will enter into agreements with holders of prior rights on the Fresno River to exchange Madera Canal water for Fresno River water to cover periods when there is otherwise no unappropriated water to satisfy Application 18733.

Existence of Unappropriated Water and Beneficial Use

9. Unappropriated water is available to supply the applicant, 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.

10. The intended use is beneficial.

Applicant's Diversion Season

11. At the outset of the hearing, the applicant acknowledged that there is no unappropriated water in the Fresno River during the period from June 1 to October 1 (RT 3). The applicant's routing study of pre-project conditions shows that there is surplus water in the river available for storage only during the period from December 1 to April 30. The diversion season in any permit issued pursuant to Application 18733 should be limited to that period with a proviso that the diversion season may be extended to include the months of November and May if equivalent exchange water is released from the Madera Canal. The applicant does not intend to make any significant diversions to storage during the month of October (R-1 study, column 6; Applicant's Exh. 13).

12. The operation of the applicant's proposed project will not significantly affect the quality of the water in the Fresno or San Joaquin Rivers. The Fresno River flows reach the San Joaquin River only in years of greater flow than the mean annual runoff (RT 84). The impact of applicant's project on Sacramento-San Joaquin Delta water quality objectives due to the increases in consumptive use of water will be insignificant.

Reservation of Water for Future Upstream Uses

13. The land area above proposed Hidden Dam has limited uses, the most important being for the raising of stock and for recreation. It is in the public interest that as much water of the Fresno River as is necessary for these purposes be reserved for future use on upstream lands, as the Fresno River is the only feasible source of supply for this area. Furthermore, so long as individual reservoirs for these purposes do not exceed a capacity of 10 acre-feet they will probably not result in a loss of water in excess of that which would have occurred from use by the phreatophytes within the area that the reservoirs occupy and will not deplete the flow of water into Hidden Reservoir. Therefore, applicant's permit should be subject to appropriations by storage upstream from Hidden Reservoir with a priority subsequent to May 22, 1959 (the date Application 18733 was filed) for stock-watering and recreational purposes, provided the individual capacity of reservoirs for such purposes does not exceed 10 acre-feet.

14. In the planning of applicant's project an allowance was made of 2,000 afa for future upstream depletions from the Fresno River in the spring months (applicant's Exhibit 20, column 2). Applicant's permit should contain a term stating that it is subject to depletions by future upstream appropriations to this extent. Permits for such appropriations should be issued only until gross diversions under them equal 2,000 acre-feet during any year when the runoff at Hidden Reservoir is 73,000 acre-feet or more. This figure is derived by subtracting 2,000 from the average annual runoff at Hidden Reservoir, which is about 75,000 acre-feet. This figure is chosen because in a year when the runoff is average or above, depletion of flow at Hidden Reservoir will approximately equal the amount of water appropriated to storage in upstream reservoirs in that year.

Protection of Existing Rights Including Rights to Ground Water Supplies

15. Under the applicant's proposed plan of operation for Hidden Reservoir, water to satisfy existing downstream rights will be either water from the Fresno River released from Hidden Reservoir or San Joaquin River water from Millerton Lake released from the Madera Canal (RT 62). In order for the project to operate as presented, agreements must be made between holders of prior rights and the Madera Irrigation District subject to the approval of the applicant. These agreements will authorize substitution of water from the Madera Canal for Fresno River

water (applicant's Exhibit 19). The Board should retain jurisdiction over any permit issued pursuant to Application 18733 for the purpose of formulating any necessary terms and conditions for the protection of the holders of downstream water rights.

Due to heavy pumping of ground water during the summer irrigation season, the water table within the Madera Irrigation District has been lowering. The established annual overdraft is 18,700 acre-feet and there has been approximately a one-foot drop in the water table each year (Staff Exhibit 17, page 34). This has occurred notwithstanding the district's practice of spreading Madera Canal water for percolation into the ground. By confining the place of use of water from Hidden Reservoir to the present boundaries of the Madera Irrigation District, as proposed in Application 18733, the overdrawn condition of the ground water basin in the district should be remedied over a period of time.

Special Term to Protect Protestant Sallaberry

16. Protestant Sallaberry stipulated to the withdrawal of his protest if any permit and subsequent license issued pursuant to Application 18733 should contain certain terms (RT 104; protestant Sallaberry's Exhibit 2). Three of the four proposed terms are standard terms and will be included in accordance with the Board's practice. The remaining term is in the public interest and should be included. It reads as follows:

"Storage of water under this permit which occurs by reason of furnishing a substitute supply of water to owners of prior downstream water rights shall not constitute abandonment or loss of the downstream owners' rights, nor create a right to store water hereunder when a substitute supply is not furnished the downstream owner under an existing contract with said owner."

