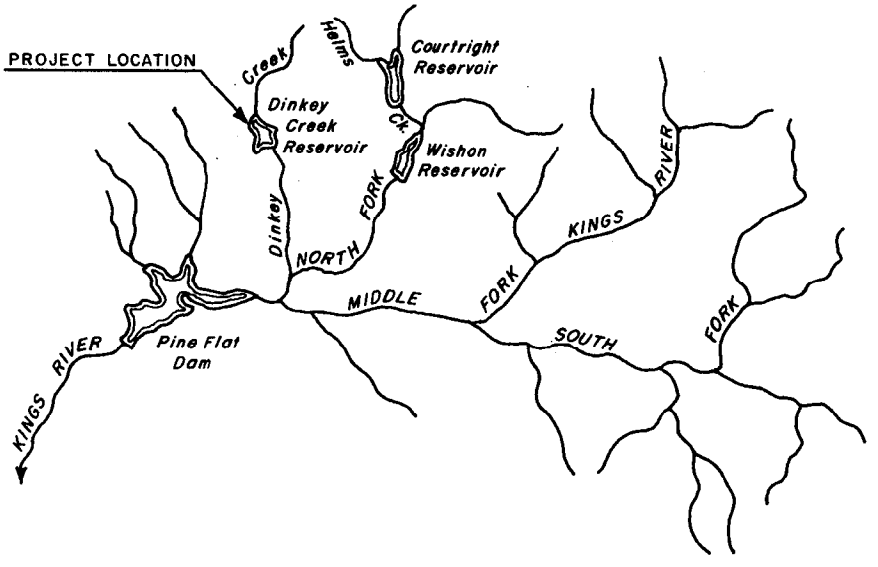
See: order WR 83-2

DINKEY CREEK HYDROELECTRIC PROJECT
WATER RIGHTS DECISION

Decision 1588



December 1982

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 26001 KINGS RIVER CONSERVATION DISTRICT, Applicant, SIERRA ASSOCIATION FOR ENVIRONMENT, Protestant.	DECISION 1588 SOURCES: Deer, Bear, Laurel and Dinkey Creeks COUNTY: Fresno

DECISION APPROVING APPLICATION 26001 IN PART

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ABBREVIATIONS

Kings River Conservation District	District
Sierra Association For Environment	SAFE
Department of Fish and Game	Fish and Game
Federal Energy Regulatory Commission	FERC
Southern California Edison Company	Edison
U. S. Bureau of Reclamation	Bureau
U. S. Forest Service	Forest Service
State Water Resources Control Board	Board
California Environmental Quality Act	CEQA
acre-feet	af
acre-feet per annum	afa
cubic-feet per second	cfs
kilovolts	kV
megawatts	MW
kilowatts	KW

DECISION APPROVING
APPLICATION 26001 IN PART

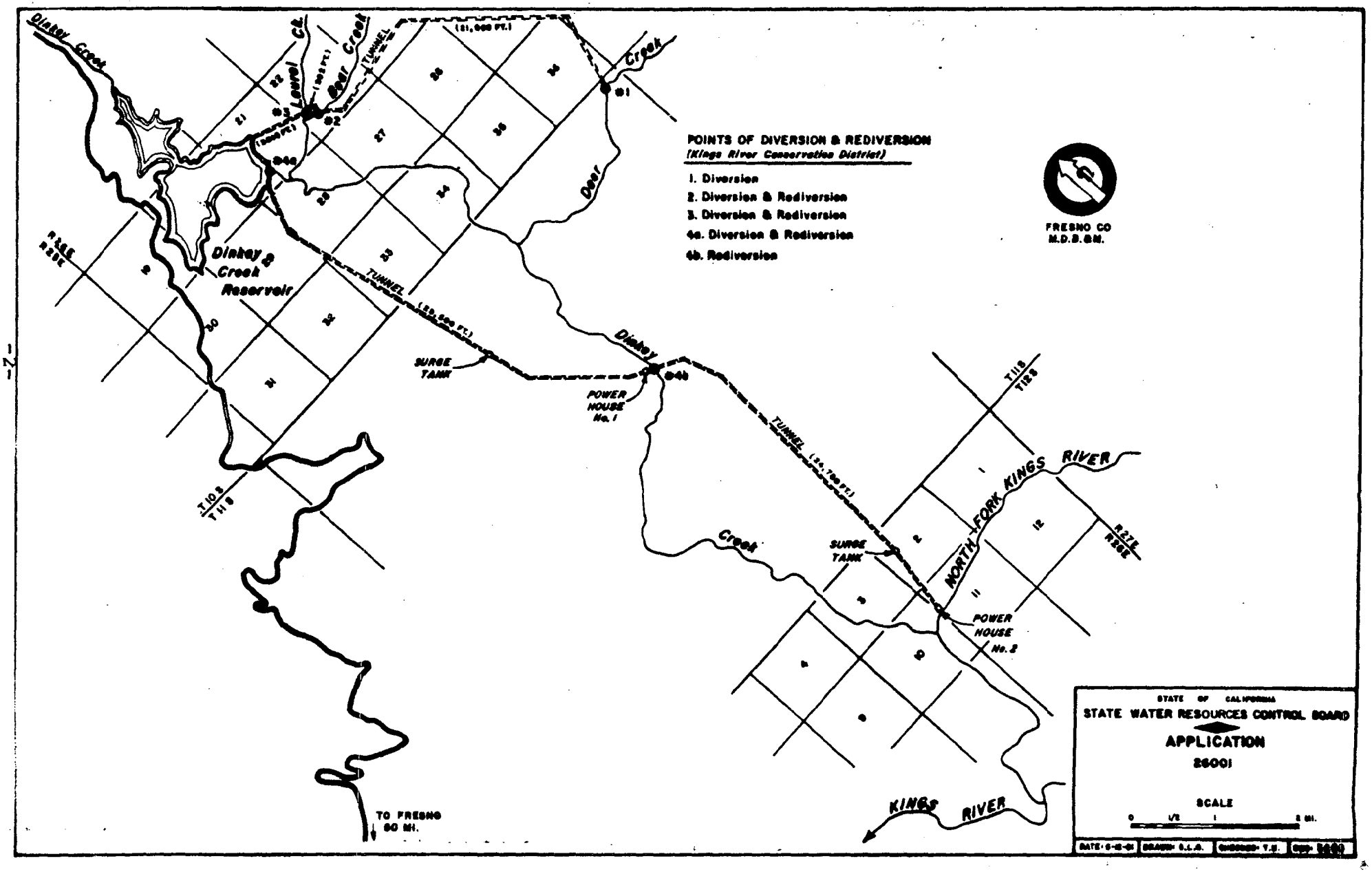
BY BOARD VICE CHAIRMAN MITCHELL:

Kings River Conservation District (District) having filed Application 26001 for a permit to appropriate unappropriated water from Deer, Bear, Laurel and Dinkey Creeks, protests having been received; a hearing having been held on 14 hearing dates from November 16, 1981, through July 29, 1982; the Board having considered all evidence in the record; the Board finds as follows:

Substance of the Application

1. Application 26001 is for a permit to take 452 cubic feet per second (cfs) by direct diversion and 90,000 acre-feet per annum (afa) by storage from October 1 to September 30 from Dinkey Creek, Deer Creek, Bear Creek and Laurel Creek, for generation of electric power. The maximum rate of diversion to offstream storage from Deer Creek will be 600 cfs. From Bear and Laurel Creeks the maximum rate of diversion to offstream storage will be 850 cfs. The total combined direct diversion and diversion to storage during any one year will not exceed 417,000 acre-feet. Points of diversion and rediversion shown on Figure 1 will be within the: (1) NW1/4 of NE1/4 of Projected Section 1, T11S, R26E, MDB&M (diversion only); (2) SW1/4 of SW1/4 of Section 22, T11S, R26E, MDB&M; (3) NW1/4 of SW1/4 of Section 22, T11S, R26E, MDB&M; (4a) SE1/4 of SW1/4 of Section 21, T10S, R26E, MDB&M; (4b) NE1/4 of SE1/4 of Projected Section 15, T11S, R26E, MDB&M (rediversion only). (See Terms 1 & 2.)

FIGURE 1


Dinkey Creek
Bear Creek
Deer Creek
POINTS OF DIVERSION & REDIVERSION
(Kings River Conservation District)
1. Diversion
2. Diversion & Rediversion
3. Diversion & Rediversion
4a. Diversion & Rediversion
4b. Rediversion
FRESNO CO
M.D.B.&M.
Dinkey Creek Reservoir
TUNNEL
SURGE TANK
POWER HOUSE No. 1
POWER HOUSE No. 2
NORTH FORK KINGS RIVER
KINGS RIVER
TO FRESNO 60 MI.
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
APPLICATION
26001
SCALE

Applicant's Project

2. The applicant proposes to construct a hydroelectric power project on Dinkey Creek that will produce an average of 377 million KWH per year. The project includes construction of the following facilities:

a. An approximately 340-foot-high, concrete-faced rockfill dam located on Dinkey Creek. The dam will form a 90,000 acre-foot capacity reservoir with a surface area of 885 acres;

b. Three concrete weir structures for diversion from Deer, Bear, and Laurel Creeks;

c. Three 10-foot diameter horseshoe-shaped diversion tunnels, totalling 26,000 feet in length, which will convey flows from Deer, Bear and Laurel Creeks into Dinkey Creek Reservoir;

d. Two 10-foot diameter, horseshoe-shaped power tunnels totalling 56,000 feet in length; and

e. Two 60 megawatt (MW) above-ground hydroelectric power plants.

3. The proposed project is located on the western slope of the Sierra Nevada approximately 40 miles east-northeast of the City of Fresno. It is within the boundaries of Sierra National Forest. Approximately one-third of the land to be used for the project is privately owned.

4. The applicant proposes to divert flow from Deer Creek into Bear Creek then divert the combined flow into Laurel Creek, and then divert the combined flow from all three streams

into Dinkey Creek Reservoir. The diversion will be by means of concrete weir structures and unlined tunnels. Each of the diversion tunnels will have a trash/guard rack at each end to prevent people and animals from entering the tunnels. The weir structures and tunnel inlets will be designed to allow a flow of 5 cfs or the natural flow, if less, to pass downstream for fish habitat preservation in Deer Creek, and a flow of 2 cfs or the natural flow, if less, in Bear Creek. The weirs will also allow bypass of large flows to flush the stream gravels and maintain the fish habitat. The diversion tunnel from Deer Creek to Bear Creek will be routed around McKinley Grove, an area containing giant sequoia. The maximum rate of flow through the diversion tunnels to Dinkey Creek Reservoir will be 850 cfs. (See Terms 1, 2, & 8.)

5. The reservoir will inundate approximately 3.25 miles of Dinkey Creek. The dam will have a permanent outlet tunnel which will release water into the creek about 300 feet downstream. (See Term 8.)

6. Power Tunnel No. 1 will run underground in a southerly direction west of Dinkey Creek from the dam for approximately 29,500 feet (5.6 miles) to Power Plant No. 1. Power Plant No. 1 will discharge water into Dinkey Creek.

7. Immediately downstream from Power Plant No. 1, a diversion weir in Dinkey Creek will either redivert the water discharged from Power Plant No. 1 into Power Tunnel No. 2, or will allow flow to pass downstream for flushing of accumulated streambed deposits. Flow in Dinkey Creek upstream of the

discharge point from Power Plant No. 1 will always be passed downstream through the weir structure. Power Tunnel No. 2 will extend underground also in a southerly direction east of Dinkey Creek for approximately 24,780 feet (4.7 miles) to Power Plant No. 2 near Balch Camp on the North Fork of the Kings River. Power Plant No. 2 will discharge water into the North Fork of the Kings River. (See Terms 2, 3, & 8.)

8. Two 230 kilovolt (kV) transmission lines will be constructed to carry electricity from the project. One will run approximately one mile from Power Plant No. 1 to the existing Helms-Gregg 230 kV line owned by PG&E Company. The other line will run approximately 2,000 feet from Power Plant No. 2 to the existing Balch-McCall 230 kV line owned by PG&E Company.

9. Gravel-surfaced, private access roads will be constructed from existing roads to the various project features. Roads to be inundated by the reservoir will be relocated.

Background

10. The District is a public agency encompassing parts of Fresno, Kings, and Tulare Counties. It was created under the Kings River Conservation District Act (Statutes 1951, Chapter 931). The District's activities include flood control, groundwater recharge, weather modification, drainage studies, and the development of water storage and hydroelectric projects. On March 22, 1982, the District was issued a license for the Dinkey Creek Hydroelectric Project by the Federal Energy Regulatory Commission (FERC).

Protests

11. The Sierra Association For Environment (SAFE) and the California Department of Fish and Game (Fish and Game) protested Application 26001. Fish and Game alleged that the project could have a detrimental effect on both fish and wildlife. Fish and Game's protest was dismissed after a mitigation agreement was reached with the applicant. (See Term 15.)

SAFE alleged that the appropriation will not best serve the public interest, will be contrary to law, and will have an adverse environmental impact. SAFE contends that the cost of the project will be higher than the applicant has estimated, that the Board should prepare a subsequent EIR on the project to include information not set forth in the EIS/EIR, that there are unmitigated adverse environmental effects because of the project for which no sufficient overriding considerations exist under the California Environmental Quality Act (CEQA) to justify the project, and that the District has not proved that the project will produce the estimated 377 million kilowatt hours of electricity per year.

Agreements Between the Applicant and Other Entities

12. The District made several agreements during the development of the Dinkey Creek project. On September 4, 1980, it entered into an agreement with the United States Forest Service (Forest Service) regarding areas within the Forest Service's responsibility, including recreation, timber, cultural resources, sensitive plants, public and private recreational facilities,

construction camps, and reservoir operation. On October 6, 1980, it entered into a three-party Fish and Wildlife Agreement with the Forest Service and the California Department of Fish and Game, concerning stream fishery management, reservoir fishery management, wildlife resources and measures to reduce conflicts between the project and wildlife. On April 21, 1981, it entered into an agreement with Kings River Water Association (Association) by which the Association condones the District's planned storage of water in Dinkey Creek Reservoir. (Through its members, the Association claims rights to all of the water in the Kings River watershed, of which Dinkey Creek is a part.) On March 11, 1980, the District contracted to sell the project's full output to Southern California Edison Company (Edison). (See Terms 15, 17, & 28.)

Interested Parties and Public Participation

13. Many interested parties appeared at the hearing to state their positions concerning the project. Glen Dorfmeier generally supported the applicant's project. He raised an issue concerning the Board's authority. He apparently believed that the Board's consideration of the project was directed toward a challenge to FERC's authority to license the project. He argued that such a challenge would be improper because the Dinkey site was reserved by the United States for power purposes. He also argued that the Board should give the applicant a consumptive water right for the proposed campgrounds around the reservoir.

14. Other interested parties represented the Girl Scouts, the League of Women Voters of Fresno, the Forest Service, owners of property to be condemned for the project, recreationists, the Cold Springs Mono Tribe, and the County of Fresno. They raised concerns regarding recreation, prehistoric and historic cultural values, and compensation for parcels to be inundated.

15. Hearing sessions devoted to public participation were held during the evenings of November 16, 1981, and January 13, 1982. Recreational and labor employment concerns were the primary subjects raised at the public participation sessions.

Watershed and Water Supply

16. The Dinkey Creek watershed covers an area of about 137 square miles on the western slope of the Sierra Nevada. Its elevation ranges from over 10,000 feet to about 1,230 feet at the confluence with North Fork Kings River. Average annual precipitation ranges from about 30 to over 50 inches. About 85 percent of the total annual precipitation, generally in the form of snow, occurs during the six months from November through April. Snowmelt provides a major portion of the runoff in late spring and early summer, resulting in relatively steady but high stream flows. Occasional rain storms can cause temporary sharp increases in flow. In summer, stream flows generally are low. There is little or no flow in late summer and fall.

17. Dinkey Creek Dam will be located at about elevation 5,300 feet. The contributing drainage area is 51.6 square miles. Table 1 contains a summary of simulated monthly inflows to the proposed reservoir, including that from Bear,

TABLE 1

MONTHLY AND ANNUAL DISCHARGES (in cfs)

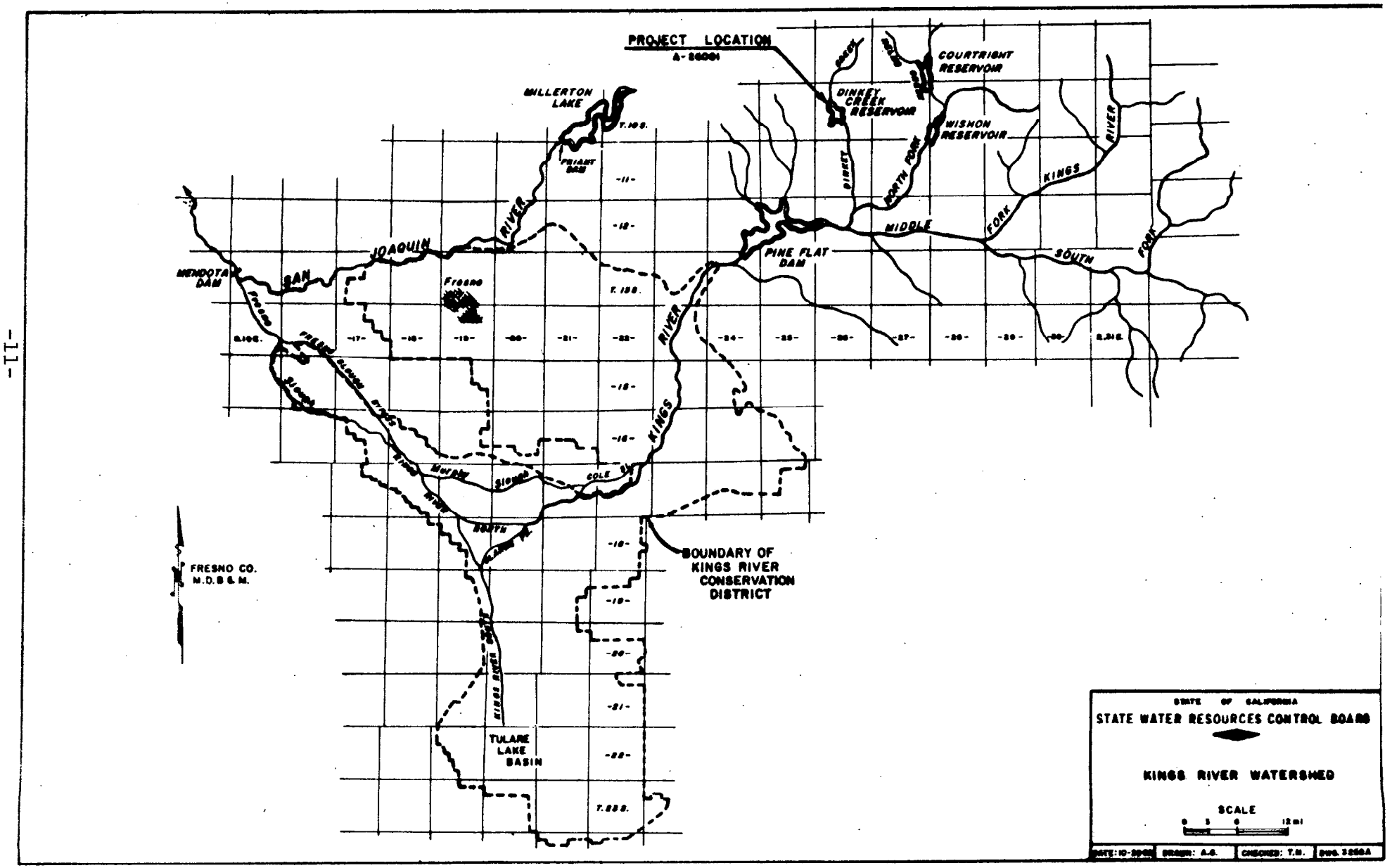
	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	WATER YEAR AVG
DINKEY CREEK AT DINKEY MEADOW													
Avg.	9	27	50	62	80	119	257	397	235	41	8	6	108
Max.	90	300	310	412	269	270	530	1250	890	250	42	75	315
Min.	1	1	2	6	12	19	67	75	8	1	1	1	21
DEER CREEK BELOW EAST FORK													
Avg.	3	9	18	21	29	41	94	155	86	15	3	2	40
Max.	30	109	113	165	100	98	204	516	365	110	13	26	124
Min.	1	1	1	3	4	7	25	16	2	1	1	1	8
BEAR CREEK - LAUREL CREEK CONFLUENCE													
Avg.	3	7	14	17	23	33	75	124	69	12	2	2	32
Max.	24	87	90	132	80	78	163	413	292	88	10	21	99
Min.	1	1	1	2	3	6	20	13	2	1	1	1	6
TOTAL INFLOW TO DINKEY CREEK RESERVOIR													
Avg.	11	38	76	94	124	186	418	669	384	62	10	7	173
Max.	137	489	506	702	438	439	890	2172	1520	441	58	115	532
Min.	1	1	2	6	14	25	105	97	8	1	1	1	31

Laurel, and Deer Creeks, for the 61-year period from 1920 to 1981. Average annual inflow for the 61-year period would be 173 cfs (125,200 afa). It varies from a low of 7 cfs in September to a high of 669 cfs in May. Inflow in the maximum year averaged 532 cfs; the inflow in the minimum year averaged 31 cfs. Respectively, these inflows represent a maximum of 385,100 afa and a minimum of 22,400 afa. Projected flow into Dinkey Creek Reservoir, including the diversions from Deer, Bear, and Laurel Creeks, represents about 85 percent of the total Dinkey Creek watershed runoff.