Flood Control

17. The storage of water or regulation of flow for flood control purposes is a continuing paramount power of the United States conferred on it by the Commerce Clause of the United States Constitution and is outside the jurisdiction of this Board. Accordingly, permit on Application 18733 will not include flood control as a purpose of use.

From the foregoing findings, the Board concludes that Application 18733 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 18733 be, and it is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 74,000 acre-feet per annum by storage to be collected from

December 1 of each year to April 30 of the succeeding year, provided the diversion season may be extended to include the months of November and May when equivalent exchange water has been or will be released from the Madera Canal and provided further that a minimum pool of 5,000 acre-feet shall be maintained at all times for recreational use.

2. Storage of water under this permit, which occurs by reason of furnishing a substitute supply of water to owners of prior downstream water rights, shall not constitute an abandonment or loss of the downstream owners' rights, nor create a right to store water hereunder when a substitute supply is not furnished the downstream owner under an existing contract with said owner.

3. The State Water Resources Control Board reserves jurisdiction over this permit 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.

4. The amount authorized for appropriation may be reduced in the license if investigation warrants.

5. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

6. Said construction work shall be completed on or before December 1, 1980.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1990.

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

9. All rights and privileges under this permit, 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.

Permittee shall take all reasonable steps necessary to minimize waste of water, and, except where it is incompatible with the objective of paragraph 17 herein, may be required to implement such programs as (1) reuse or reclamation of the water allocated; (2) restriction of diversions so as to eliminate tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. At any time after notice to affected parties and opportunity for hearing, the Board may impose specific requirements over and

above those contained in this permit, with a view to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

10. The quantity of water diverted under this permit and under any license 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.

11. Permittee shall allow representatives of the State Water Resources Control 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.

12. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

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

14. This permit shall be subject to appropriations by storage upstream from Hidden Reservoir with a priority subsequent to May 22, 1959 for stockwatering and recreational purposes, provided the individual capacity of reservoirs for such purposes does not exceed 10 acre-feet. ~~and the reservoirs are kept free of phreatophytes.~~ *(Revised per K L W letter attached.)*

15. In addition to the reservation in the preceding paragraph, this permit shall be subject to depletion of flow into Hidden Reservoir of 2,000 acre-feet per annum by upstream appropriations with a priority subsequent to May 22, 1959.

16. The Board reserves jurisdiction over this permit for the purpose of approving terms and conditions of agreements authorizing substitution of Madera Canal water for Fresno River water which have been formulated by the parties for protection of existing downstream water rights. Permittee shall submit to the Board agreements reached with owners of downstream rights to the flow of the Fresno River. The Board may, at any time, on its own motion or at the request of protestants or interested parties, hear, review, and make such further order as may be necessary.

17. The place of use of the water appropriated for irrigation shall be restricted to the area within the existing

Madera Irrigation District boundaries as shown by map now on file with the State Water Resources Control Board. No expansion or change in the place of use will be granted until permittee provides satisfactory evidence that underlying ground water sources are not overdrawn.

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

Dated: January 4, 1973

ABSENT

W. W. Adams, Chairman

RONALD B. ROBIE

Ronald B. Robie, Vice Chairman

E. F. DIBBLE

E. F. Dibble, Member

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ROOM 1015, RESOURCES BUILDING

1416 NINTH STREET • SACRAMENTO 95814



January 17, 1973

Applicant, Protestants and
Other Interested Parties:

Application 18733 - United States
Bureau of Reclamation - Hidden Dam
Project

Please substitute the enclosed corrected page 14 for page 14 of your copy of Decision 1407 which was recently sent to you. You will note by strike-out the change in the new page. While maintaining the individual reservoirs free of phreatophytes is highly desirable, the Board did not intend such as a condition for qualifying under this permit term.

Sincerely,

K. L. Woodward
K. L. Woodward, Chief
Division of Water Rights

Enclosure

TABLE 1

<u>Year</u>	<u>Period When Flow Exceeded Downstream Prior Rights and Channel Losses in Days</u>	<u>Amount Exceeding Downstream Prior Rights and Channel Losses in Second-foot Days</u>
1952	21	12,255
1953	0	0
1954	0	0
1955	8	21,230
1956	8	6,877
1957	0	0
1958	25	26,369
1959	0	0
1960	0	0
1961	0	0
1962	14	11,232
1963	1	2,245
1964	4	761
1965	2	1,220
1966	1	2,780
1967	47	22,404
	<u>16/ 131</u>	<u>16/ 107,373</u>
	8 + days/yr.	6,710 sec. ft. days/yr.