18. About 12 miles downstream from the proposed reservoir, Dinkey Creek joins the North Fork Kings River (see Figure 2). Pine Flat Dam, located downstream on the Kings River, forms an approximately 1,000,000 af capacity reservoir. Pine Flat Dam and Reservoir, constructed in 1954, are the principal control facilities on the Kings River. They are used for flood control, power generation, and storage of water for irrigation. Below Pine Flat Dam, the Kings River bifurcates at several points, partly rejoins, is controlled by levees and weirs, and supplies numerous irrigation canals. Ultimately, part of the Kings River flows south into Tulare Lake Basin and part of it flows north into the San Joaquin River through Fresno Slough.

19. The Association, which includes all of the parties who claim water rights on the Kings River, administers the distribution of the waters of the Kings River. Flows which cannot be used for irrigation within the Association's service area mostly are conveyed out of the watershed to the San Joaquin

FIGURE 2


PROJECT LOCATION
A-26004
COURTRIGHT RESERVOIR
DINKEY CREEK RESERVOIR
WISHON RESERVOIR
MILLERTON LAKE
FRIANT DAM
PINE FLAT DAM
MENDOTA DAM
SAN JOAQUIN RIVER
FRESNO
KINGS RIVER
MIDDLE FORK
SOUTH FORK
NORTH FORK
FRESNO SLOUGH
MURRY SLOUGH
COLE SLOUGH
BOUNDARY OF KINGS RIVER CONSERVATION DISTRICT
FRESNO CO.
M.D.B.&M.
TULARE LAKE BASIN
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
KINGS RIVER WATERSHED
SCALE

River through Fresno Slough. Table 2 gives the flows in Fresno Slough since construction of Pine Flat Dam. Because of control facility capacities, a portion of the larger flood flows in the Kings River reaches Tulare Lake Basin.

Availability of Unappropriated Water

20. The District has applied for direct diversion of up to 452 cfs (327,000 afa) plus diversion of up to 90,000 afa to storage. The project's turbines will be designed to use 452 cfs. They are intended for use approximately 4-1/2 hours per day. The applicant's reservoir operation study shows that average annual inflow and outflow for the reservoir would be about 173 cfs and 171 cfs, respectively, based on the hydrologic data presented in Findings 16-19 above. The difference in flow rates represents the average evaporation from the reservoir of 2,017 afa. Allowing an average of 29 cfs for fish bypass flows and reservoir spills to Dinkey Creek, the average annual flow through the turbines would be about 142 cfs, or 102,800 afa. Turbine flows in the maximum and minimum years would be 256 cfs and 70 cfs, respectively. These flows would use 185,300 afa and 50,600 afa, respectively. Consequently, considerably less than 327,000 afa will be available for direct diversion in the Dinkey Creek watershed. However, the operation study shows that a combination of water available from direct diversion and storage is sufficient to provide for District's intended part-day operation of the turbines. (See Term 1.)

TABLE 2

MONTHLY DISCHARGE IN A.F. FOR FRESNO SLOUGH BY-PASS (Water Years)

Year	Oct., Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug., Sept.	Total
1954-55	---	---	---	---	---	---	---	---	---	---	---
1955-56	---	3681	468	57672	29384	---	---	---	---	---	91205
1956-57	---	---	---	---	---	---	---	---	---	---	---
1957-58	---	---	---	---	958	27241	93363	90610	625		212797
1958-59	---	---	---	---	---	---	---	---	---	---	---
1959-60	---	---	---	---	---	---	---	---	---	---	---
1960-61	---	---	---	---	---	---	---	---	---	---	---
1961-62	---	---	---	---	---	---	---	---	---	---	---
1962-63	---	---	---	---	---	---	---	---	---	---	---
1963-64	---	---	---	---	---	---	---	---	---	---	---
1964-65	---	---	---	---	---	---	---	---	---	---	---
1965-66	---	---	---	---	---	---	---	---	---	---	---
1966-67	---	2884	---	---	---	48657	194665	149853	88811	---	484870
1967-68	---	---	---	---	---	---	---	---	---	---	---
1968-69	---	---	38510	184090	285920	278860	302640	318170	132580	* 10570	1551340
1969-70	---	1370	53320	4780	2700	---	---	---	---	---	62170
1970-71	---	---	---	---	---	---	---	---	---	---	---
1971-72	---	---	---	---	---	---	---	---	---	---	---
1972-73	---	---	---	---	---	---	---	139	---	---	139
1973-74	---	---	93	---	---	18340	19940	47980	---	---	86353
1974-75	---	---	---	---	---	---	---	---	---	---	---
1975-76	---	---	---	---	---	---	---	---	---	---	---
1976-77	---	---	---	---	---	---	---	---	---	---	---
1977-78	---	---	---	6670	94810	198670	202040	48820	176		551186
1978-79	---	---	---	397	218	640	9430	730	337	---	11752
1979-80	---	---	57150	86990	252370	77650	70020	12230	23170	---	579580
1980-81	---	---	---	---	---	---	---	---	---	---	---
Total											
Average											134,496

*August

21. The reservoir operation study indicates that storage would not occur during the months of July and August. Therefore, the authorized storage season will not include those months. (See Term 1.)

22. The District has executed an agreement with the Association and the members of the Association, under which the Association and its members waive objection to the District's storage of water in Dinkey Creek Reservoir for power generation, subject to certain terms and conditions. As noted above, the members of the Association claim the right to use all of the waters of the Kings River, including those of Dinkey Creek. Under the agreement, District will pay the Association, as fiscal agent for its members, 25 percent of the monthly power benefit payment due to the District from Edison for power delivered. The agreement also requires the applicant to release water, for irrigation purposes by the Association, to Pine Flat Reservoir if Pine Flat contains less than 30,000 acre-feet. In our view, such a release would be in recognition of the superior water rights of the Association's members and not for irrigation use by the District. The agreement does not indicate that the District will use water for irrigation or that the Association's members are changing their diversion point from Pine Flat.

23. Evidence shows that storage at Dinkey Creek Reservoir will modify the timing of streamflow downstream. During the runoff season, storage at Pine Flat Reservoir could be reduced because of storage at Dinkey Creek, and downstream flow

to Fresno Slough or Tulare Lake Basin could be reduced because of flood operation criteria at Pine Flat. During the summer months, when stored water in Dinkey Creek Reservoir is used for power generation, flow into or through Pine Flat Reservoir will be increased. As a result of this increased flow from Dinkey Creek, a corresponding reduction in release of stored water from Pine Flat Reservoir for irrigation purposes could occur, offsetting some or all of the earlier reductions in storage at Pine Flat. By agreement with the District, the members of the Association have stipulated that any change in operation of Pine Flat Reservoir or in downstream flow caused by storage at Dinkey Creek would not adversely affect their prior rights.

24. No downstream water user other than the Association and its members has asserted any rights in the waters tributary to the Kings River, including those of Dinkey Creek. However, the record indicates that during times of high flows, some water escapes from the service area of the Association into the San Joaquin River through Fresno Slough. The reduction in quantity of water escaping into the San Joaquin River because of the project would be about 225,000 af total during the 27-year period from 1954 to 1981. No water user has come forward to claim rights to this water, and we are not aware of any holders of such rights. In some months, Dinkey Creek Reservoir might have reduced the flow in the San Joaquin River by as much as about 8 percent of the flow at Vernalis, assuming that when there is flow out of Fresno Slough into the San Joaquin River there is hydraulic continuity

to the Delta. During drier months, this reduction in flow could conceivably adversely affect water quality in the southern Sacramento-San Joaquin Delta. However, records indicate that except in a few months of the 27-year period analyzed, historic flows into the Delta would have been sufficiently high that no adverse impacts on water quality in the Delta would have resulted. During the few borderline months, records are not sufficiently detailed to determined fully the significance of the reduced Delta flows. However, available information indicates that no significant adverse impact would occur.

25. Because there are no downstream water users who object to the District's proposed diversion of water for power generation, because the District's proposed use will not significantly consume water, and because no known adverse downstream impact would occur, we find that water is available to supply the District's project as requested except for diversion to storage during the months of July, August, September, and October. (See Term 1.)

26. The agreement between the District and the Association directs that any permits for the proposed project shall provide that they shall be in accordance with and subject to the terms and conditions of the agreement. We note that by this decision we are not acting on any of the water rights claimed by members of the Association. Nor is the Board bound by the terms and conditions of the agreement between the District

and the Association. Therefore, the permit will not include conditions from the agreement. However, the permit issued pursuant to this decision will be subject to all prior water rights, including those of the Association members.

Application of Standard Permit Terms 80, 90 and 91

27. Standard permit term 80 reserves to the Board authority to change the authorized diversion season in permits to conform to the results of comprehensive analysis of the availability of unappropriated water in the Sacramento-San Joaquin Delta watershed. Terms 90 and 91 operate to restrict diversion during the authorized diversion season when water is unavailable to the permittee. These terms are included in permits within the Sacramento-San Joaquin Delta watershed when hydraulic continuity with the Delta may exist during the authorized diversion season. (See Terms 10, 11, & 12.)

28. Since Kings River water occasionally flows through Fresno Slough into the San Joaquin River, and since hydraulic continuity with the Delta may occasionally exist during the diversion season to be authorized for collection to storage in Dinkey Creek Reservoir, terms 80, 90, and 91 will be included in the permit. They will apply only to diversions to storage. (See Terms 10, 11, & 12.)

Need for Water

29. The District has contracted to sell the project's full output of power to Southern California Edison Company (Edison). Under the power sale contract Edison has the right to

approve the District's bond resolution authorizing the sale of revenue bonds to construct the project. If Edison approves the bond resolution, it will be committed to the project, and the contract will become effective. If Edison is committed to the project, it likely will be built and the water appropriated under Application 26001 likely will be beneficially used.

30. It is unlikely that the applicant will be able to sell its revenue bonds to fund construction of the project unless it can demonstrate that it will have a purchaser for the project's output.

31. Since the contract will not become effective until Edison approves the resolution, a risk exists that Edison will not purchase the power to be produced by the project. Since this risk is present, and power generation is the sole purpose of the project, the project should not be constructed unless assurance exists that the power will be purchased. A fully effective power sale contract will provide such assurance if it contains terms financially obligating the purchaser to the project. (See Term 4.)

32. Whether Edison will approve the District's bond resolution depends largely upon whether Edison's evaluation of the expected cost of power generated by the project places the cost above or below the cost of power generated by using oil and gas. Under economic conditions existing at the time of the hearing the purchase of electricity from the project was economically marginal for Edison. Small changes in assumptions concerning interest rates, construction costs, and the price of

oil and gas could make the project more or less attractive economically.

33. The project is expected to provide 120 megawatts (MW) of capacity. In the next ten years Edison is expected to need new capacity totalling in excess of 6000 MW.

34. Edison's purchase of power from the project will fit into Edison's overall resource strategy. This strategy is substantially similar to current recommendations of the California Energy Commission for planning policies and powerplant needs in Edison's service area. Under its strategy, Edison will emphasize renewable and alternate supply sources and management of demand growth through substantial investment in conservation and load management. Edison's strategy also involves reducing by half the amount of oil and gas it now uses to generate electricity. The reduction in oil and gas use will reduce Edison's emissions of nitrogen oxides in the South Coast Air Basin.

35. The California Energy Commission in its 1981 Biennial Report sets forth six priority ranks for meeting California's future energy requirements. The Dinkey Creek project will fit into the Commission's fifth of the six listed priority ranks for new power resources.

36. Failure to build the project will not result in a power shortage in Southern California. Instead, the equivalent amount of power may be generated by consuming oil and gas in existing powerplants, or by other projects under Edison's consideration. If the Dinkey Creek project is built, and Edison purchases the power, the project may reduce Edison's net cost of power.

Applicant's Financial Capability to Complete the Project

37. The District has produced evidence that it was authorized in a November 1981 bond election to sell bonds in the amount of $700 million to fund construction of the project. The District and Edison have each produced estimates of the project's cost, which include contingencies to cover possible delays during construction. The project is estimated to require 4-1/2 years to construct, preceded by 15 months of engineering work commencing after the Board issues a permit to the District. The District, using an escalation rate of 11 percent, estimates that for construction start dates of March 1983, March 1984, and March 1985, the project's cost will be $311 million, $384 million, and $386 million, respectively. (These figures include mitigation costs.) With the addition of a reserve fund and payments for interest at 15 percent, the total cost for each start date will be $517 million, $579 million and $640 million, respectively. Edison, however, estimated a 24-percent higher instantaneous cost than the District. Edison placed the total bond cost for a construction start of March 1984 at $485 million, assuming an interest rate of 11 percent and an escalation rate of 7 percent. If the bond costs are higher than $700 million, the District will have to raise more money, likely through another bond election during construction, to complete the project. Because of the foregoing uncertainties, there is no assurance the project will be built and the water applied for placed to beneficial use.

38. SAFE urged that the cost of construction is likely to be much higher than estimated by the District, but failed to establish such a likelihood. Even if the capital cost were higher, the capital intensive nature of the project indicates that a small change in the interest rate could be more significant than a change in the construction cost.

39. Edison must obtain the approval of the California Public Utilities Commission (PUC) to guarantee payment of the debt service on the District's bonds, before making its final commitment under the power sale contract. If the PUC disapproves the financial arrangements between the District and Edison, or requires changes, there would be delays in commencing construction.

40. Under the applicant's FERC license, dated March 22, 1982, construction is required to commence within two years of the date of the license's issuance.

Applicant's Diligence

41. The record shows that construction can start by the spring of 1985, at the latest. A period of 4-1/2 years after the start of construction should be sufficient to complete the project if it is pursued with due diligence, absent unforeseen occurrences. (See Terms 4, 5, & 6.)

Fisheries Considerations

42. The project source streams support self-sustaining populations of rainbow trout, brown trout, sculpin, and

occasionally brook trout. On Bear and Laurel Creeks, these populations occur primarily upstream of the project diversions. Dinkey Creek in its lower three miles supports several warm water non-game fish species and smallmouth bass. Fish and Game annually plants approximately 30,000 hatchery-reared catchable rainbow trout in the vicinity of the proposed Dinkey Creek Reservoir.

43. Fish and Game, the Forest Service, and the District entered into a Fish and Wildlife Agreement which sets forth, among other things, instream flow release requirements to be maintained by the applicant. The flow release requirements are expected in most years to enhance the stream fishery below Dinkey Creek Dam, and to mitigate effects on the other source streams. In even the driest years studied by the District, water would be available for fish releases. The agreed-upon instream flow releases appear satisfactory given present knowledge. However, future advance in methodology and actual experience may indicate needed changes. District will study the effects of the flow releases below Dinkey Creek Dam and submit its results to FERC. Such results should also be submitted to the Board. (See Terms 15.a., 15.c., 21 & 23.)

44. The Fish and Wildlife Agreement contains provisions for creation or preservation of conditions at the reservoir site which will optimize the potential reservoir fishery habitat.

Further detailed evaluation of the site will be done. The agreed-upon measures appear necessary and proper. Provisions derived from the Agreement will be included in the water right permit. (See Terms 15.e., 15.g., & 15.h.)

45. Unusual conditions may occur which would require reductions in streamflow releases from Dinkey Creek Reservoir below those prescribed in the agreement. In such cases the District should obtain Fish and Game's consent and required conditions prior to reducing the flow, except when such a reduction is necessary because of an imminent threat to public safety. In the latter situation the District should obtain Fish and Game's agreement on the conditions for reduced flow releases at the earliest opportunity. The District should promptly report to the Board any reductions in streamflow releases, stating the necessity, magnitude, and duration of the flow reduction. (See Term 15.b.)

46. Flushing flow releases into the source creeks may become necessary from time to time to remove sediments from the streambeds. Such releases should be made by the District at the direction of Fish and Game if they are needed for two consecutive years. The monitoring techniques, buildup criteria, and quantities of flow should be satisfactory to Fish and Game. (See Term 15.d.)

47. Except during critical dry years (as defined by the Department of Water Resources), a minimum reservoir pool

should be maintained for the benefit of the reservoir fishery. The size of such pool should remain flexible until Fish and Game and the Forest Service have evluated or have concurred in an evaluation of the reservoir fishery habitat. A report on the reservoir fishery habitat should be made and submitted to the Board upon completion of the evaluation, but not later than two years after initial filling of the reservoir. (See Terms 15.i., 22 & 23.)

Wildlife Considerations

48. More than 125 species of birds inhabit the project area, including several game species. Mammals include bobcats, gray fox, skunk, beaver, mule deer, and squirrels. Key game animals are mule deer, mountain quail, and gray squirrels. People interact with the wildlife through birdwatching, hunting, educational work and scientific study.

49. Economically, the most important wildlife species in the project area is the California mule deer. A portion of the North Kings deer herd, about 600 head, migrates through the reservoir site each year, stopping to rear fawns in the area. The project will eliminate about 1,120 acres of deer habitat, will block a migration route, and will inundate areas where deer stop over and where they rear fawns during the summer. About 300 deer would be directly affected.

If construction crews using vehicular transportation on Trimmer Springs Road change shifts during hours between 5:00 and 7:30 a.m. and 4:30 and 8:00 p.m., in the months of November through April, the road kills of deer will be higher than for shift changes at other hours. (See Terms 15.1. - 15.s.)

Increased recreation when the project is in operation will also adversely affect the deer.

50. The impacts of the project on wildlife can likely be mitigated by enhancing habitat carrying capacity at other locations satisfactory to Fish and Game, and by taking other steps set forth in the Fish and Wildlife Agreement. To replace the lost habitat, approximately 3,000 acres of habitat would have to be improved on selected mitigation parcels so as to increase their overall carrying capacity by one-third. After habitat enhancement is completed, the mitigation parcels should be maintained at their enhanced carrying capacity. (See Term 15.j.)

51. The record shows that there are likely no known previous cases in which wildlife mitigation programs such as the one proposed by the District have been successfully employed for projects which both interfered with deer migration corridors and eliminated habitat. A study of the trends in deer usage before and after habitat enhancement work is carried out on a mitigation parcel or parcels would provide information showing whether the mitigation program is effective. If the program does not increase deer use of the mitigation parcel, related factors should be examined for an explanation of the result, and alternate mitigation steps should be taken. (See Terms 16 & 23.)

Recreational Considerations

52. Major recreational activites in the project area include camping, hunting, fishing, swimming, hiking and nature study. In the Dinkey Creek basin, recreational facilities include a resort, a store/restaurant, a pack station, 45 summer residences, 129 Forest Service campsites, 3 day-use areas, and four organizational camps able to accommodate a total of 746 people at one time. The camps are operated by the YWCA, the Girl Scouts, and the City of Fresno, and include showers, cabins, tent cabins, cooking facilities, dormitories and other support facilities. Three camps are on Forest Service land, and one is on land owned by the Girl Scouts.

53. Dinkey Creek Reservoir will totally inundate two of the organizational camps, the store/restaurant, the pack station, three summer residences, and the 3 day-use areas. It will partially inundate the other two organizational camps, which will have to be closed. The reservoir will also inundate approximately three miles of the most popular portion of Dinkey Creek. Construction activity will reduce recreational use of the area during the 4-1/2-year construction period.

54. To mitigate the project's impact on recreation, the District intends to develop new recreational facilities along the northern shore of the reservoir. A scenic and wildlife preservation area is planned for the southern, western, and part of the eastern shore. Proposed recreational facilities include 107 overnight campsites, 39 picnic sites, beaches, a boat ramp,

and appurtenant parking areas. The organization camps will not be relocated because the Forest Service will not permit this use at the reservoir and the operator of Camp Fresno and Camp Fresno, Jr., has not expressed an interest in relocating the camps. The new facilities will accommodate 1,245 people and could be expanded to accommodate 2,174 people. The District will fund construction, operation, maintenance, and replacement of the facilities, and the Forest Service will operate and maintain them under contract with the District. (See Term 17.a.)

55. Since the Girl Scout Camp is privately owned and will be inundated, the District will buy it or exercise the power of eminent domain to acquire it. The District must pay the Girl Scouts just compensation for their property. Therefore, a condition requiring the District to do so is unnecessary.