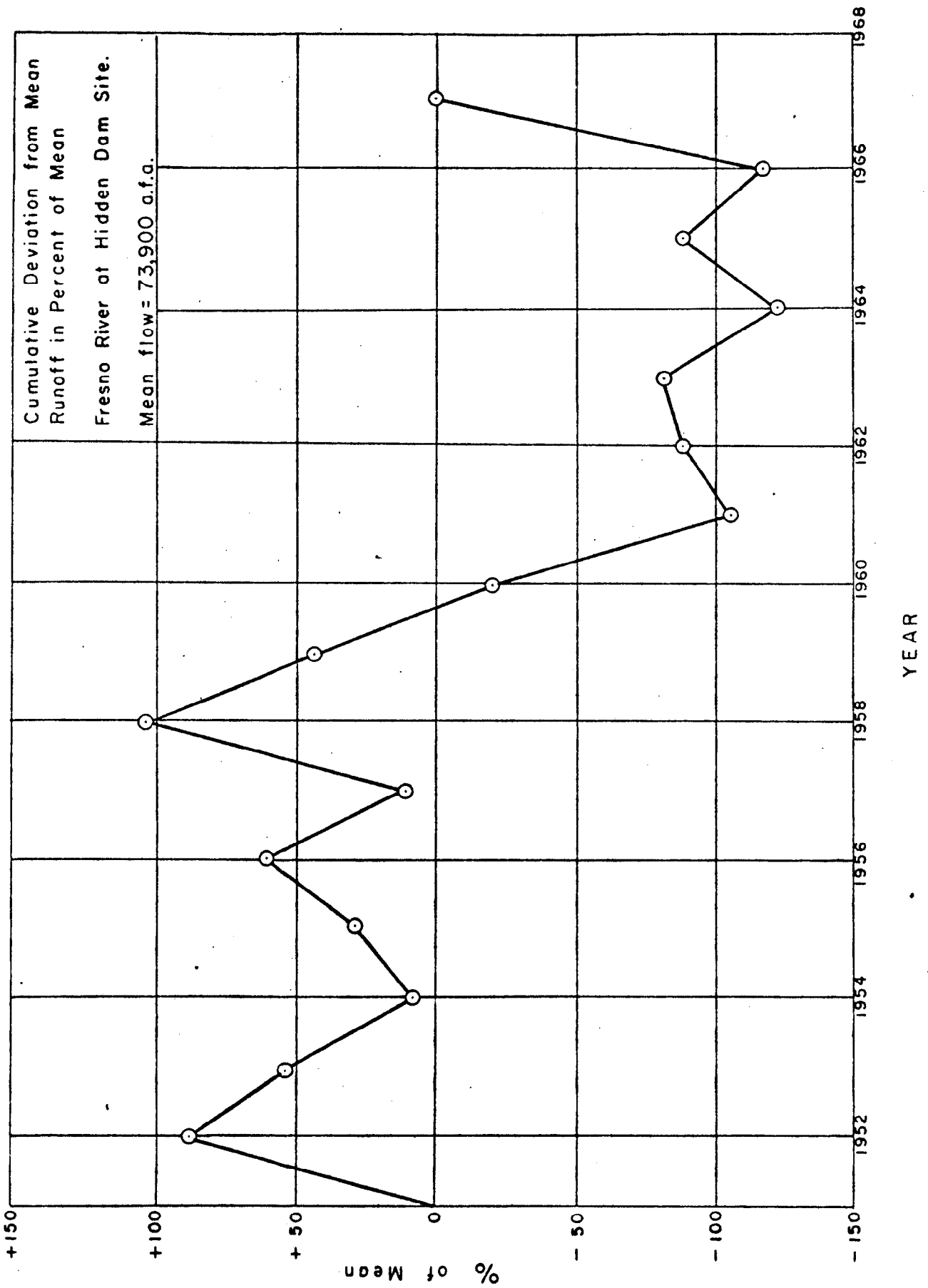


PLATE II
FACE VALUE OF RIGHTS
FRESNO RIVER BELOW DAULTON GAGE
In
Cubic Feet Per Second