56. While approximately three miles of streamside recreation will be converted to reservoir recreation, this stream segment is not unique. Other streamside recreational opportunities exist in the vicinity of the project.

57. A water supply will be needed for users of the recreational facilities to be constructed by the District. The District has not secured water rights or a water supply for users of these facilities, nor has it applied for water rights for domestic or recreational use at the facilities. For the District to appropriate water from the project sources for this purpose, it would have to file an application separate from

Application 26001. Water in the amounts needed for the recreational uses proposed would not be incidental to Application 26001, even if the District requested that it be allocated as an incidental use under Application 26001. The District should demonstrate that it has an adequate water supply for use at the planned recreational facilities before it commences construction of the project. (See Term 18.)

Sensitive Plants

58. During the month of June, after many plants had finished blooming, botanical surveys were commenced at the project spillway, Surge Tank No. 1 with Adit No. 1 and access road, and Powerhouse No. 1 sites. The flow is crucial for identifying certain species. Therefore, the survey may have overlooked some rare or endangered plant species. To the extent that this survey was not timed to observe all of the plants at an identifiable stage, it was inadequate. The District should conduct additional botanical surveys during appropriate months, to determine whether rare and endangered plants are present at the project spillway, Surge Tank No. 1, Adit No. 1, and Powerhouse No. 1 sites. (See Term 19.)

59. A small glade is located on Deer Creek downstream from the project diversion point. The glade forms an unusual environment which supports numerous moisture and shade-loving plant species, four of which are uncommon in that part of the Sierra Nevada. The District's access road to the diversion point will pass directly beneath the glade. While the District agrees that the glade should be protected, it has not adopted any plan to

protect the glade or to mitigate any construction or operation impacts to the glade. The District should adopt such a plan before initiating construction of the project. (See Term 20.)

Water Quality

60. Project construction and operation will affect water quality in the Dinkey Creek Reservoir, Dinkey Creek, and in the North Fork Kings River. The Central Valley Regional Water Quality Control Board has issued a National Pollution Discharge Elimination System (NPDES) permit to the District. The permit establishes waste discharge requirements for seventeen point discharges expected as a result of the project's construction and operation. (See Term 17.e.)

Project Transmission Lines

61. Transmission lines to carry electricity produced by the project are to be constructed, owned and operated by the power purchaser, Edison. While the transmission lines appear essential to the Dinkey Creek project, they are formally part of another project. Before they can be constructed, Edison must obtain permits or licenses both from FERC and the California Public Utilities Commission. Although the lines could adversely affect the deer herd, such adverse effects can be mitigated by the agencies which will approve the transmission lines.

Environmental Effect if Project is Not Completed

62. As found above (see Finding 31), Edison may not purchase the power to be produced by the proposed project.

Assurance is needed that the power will be used; a fully effective power sale contract with financial commitments by the purchaser would provide such assurance. If the project is partially constructed and then abandoned, many of the project mitigation measures which must be done after completion of construction will be ineffective or impractical. Consequently, it is important from the standpoint of environmental mitigation that no physical steps toward construction of the project be taken unless strong assurance exists that the project will be fully constructed and used. (See Term 4.)

Cultural Resource Considerations

63. Construction of Dinkey Creek Reservoir raises two major cultural resources questions. First, can project impacts on archeological sites be mitigated? Second, can losses of cultural resources including the Native Americans' traditional camps and gathering places, and historic folkways, be mitigated?

64. Eighteen prehistoric archeological sites have been identified in the project area. Twelve will be inundated, and two more will be directly impacted by flooding. The remaining four sites may be impacted by recreational use of the area. Each of the eighteen sites has been test excavated to determine eligibility for inclusion in the National Register of Historic Places. Under federal laws, if the sites are declared eligible for the National Register, steps must be taken to mitigate the impacts of the project on the archeological sites. If impacts are identified and they can be mitigated, a mitigation program is

required. Once a Memorandum of Agreement setting forth mitigation steps is signed by the project proponent and the agencies responsible for ensuring mitigation (i.e., Forest Service, State Historic Preservation Officer, and FERC), the project may be permitted under the provisions of 16 USC §§469 and 470aa-11. The sites have not yet been placed in the National Register, no mitigation program has been formulated, and no Memorandum of Agreement has yet been executed. If the project is constructed, the sites should be either protected or excavated to recover their data. Federal law, at 16 USC §§470ee and 470ff provides for both criminal and civil penalties for excavating, removing, damaging or otherwise altering archeological sites without a permit. (See Term 17.g.)

65. The project also impacts historical resources. First it impacts non-physical features of the area's history. Construction of the project will alter or destroy established folklife patterns. Inundation of Dinkey Meadow likely will cause termination of the Forbes family's cattle drive into the Sierra Nevada. Traditional recreation uses of the project area will change. Second, it impacts physical historic features, including the sites of the forest ranger station and the Dinkey Creek Truss Bridge, which will be inundated. A total of seventeen structures were identified during the initial research on historic resources in the project area. The historic use of the Forest Service structures, the historic recreational uses, and the historic cattle drive should be recorded before they are

lost or relocated. Mitigation for loss of the physical historical remains is covered under the same federal laws as the prehistoric sites. (See Terms 17.g. & 25.)

66. The reservoir will inundate significant camps, tradegrounds, and culturally important sites. These sites will be lost to future Native American generations if the project is constructed. Several measures were recommended by the ethnographers to mitigate the project's adverse impacts on the Dinkey Creek ethnographic resources and on the contemporary Mono people. These measures are appropriate due to the circumstances, and the District should ensure these measures are taken. Since these measures will require an agreement between the District and the Cold Spring Mono Tribe, the District should provide the Board with a copy of an executed agreement prior to commencement of project construction. The agreement should contain time limits for implementation of the measures. (See Term 24.)

Alternative Projects

67. In its final EIR/EIS, the applicant described no alternative project sites or variations of the proposed project. For the water right hearing, the Board asked the District to provide further information on the alternatives set forth in the Feasibility Report prepared by the District's engineering consultant. The District supplied information on Alternatives A and B, both of which would feature dams on Dinkey Creek in a narrow gorge downstream from the proposed site. Alternative A's dam would be downstream 4,500 feet, and Alternative B's dam would be downstream 13,500 feet.

68. In 1981 dollars, the construction cost at the proposed site is estimated at about $96 million, the cost of Alternative A is about $136 million and the cost of Alternative B is about $212 million. Alternative A would inundate all but a narrow ribbon of land to be inundated by the project, and would save Camp Fresno and Camp Fresno, Jr., from inundation. It would impact the migration of about twice as many deer as the selected project. Alternative B would not inundate Dinkey Meadow and the recreational facilities. However, it would impact migration of more deer than either Alternative A or the selected project. It would reduce the power output by 38 million kilowatt hours per year and would increase the cost per unit of power by 75 percent, compared with the selected project. Because of these facts, the alternate project dam sites require no further consideration.

Effect on Cattle Grazing

69. The Dinkey Creek Reservoir will inundate about 76 acres of land in Dinkey Meadow owned by the Forbes family. This land is used by the Forbes' as a staging area during their annual cattle drives to and from their summer range. Loss of the land would impair the ability to drive the cattle to and from the summer range. The Forbes will have the right to receive just compensation from the District for their land.

Agreement Between District and Forest Service

70. The September 4, 1980, agreement between District and Forest Service, covers mitigation requirements for visual

resources, waste disposal, removal of trees from the national forest, erosion control, dust control, losses and damage to cultural resources, fire control, public safety, loss of public and private recreational facilities, water quality, and effects of the construction camps. The terms of the Forest Service agreement are necessary and proper as mitigation for the adverse effects of the project. However, the agreement is subject to the terms and conditions of the current FERC license which was granted for a period of 50 years. A water right is granted for an indefinite term which may continue well beyond the term of the current FERC license. Consequently, these terms should be made conditions of the water right. (See Term 17.)

SAFE's Request That a Supplemental EIR Be Prepared

71. SAFE has asserted in a letter to the District dated November 26, 1981, and in its opening post-hearing brief dated September 6, 1982, that a supplemental or subsequent EIR is required for the project, under 14 Cal.Admin.Code §15067 and under Public Resources Code §21166. In its letter to the District, SAFE also cited Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors, et al., 122 Cal.App.3d 813, 176 Cal.Rptr. 342 (1981) in support of its assertion. SAFE's assertion was based on arguments that previously unknown information regarding project effects on cultural resources became available during the hearing in November, and that the EIR/EIS did not discuss cumulative impacts of other projects in the area. The District did not prepare a supplemental or subsequent EIR. In its opening

post-hearing brief, SAFE alleged that several other impacts were also not discussed. For the first time, it also formally asserted that the Board is responsible for preparing a subsequent or supplemental EIR. It is noted that the District certified the Final EIS/EIR on October 12, 1980, and filed a Notice of Determination on December 29, 1980. No suit was filed within 30 days thereafter challenging the adequacy of the EIS/EIR, and it became final.

72. Public Resources Code §21166 permits the preparation of a subsequent or supplemental EIR only under three specified circumstances. Clearly neither subsection (a) or (b) applies to the current situation. Subsection (c) provides for a supplement if "New information, which was not known and could not have been known at the time the environmental impact report was certified as complete becomes available." Under the circumstances at hand, the so-called "new information" which became apparent at the November hearing was known or could have been known by the District, the lead agency, before the report was certified. The information was, in other words, readily available, and was not new information.

The Sutter Sensible Planning, Inc., case cited by SAFE does not advance SAFE's assertion. In that case a Final EIR was amended after a hearing, and was not circulated for comment prior to its certification by the lead agency. In determining the extent to which circulation was required at this stage, the court drew a parallel with the requirements for a subsequent EIR. However, the court did not declare that the amendment adopted before certification of the EIR constituted a subsequent EIR as described in

Public Resources Code §21166. Nor did the court construe §21166 with regard to the allowability of a subsequent EIR. Instead, the court held that before certification, the amendment (made prior to certification of the Final EIR) had to be given full circulation like any EIR or subsequent EIR. Thus the cited case is inapposite to the present situation, and no subsequent or supplemental EIR/EIS is authorized.

73. Instead of preparing or requiring a subsequent or supplemental EIR, the Board, under its statutory authority to consider the public interest, required that evidence be presented to it concerning the cumulative and other environmental impacts not discussed in the EIR/EIS. In this way the Board has fully considered all environmental impacts known to it, regardless of their lack of exposition in the EIR/EIS.

Local Government Interest

74. The District will realign the Dinkey Creek-McKinley Grove Road. This realignment should be done in a manner which is satisfactory to Fresno County and the Forest Service. (See Term 27.)

75. During construction of the project, increased law enforcement services will need to be provided by Fresno County in the project area. At current levels, the needed services will cost the County about $300,000 per year. Fresno County can raise funds to cover these costs only through a contract with the District. It is in the public interest that the District compensate Fresno County for law enforcement expenses connected to construction of the project. (See Term 26.)

Board's Authority to Condition the Water Right for the Dinkey Creek Power Project

76. Interested party Dorfmeier requested a ruling on the scope of issues in the hearing on Application 26001. He asked that the Board limit the scope of its hearing based upon Section 27 of the Federal Power Act and the opinion of the U. S. Supreme Court in Federal Power Commission v. Oregon, 349 U.S. 435, 75 S.Ct. 832 (1955). The Federal Power Commission case was not a water right case. Instead, it was a case in which the State required a dam permit from the fish commission. On this basis, it does not apply to Application 26001. Section 27 indicates federal deference to the states regarding water appropriations. Recent cases, including U.S. v. New Mexico, 438 U.S. 696, 98 S.Ct. 3012 (1978), and California v. U.S., 438 U.S. 645, 98 S.Ct. 2985 (1978) control the relationship between the federal government and the states regarding water rights. Consequently, the Board does not limit its consideration of the project and Application 26001 in response to Mr. Dorfmeier's request.

Resolution of Objections to Evidence

77. During the hearing a number of objections were made by the District to exhibits offered in evidence by the Board's staff and by the protestant. Rulings on these objections are as follows:

Staff Exhibits 1, 10, 20, 26, 27, 36 and 37, and SAFE Exhibits 3, 5, 19, and 20 were objected to as hearsay. The District generally objected to all offered California Energy Commission

documents as hearsay. Exhibits which are hearsay are nevertheless admissible under the Board's regulations. Therefore, the District's hearsay objections are overruled.

Staff Exhibits 10 and 45 were objected to as not being the sort of evidence on which responsible people would rely in the conduct of serious affairs. These objections are overruled.

The District objected to the following exhibits as irrelevant: Staff Exhibits 1, 20, 26, 27, 36, and 37; SAFE Exhibits 4, 6, 15, 16, 17, 18, and 23. These objections are overruled as to Staff Exhibits 1, 26, 27, 36, and 37, and as to SAFE Exhibits 4, 6, and 23. Adequate foundation has not been provided to show that the Dinkey and Helms projects are sufficiently similar so that the costs of the Dinkey project can be predicted by reference to the Helms costs. Consequently, the objections to admission of SAFE Exhibits 15, 16, 17, and 18, and Staff Exhibit 20 (identical to SAFE Exhibit 17) are sustained.

Finally, the District objected to the potential scope of use and the breadth of SAFE Exhibit 23. This objection is overruled.

Environmental Considerations

78. The Board has considered both the environmental impacts presented to it during the water rights hearing and those set forth in the Final EIR/EIS, and will condition the permit to mitigate those impacts. Consideration of the Final EIR/EIS and Notice of Determination prepared by the District, and adoption of mitigation measures will satisfy the Board's responsibilities under CEQA.

Conclusion

79. From the foregoing findings, the Board concludes that Application 26001 should be approved in part, and a permit issued to the District subject to the terms and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 26001 be approved, in part, and a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable mandatory standard permit terms (5i, 6, 10, 11, 12, and 13)* in addition to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 452 cubic feet per second by direct diversion from Deer, Bear, Laurel, and Dinkey Creeks from January 1 of each year to December 31 of each year, and 90,000 acre-feet per annum by storage to be collected from September 1 of each year to June 30 of the succeeding year.

2. The maximum rate of diversion to offstream storage from Deer Creek shall not exceed 600 cubic feet per second, and from Bear and Laurel Creeks shall not exceed 850 cubic feet per second. The total rate of diversion from all three sources shall not exceed 850 cubic feet per second.

3. Water diverted under this permit is for nonconsumptive uses and is to be released to North Fork Kings River within SE1/4 of NE1/4 of Section 10 or within SW1/4 of NW1/4 of Section 11, T12S, R26E, MDB&M.

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* A copy of the Board's standard permit terms is available upon request.

4. Permittee shall have a fully effective contract(s) to sell the project's power output, and commence construction of the project by March 1, 1985, thereafter prosecuting project construction with reasonable diligence. In no event shall permittee commence construction of the project or disturb any existing features of the project area unless it has a fully effective contract(s) to sell the project's power output. Test borings required to complete final design of the project or activities requires to carry out any of the mitigation measures required by this or other permits shall not be construed as disturbance of existing features of the project area.

5. Project construction work shall be completed by December 1, 1990.

6. Permittee shall make complete application of the water to the authorized use by December 1, 1995.

7. Construction of the storage dam shall not be commenced until the Department of Water Resources has approved plans and specifications.

8. Permittee shall install and maintain outlet pipes of adequate capacity in Dinkey Creek Dam and in the diversion weirs on Deer Creek, Laurel Creek, and Bear Creek, positioned 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 which is not authorized for appropriation under this permit is allowed to pass downstream.

9. 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, provided, however, the permittee shall postpone clearing the reservoir site as long as feasible to prolong the availability of wildlife habitat, and shall conduct clearing operations in a manner satisfactory to Fish and Game and the Forest Service.

10. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to storage to conform to the results of a comprehensive analysis of the availability of unappropriated water in the Sacramento-San Joaquin Delta. Action to change the season of diversion to storage will be taken only after notice to interested parties and opportunity for hearing.

11. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion to storage during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento-San Joaquin Delta are such that in any year of water scarcity the season of diversion

authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

12. No diversion to storage is authorized by this permit when satisfaction of inbasin entitlement requires release of supplemental Project water by the Central Valley Project or the State Water Project.

a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

b. Supplemental Project water is defined as water imported to the basin by the projects, and water released from Project storage, which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The Board shall notify the permittee of curtailment of diversion to storage under this term after it finds that supplemental Project water has been released or will be released. The Board will advise the permittee of the probability of imminent curtailment of diversion to storage as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

13. All rights and privileges to appropriate water for power purposes under this permit and any subsequently issued licenses are subject to depletions resulting from future upstream appropriation for (a) domestic and (b) stockwatering uses within the watershed. Such rights and privileges may also be subject to future upstream appropriations for uses within the watershed other than domestic and stockwatering if and to the extent that the Board determines, pursuant to Water Code Sections 100 and 275, that the continued exercise of the appropriation for power purposes is unreasonable in light of such proposed uses. Any such determination shall be made only after notice to permittee or licensee of an application for any such future upstream appropriation and the opportunity to be heard; provided, that a hearing, if requested, may be consolidated with the hearing on such applications.

14. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state, and local approvals have been obtained, including compliance with any applicable Federal Energy Regulatory Commission requirements.

15. Permittee shall comply with the following provisions which are derived from the Fish and Wildlife Agreement between permittee; State of California, Department of Fish and Game (Fish and Game); and Forest Service, United States Department of Agriculture (Forest Service), for the Dinkey Creek Hydroelectric Project, executed on October 6, 1980:

a. To establish and/or maintain stream fisheries affected by the project, permittee shall:

(1) maintain a minimum of 5 cfs or the natural streamflow, whichever is less, immediately downstream from the diversion dam or Deer Creek;

(2) maintain a minimum of 2 cfs or the natural streamflow, whichever is less, immediately below the confluence of Bear and Laurel Creeks. The minimum flow immediately below the confluence of Bear and Laurel Creeks shall be maintained by releasing approximately equal flows from the diversion dams on Bear Creek and Laurel Creek;

(3) maintain the following continuous minimum regulated flows immediately downstream from the confluence of Dinkey and Bear Creek:

Monthly Flows to be Maintained Immediately Below the Confluence of Dinkey Creek and Bear Creek During Three Possible Water Year Conditions (In cfs)

Water Year Condition	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
Normal	14	20	25	30	30	30	30	30	30	20	14	11
Dry	5	18	25	25	25	25	25	25	25	10	5	5
Wet	20	20	25	33	35	35	35	35	35	35	23	20

The following definitions shall be used in determining water year conditions:

(a) Wet Year: Any twelve-month period beginning May 1 in which the natural runoff of the Kings River at Pine Flat Reservoir for the current April 1 to July 31 period, as forecast on April 1 by the State of California Department of

Water Resources and as may be adjusted by the State on May 1, will be more than 135 percent of the average for such period as computed by the State for the 50-year period used at that time.

(b) Normal Year: Any twelve-month period beginning May 1 in which the natural runoff of the Kings River at Pine Flat Reservoir for the current April 1 to July 31 period, as forecast on April 1 by the State of California Department of Water Resources and as may be adjusted by the State on May 1 will be at least 60 percent, but not more than 135 percent of the average for such period as computed by the State for the 50-year period used at that time.

(c) Dry Year: Any twelve-month period beginning May 1 in which the natural runoff of the Kings River at Pine Flat Reservoir for the current April 1 to July 31 period, as forecast on April 1 by the State of California Department of Water Resources and as may be adjusted by the State on May 1, will be less than 60 percent of the average for such period as computed by the State for the 50-year period used at that time.

If during a designated dry year, the February 1 or March 1 Department of Water Resources forecast indicates that dry year conditions no longer prevail, normal year flow releases shall resume immediately.

(4) maintain flows in Dinkey Creek immediately below the diversion dam at Powerhouse No. 1 that equal or exceed the inflow from Dinkey Creek to the diversion pool at Powerhouse No. 1. In the event Powerhouse No. 1 is shut down while Powerhouse No. 2 is operational, flows in Dinkey Creek immediately below the

diversion dam at Powerhouse No. 1 shall equal or exceed the inflow from Dinkey Creek to the diversion pool that would occur if Powerhouse No. 1 were operational.

b. Permittee shall continuously maintain the flows prescribed in provision a. above at all times except during periods when streamflow reduction is necessary for public safety or major project maintenance work. Release from the Dinkey Creek Dam shall not be less than prescribed in provision a. when impounded water is available within the reservoir, unless permittee provides the State Water Resources Control Board (Board), Fish and Game and the Forest Service with written notification that such action is necessary for the public safety or to permit major project maintenance work. Written notification specifying why such action is necessary shall be provided no less than ten (10) days prior to any flow reduction, except in situations involving an imminent threat to public safety. The terms and conditions for reduced flow releases shall be agreeable to Fish and Game and the Forest Service. The District shall promptly report to the Board any reductions in streamflow releases, stating the necessity, magnitude and duration of the flow reduction.

c. Permittee shall be responsible for installing and maintaining streamflow measuring gages satisfactory to the Board at the locations described below, and shall provide data from any or all the gages to Fish and Game, the Forest Service, or the State Water Resources Control Board, upon request.