Parties Water Rights	Date of Priority	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Madera Irrigation District* Old Appropriation		200	200	200	200	200	200	200	200	200	200	200	200
G. D. Turnbow and Palace-New Mont- gomery Garage - Application 11003A and B, Permit 7582B, License 9073	3-9-45		35	35	35	35	35	35	35	35	35	35	35
Red Top Ranch - Application 11048, License 5753	5-9-45		6.6	6.6	6.6	6.6	6.6	6.6	6.6	6.6	6.6	6.6	6.6
John Sallaberry - Application 13541, License 4689	1-13-50	45	45	45	45	45	45					45	45
Madera Irrigation District - Appli- cation 15287, Permit 10472	4-10-53	200	200	200	200							200	200
Menefee River Ranch Company - Ap- plication 16136, License 7561	11-15-54		3.2	3.2	3.2	3.2	3.2**						
State Department of Fish and Game - Application 17311, License 9229	10-4-56	25	25	25	25							25	25
Subtotal		470	514.8	514.8	514.8	289.8	289.8**	241.6	241.6	241.6	241.6	511.6	470
							286.6						
Channel Percolation Loss*		80	80	80	80	80	80	80	80	80	80	80	80
Total		550	594.8	594.8	594.8	369.8	369.8**	321.6	321.6	321.6	321.6	591.6	550
							366.6						

* From D-854, pp. 17-18

** To June 15

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 18733
of UNITED STATES BUREAU OF RECLAMATION
to Appropriate from Fresno River in
Madera County

Order WR 73-13

ORDER DENYING PETITIONS FOR RECONSIDERATION
AND AMENDING DECISION 1407

On January 4, 1973, the State Water Resources Control Board adopted Decision 1407 in which the Board approved Application 18733 of the United States Bureau of Reclamation covering the Hidden Dam project.

On February 1, 1973, the Bureau and the Madera Irrigation District, beneficiary of the project, filed petitions for reconsideration of the decision. The reconsideration requested concerns conditions 14, 15, and 17 of the Order of the decision relating to reservations of water for upstream uses and limitation of the place of use of project water. Included in the petitions is a contention of the petitioners that new data, developed subsequent to the hearing in the matter, justify a revision of condition 17. They also request that the provision of condition 14 be subject to the upstream reservoirs being kept free of phreatophytes and that condition 15 be clarified by defining how the depletion of flow is intended to be interpreted.

Condition 17 restricts the place of use under the permit to the existing boundaries of the Madera Irrigation District and provides that no expansion or change in the place of use will be allowed until the permittee provides satisfactory evidence that underlying ground water sources are not overdrawn. The District contends that this is an unreasonable restriction on its inherent power to annex lands as it determines to be in the best interest of the area involved and the subject is not within the jurisdiction of the Board to regulate. The Bureau agrees that the evidence produced at the hearing shows the ground water levels underlying the District are steadily lowering, but now contends that later information shows this trend to have reversed and that the ground water levels are recovering.

While it is true the hydrograph accompanying the Bureau's petition shows that the average depth to water has decreased since 1968, the period of record may not be adequate to assure that this trend will continue. By the time Hidden Project water is available, the evidence should be more conclusive. If the Bureau is correct, then the provisions of condition 17 can be met and no problem is seen in allowing an expansion of the place of use, should it so desire. In the meantime, we believe that the provisions of condition 17 are in the public interest and within the jurisdiction of the Board to impose. Therefore, no revision of condition 17 is justified at this time.

The arguments of the petitioners that condition 14 should be subject to keeping the qualifying reservoirs free of phreatophytes are persuasive and the order will so provide.

Condition 15 was based upon the intention of the Board to permit a streamflow depletion of up to 2,000 acre-feet of the water reaching Hidden Reservoir. This is reflected in the first two sentences of finding 14 on page 8 of the decision. The three sentences following expressed the manner in which such depletion could be determined when the runoff during a given year was average or above. It did not intend to mean that depletion would be equal to gross diversion notwithstanding the type of water year. Condition 15 correctly reflects the intent of the Board and no change is warranted.

IT IS HEREBY ORDERED that the petitions of United States Bureau of Reclamation and the Madera Irrigation District be denied, and that condition 14 on page 14 of Decision 1407 be amended by removing the period after "acre-feet" and adding the phrase "and the reservoirs are kept free of phreatophytes." No other changes to the Decision are warranted.



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

Dated: March 1, 1973

W. W. ADAMS

W. W. Adams, Chairman

RONALD B. ROBIE

Ronald B. Robie, Vice Chairman

E. F. DIBBLE

E. F. Dibble, Member

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