Gage No. 1 -- to be located immediately downstream from the confluence of Dinkey and Bear Creeks.

Gage No. 2 -- to be located on Dinkey Creek immediately upstream from the diversion pool at Powerhouse No. 1.

Gage No. 3 -- to be located on Dinkey Creek immediately downstream from the diversion dam at Powerhouse No. 1.

Gage No. 4 -- to be located immediately downstream from the diversion dam on Deer Creek.

Gage No. 5 -- to be located immediately downstream from the confluence of Bear and Laurel Creeks.

d. Permittee shall make flushing flow releases for the purpose of removing sediment deposits from the streambed of Dinkey Creek and its diverted tributaries. The releases shall be subject to the following terms:

(1) Permittee shall develop sediment monitoring techniques and locations and allowable buildup criteria which are satisfactory to Fish and Game. These criteria shall be established prior to the initial filling of Dinkey Creek Reservoir. A report on the sediment monitoring techniques and locations and buildup criteria shall be submitted to the State Water Resources Control Board for review and approval prior to initial filling of the reservoir. The State Water Resources Control Board reserves jurisdiction over this permit to impose further requirements for managing sediment deposits. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

(2) Permittee shall monitor sediment buildup annually using the sediment monitoring techniques and locations and buildup criteria developed pursuant to paragraph (1) above.

(3) If, in two consecutive years, permittee or Fish and Game determines that the level of sediment buildup is unacceptable, permittee shall release sufficient flows from the appropriate diversion structure to reduce sediment buildup to an allowable level under the criteria.

(4) No flushing flows shall be required during "dry year conditions" as defined in paragraph a.(3) above.

e. Permittee shall during project construction create or maintain, using procedures satisfactory to Fish and Game and the Forest Service, maximum attractive fishery habitat within the Dinkey Creek Reservoir impoundment zone. Procedures to be used shall include willow planting, vegetation retention and rock reef establishment in locations designated or approved by Fish and Game and by the Forest Service. All work shall be conducted prior to completion of project construction.

f. If Fish and Game determines that establishment of a smallmouth bass or other non-trout fishery in Dinkey Creek Reservoir is advisable, permittee shall provide Fish and Game with manpower as needed to acquire the brood stock for the fishery.

g. Permittee shall maintain spawning access for migrating fish in all perennial streams within the take line of Dinkey Creek Reservoir. Permittee shall inspect these streams annually and shall remove barriers to migrating fish as soon as possible.

h. Permittee shall, to the satisfaction of Fish and Game and the Forest Service, identify and eliminate all

potential fish isolation pockets within the reservoir impoundment area.

i. Permittee shall notify Fish and Game and the Forest Service at least ten (10) days prior to unusual drawdowns or draining of Dinkey Creek Reservoir for any reason, unless such action is necessary because of an imminent threat to public safety. If such an imminent threat to public safety arises, permittee shall give notice of the drawdown or draining of the reservoir immediately. Permittee shall assist Fish and Game in fish rescue made necessary by any project operation.

j. To compensate for project-induced impacts to wildlife resources, permittee shall implement a habitat management plan calculated to preserve or increase the carrying capacities of wildlife habitats on lands in the vicinity of the project. Carrying capacities of sites selected for habitat manipulation shall be increased by altering existing habitat conditions in a manner that will afford increased wildlife use. The cumulative increase in carrying capacity resulting from project habitat manipulation work shall equal or exceed carrying capacity lost due to project-imposed impacts. The habitat management plan shall be implemented in accordance with the Fish and Wildlife Agreement, and the terms therein regarding the Habitat Management Plan are incorporated herein by reference as if fully set forth; provided, that the Board shall maintain continuing authority to change or add terms in the public interest to resolve issues arising from any impasse among the parties encountered in achieving the goal of preserving or increasing the capacity of wildlife habitat in the project vicinity. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

k. Permittee shall develop and implement a raptor protection plan which is satisfactory to Fish and Game and the Forest Service. Said plan shall include measures to protect raptors within the project area during construction and operation of the project and appurtenant recreational facilities.

l. Permittee shall annually sweep and remove all floating debris from Dinkey Creek Reservoir. During the months of May, June, October, and November, permittee shall inspect the dam area daily and remove debris accumulations which are hazardous to migrating deer. Debris removal shall be conducted between 10:00 a.m. and 3:00 p.m.

m. Permittee shall erect and maintain fences around the pools formed behind the project diversion and coffer dams to reduce wildlife losses; provided, no fence shall be required around Dinkey Creek Reservoir. Plans for each fence shall be developed in cooperation with Fish and Game and the Forest Service.

n. Permittee shall provide wildlife access across Dinkey Creek Dam by maintaining loam soil on the dam crest and spillway bridge which is capable of supporting grass growth through August 30 each year. The soil base shall be seeded by permittee with a mixture approved by Fish and Game and the Forest Service. Grass on the dam crest shall be established before impoundment of Dinkey Creek is initiated and shall be maintained by permittee. To accommodate maintenance vehicular traffic, two parallel gravel or concrete paths are allowed across the crest of the dam and the spillway bridge.

o. Permittee shall construct and maintain fences along both borders of the Dinkey Creek Dam spillway to prevent accidental wildlife injury or mortality. The fences shall be designed by permittee and approved by Fish and Game and the Forest Service. The fences shall be constructed prior to the initial fillings of the Dinkey Creek Reservoir.

p. Permittee shall not divert flows from Deer Creek when the Dinkey Creek Reservoir is spilling or when diverted flows would result in higher than naturally occurring flows in Bear Creek below the project diversion structures. During periods when reservoir spills and the spring deer migration coincide, permittee shall divert flows from Bear and Laurel Creeks in a manner that will maintain the minimum fish flow releases prescribed in provision a. and minimize the probability of deer drownings in Bear Creek below the project diversion structures.

q. Permittee shall close the surface of Dinkey Creek Reservoir to all activities except project-related maintenance, operation or emergency activity each year from May 1 to June 15 and from October 20 to November 10 or as may be modified upon recommendation of Fish and Game and the Forest Service. Written notice of changes in these dates shall be provided to the State Water Resources Control Board for its review and approval within 30 days after such change is made.

r. Permittee shall negotiate with the project construction contractor to schedule shift changes for personnel at Powerhouse No. 2 and Adit No. 2 to not take place between 5:00 a.m. to 7:30 a.m. and 4:30 p.m. to 8:00 p.m. from November through April. In the event permittee is unsuccessful in negotiating the desired shift change time restrictions, then permittee shall implement alternative measures to reduce project-related traffic on Trimmer Springs Road during these hours.

s. Permittee shall comply with the terms of the Fish and Wildlife Agreement regarding mitigation of construction effects and regarding post-construction rehabilitation and restoration work, and such terms are incorporated herein by reference as if fully set forth; provided, that the Board reserves jurisdiction to change or add terms in the public interest, to resolve issues arising from any impasse among the parties encountered in ensuring that the effects of construction activities on fish and wildlife are properly mitigated. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

16. In conjunction with the monitoring program required pursuant to the Fish and Wildlife Agreement dated October 6, 1980, at pages 32 - 33 (Evaluation of the Management Plan's Effectiveness) permittee shall also undertake a long-term monitoring program to evaluate the effectiveness of the wildlife management plan in promoting deer usage of the project mitigation parcels. Said monitoring program shall include, at a minimum, the following two-phase approach:

Phase I -- Before initial habitat work commences, permittee in cooperation with Fish and Game and the Forest Service, shall monitor deer usage of the selected habitat manipulation sites and determine achievable objectives for increasing deer usage in those areas. These objectives shall be compatible with other goals of the management plan.

Phase II -- Following completion of the initial habitat enhancement work, in cooperation with Fish and Game and the Forest Service, permittee shall periodically monitor deer usage of the mitigation parcels and evaluate the trend in actual usage against the objectives established during Phase I.

If the Phase II monitoring shows that deer usage is below the objective and the habitat manipulation objective has been met, permittee shall undertake a study to determine whether lower than expected deer usage is attributable to external factors or to deficiencies in the habitat management plan. If the latter is found to be the case, permittee in cooperation with Fish and Game and the Forest Service shall further modify the wildlife habitat management plan to achieve the desired objective for deer usage. Permittee shall report to the State Water Resources Control Board in writing the results of this monitoring program, within five years after project construction is completed, and every five years thereafter.

17. Permittee shall comply with the following provisions which are derived from the Memorandum of Agreement between permittee and the Forest Service, United States Department of Agriculture, executed September 4, 1980:

a. (1) Permittee, in cooperation with the Forest Service, shall develop recreational resources of the project to their optimum use. Optimum use shall be defined as the highest and best use determined by the capability of the resources and the public's desire for a particular recreational experience. Permittee shall initially construct at its own expense project recreation facilities which can accommodate 1,245 people at one time (PAOT). Said facilities shall be completed by the time Dinkey Creek Reservoir is initially filled. They shall be at the sites and to the specifications determined by the Forest Service.

After completion of initial recreation development, permittee shall cooperate with the Forest Service in an annual program to monitor use of existing facilities. When any one of the then existing day-use facilities, family campground, or group campground facilities is occupied at over 95-percent capacity by recreation parties on at least 10 days of any calendar year, excluding the three-day weekends for Memorial Day, Independence Day, and Labor Day, permittee shall initiate planning and construction of additional recreation facilities to accommodate an additional 929 PAOT. The optimum use of project recreational resources shall be subject to modification by the Forest Service. Construction of additional developments shall be complete within 3 years following the year when a demonstrated need is indicated.

All facilities shall be designed in accordance with Forest Service standards in effect at the time of design, and shall be subject to Forest Service approval.

(2) In the interest of public safety on Dinkey Creek Reservoir, permittee shall provide buoys to regulate boat speeds in user and hazard areas and booms where necessary to keep boats away from the dam and swimming areas.

(3) Permittee shall provide funding for the operation, maintenance and replacement of all recreational facilities built in conjunction with the project, and shall carry out all necessary work directly or under contract.

b. Permittee shall purchase and reforest land sufficient to replace the timber productivity on National Forest lands lost because of the project. Permittee shall obtain the approval of the Forest Service for each reforestation parcel, prior to purchasing it. Permittee shall also deposit funds into a cooperative account with the Forest Service sufficient to cover the cost of reforestation as estimated by the Forest Service.

c. Permittee shall design, construct and operate all project facilities in a manner which meets the visual objectives as given in the "Visual Resource Plan, Dinkey Creek Hydroelectric Project", prepared by the Forest Service.

d. Permittee shall prepare and implement an erosion control plan which is satisfactory to the Forest Service. The plan shall be completed six months prior to any construction activities on the project.

e. Permittee shall construct, operate, and maintain all project facilities in compliance with all applicable water quality standards required by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board. If the permittee fails to comply with

this term, the Board may revoke the permit after opportunity for hearing.

f. Permittee shall prepare and implement a waste-water and solid waste disposal plan which is satisfactory to the Forest Service. Said plan shall be comprehensive and cover the construction and operational phases of the project. The plan shall comply with the regulations of the Department of Agriculture and all federal, state, county and municipal laws, ordinances and regulations which are applicable. The plan shall be completed prior to commencing any construction or land disturbance.

g. Permittee shall comply with the "Procedure for the Protection of Historic and Cultural Properties" (36 CFR 60 and 36 CFR 800, as amended.) Pursuant to said procedures, permittee shall prepare a comprehensive management plan to protect the cultural resources which will be directly and indirectly impacted on both private and public lands within the sphere of influence of the facilities to be constructed. The plan shall include measures to evaluate, protect, and mitigate cultural resources and shall be subject to approval by the Forest Service and the State Historic Preservation Office. The permittee shall fund any cultural resource studies deemed necessary by the Forest Service and the State Historic Preservation Office to identify, evaluate, and mitigate and/or protect any previously unrecorded cultural resources that are discovered during the design and construction of the project. Cultural studies shall be conducted by professional archeologists, historians and anthropologists under contract to the permittee. Unless the cultural resource plan indicates that recovery and/or protection of cultural

resources may occur during preconstruction clearing operations, the permittee shall complete the preparation of a comprehensive management plan and implement its provisions, including the recovery and/or protection of cultural resources, prior to commencing any construction or land disturbance.

h. Permittee shall inform all persons associated with the construction and operational phase of the project of the rules and regulations governing the use of and their conduct on National Forest Lands.

i. Permittee shall comply with the terms of the Memorandum of Agreement with the Forest Service regarding mitigation measures to be done in connection with construction, and such terms are incorporated herein by reference as if fully set forth; provided, that the Board reserves jurisdiction to change or add terms in the public interest, to resolve issues arising from any impasse among the parties encountered in ensuring that the effects of construction activities are properly mitigated. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

18. Prior to commencing construction of the project, permittee shall establish to the satisfaction of the State Water Resources Control Board that it has rights to the use of a water supply of adequate quality and quantity for use at the planned recreational facilities. Permittee shall provide such water to the recreational facilities at Dinkey Creek Reservoir. Such water is not appropriated under this permit, but should be obtained under other water rights held or obtainable by permittee.

19. Prior to the initiation of any project construction activities, permittee shall conduct further field surveys to

determine whether populations of any officially designated rare or endangered plant species occur at the following project sites:

a. Dinkey Creek Dam spillway.

b. Adit No. 1, Surge Tank No. 1, associated access road, and spoil area.

c. Powerhouse No. 1 and access road.

Said field surveys shall be conducted by a qualified botanist during the proper season of the year to maximize identification potential for any species of concern. Permittee shall complete the surveys no less than 120 days prior to initiation of construction at these sites. In the event any officially designated rare or endangered plants are found in the study areas, permittee shall develop measures to mitigate any project impacts on those plants. Permittee shall submit a report on the field survey techniques and findings and any proposed mitigation measures to the State Water Resources Control Board within 60 days after completion of the surveys. The Board reserves jurisdiction over this permit to supplement or modify conditions based on the findings of the surveys. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

20. Permittee shall prepare and implement a plan to mitigate any potentially significant adverse effects of the project on the glade located near the project diversion point on Deer Creek. Permittee shall submit said plan to the State Water Resources Control Board prior to initiation of any construction work or disturbance at that site. The Board reserves jurisdiction over this permit to supplement or modify permit terms and conditions based on its review of the mitigation plan. Action by

the Board will be taken only after notice to interested parties and opportunity for hearing.

21. Permittee shall prepare plans and implementation schedules satisfactory to the Forest Service, U. S. Fish and Wildlife Service, and Fish and Game for pre- and post-construction studies to determine the effects of the flow releases required by term 15.a. on the populations of rainbow trout and brown trout in Dinkey Creek between the Dinkey Creek Dam and the confluence with the North Fork Kings River. Permittee shall conduct the studies agreed upon by the agencies consulted and shall submit annual progress reports to the State Water Resources Control Board. The studies shall be conducted for a period of time determined by Fish and Game, but shall not continue more than five years after project construction is completed. Within ninety (90) days after completion of the studies, permittee shall file with the Board, a final report on the study findings and permittee's recommendations for changes in project operations or facilities, including flow releases, that are necessary to ensure maintenance and protection of the fishery resources in Dinkey Creek between the Dinkey Creek Dam and the North Fork Kings River.

22. Permittee shall maintain a pool elevation in Dinkey Creek Reservoir of not less than 5,680 feet from Memorial Day weekend through Labor Day weekend each year. Permittee shall notify the Forest Service immediately if the February 1 runoff forecast issued by the California Department of Water Resources indicates that the pool elevation will go below 5,680 feet during the aforementioned time period. Thereafter, as soon as practical, permittee shall begin negotiations with the Forest Service on the

need for establishing a pool elevation other than 5,680 feet and modifying the reservoir operation schedule as conditions may warrant. Under no circumstances shall the stream releases prescribed in term 15.a., be reduced for the purpose of maintaining a minimum reservoir pool.

Permittee shall maintain a minimum pool elevation from the end of Labor Day weekend to the beginning of Memorial Day weekend sufficient to maintain the fisheries resources, except during Critical Dry Years as defined by the California Department of Water Resources and during those years when the pool elevation must be reduced for project maintenance purposes. Said minimum pool elevation shall be satisfactory to the U. S. Fish and Wildlife Service, the Fish and Game and the Forest Service and shall be established within two (2) years following the initial filling of the reservoir. Permittee shall consult with Fish and Game and the Forest Service and provide for any mitigation found necessary during those periods when the pool elevation will be reduced below the established minimum. Under no circumstances shall the stream releases prescribed in term 15.a., be reduced for the purpose of maintaining a minimum reservoir pool. Permittee shall notify the Board of the minimum pool level as soon as it has been determined.

The Board reserves jurisdiction over this permit to impose or change minimum pool requirements if necessary to protect fishlife. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

23. The State Water Resources Control Board reserves jurisdiction over this permit to change the requirements for fishery and wildlife mitigation if necessary to prevent a net loss to the fisheries and wildlife affected by the project. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

24. Permittee shall negotiate an agreement with the Cold Springs Mono Indian Tribe to compensate the Tribe for losses incurred as a result of the project. The agreement shall include:

a. a plan that would compensate the Native American community, which shall include the following elements:

(1) Permittee shall acquire and transfer to a trust for the benefit of the Cold Springs Mono Tribe a parcel of land close to Dinkey Creek Reservoir.

(2) Permittee shall give Native Americans free access to the project area for the purpose of collecting traditional foods and materials. Such access shall be compatible with project wildlife management and public safety objectives.

(3) Permittee shall cooperate with Native Americans in revegetating and enhancing lands in the project area after construction, to ensure that plants traditionally collected and utilized by the Native Americans are restored to the area. Such activity shall be compatible with project wildlife management objectives.

(4) Permittee shall allow the Native Americans to establish information programs for visitors to the project area.

(5) Permittee shall obtain input from individuals of the Mono Tribe in all phases of future archeological field research.

(6) Permittee shall ensure that the principal investigator for the archeological data recovery program will have direct contact with the Mono community prior to and throughout the course of the investigations.

(7) Permittee shall in cooperation with the Native Americans develop a policy for the treatment of human remains prior to commencing excavations in the project area.

(8) Permittee shall make arrangements to ensure that cultural remains recovered during excavations are stored in the project vicinity, and that one or more Native Americans receive formal training in the care of archeological materials and museum technology.

(9) Permittee shall fairly compensate Native Americans who participate in the cultural resource mitigation process.

b. The time frame for implementation of the measures. A copy of the executed agreement shall be submitted to the State Water Resources Control Board prior to commencement of project construction. Implementation of mitigation measures shall be in accordance with said agreement. If a stalemate should develop, an arbitrator who has been mutually agreed upon by the permittee and Cold Spring Mono Indian Tribe shall intervene to settle disputes.

25. Permittee, in consultation with a qualified historian, shall document folkways as they have occurred in the past at Dinkey Creek; particularly the Sierran cattle drive. Permittee shall also document the Forest Service traditions and nineteenth century recreational activities. Permittee shall submit to the State Water Resources Control Board for its approval a study plan for documentation of the identified folkways. The Board reserves jurisdiction to require modifications in the study plan after notice and opportunity for a hearing. Permittee shall conduct the studies prior to the initiation of any project construction which would hinder documentation of the folkways. Within 90 days after completing the studies, permittee shall file with the Board a report on the subject folkways.

26. Permittee shall annually, in advance, provide sufficient funds to the Fresno County Sheriff's Department to cover the cost of law enforcement necessary because of project construction in the project area.

27. Permittee shall also cooperate with Fresno County and the Forest Service in selecting and designing the realignment of the segments of the Dinkey Creek-McKinley Grove Road affected by the project.

28. Specification or incorporation by reference as permit terms or conditions of certain provisions of the agreements between the permittee and (1) the California Department of Fish and Game and the Forest Service, United States Department of Agriculture, dated October 6, 1980; and (2) the Forest

Service, United States Department of Agriculture, dated September 4, 1980, shall not be construed as disapproval of other provisions of said agreements or as affecting the enforceability, as between the parties, of such other provisions, insofar as they are not inconsistent with provisions specified or incorporated by reference as permit terms and conditions; provided, that such other provisions shall not be deemed permit terms or conditions for purposes of enforcement by the Board.

Date: DECEMBER 7 1982

WE CONCUR:

/s/ L. L. Mitchell
L. L. Mitchell, Vice Chairman

/s/ Carole A. Onorato
Carole A. Onorato, Chairwoman

/s/ Jill D. Golis
Jill D. Golis, Member

/s/ F. K. Aljibury
F. K. Aljibury, Member

/s/ Warren D. Noteware
Warren D. Noteware