

**digest of  
selected water right  
decisions of the  
california**

*State Water Resources Control Board*  
**and its  
predecessors**  
(with index)

**REVISED AND UPDATED  
TO DECISION 1400**

**CALIFORNIA**

**Ronald Reagan, Governor**

**Resources Agency  
STATE WATER RESOURCES  
CONTROL BOARD**

**W. W. Adams, Chairman**

**Edward F. Dibble, Vice Chairman**

**Ronald B. Robie**

**Roy E. Dodson**

**Mrs. Carl H. (Jean) Auer**

**Bill B. Dendy, Executive Officer**



DIGEST  
OF SELECTED WATER RIGHT DECISIONS OF THE  
CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
AND ITS PREDECESSORS  
(with index)

REVISED AND UPDATED  
TO DECISION 1400

Initial Digest by:  
M. J. Woolley, Sept., 1961  
Updated by:  
W. R. Attwater, Feb., 1969  
Revised, Updated and Indexed by:  
Rainer Hagen, Sept., 1972

TABLE OF CONTENTS

A.....CONCERNING AVAILABILITY OF WATER FOR APPROPRIATION.....1

TOPIC NUMBER		PAGE NUMBER
1.1	<u>Effect of Prior Interests</u>	
1.11	Generally	2
1.12	Prior Appropriation, Reservations, Allocations	3
1.13	Pre-1914 Rights	
1.13.1	Generally	6
1.13.2	Water Commission Act Section 12 Filings	7
1.14	Riparian Rights	8
1.15	Decrees and Judgments	11
1.16	Prior Decisions, Changed Circumstances, Adjusted Diversion Seasons	13
1.2	<u>Effect of Physical Determinations</u>	
1.21	Generally/Observations/Measurements	17
1.22	Duty of Water/Requirements Criteria	20
1.23	Hydraulic Continuity	23
1.3	<u>Particular Waters</u>	
1.31	Foreign, Artificial and Mine-Tunnel Waters	24
1.32	Ground Water	
1.32.1	Generally	25
1.32.2	Known and Definite Channels	26
1.32.3	Correlative Rights	27
1.33	Springs/Cienegas	28
1.34	Lakes and Littoral Waters	29
1.35	Return Flows	30
1.36	Waste, Drainage and Seepage Waters	31
1.37	Surplus Waters	32
1.38	Developed and Salvaged Waters	33
1.4	<u>Alternate/Supplemental Supplies and Exchange/ Purchase/Sale of Water</u>	35
1.5	<u>Rotation</u>	37
1.6	<u>Reservoirs and Effect of Stored Water</u>	38

B.....CONCERNING USES OF WATER.....40

TOPIC NUMBER		PAGE NUMBER
2.1	<u>Generally/Reasonable and Beneficial Use</u>	41
2.2	<u>Future Use and Development</u>	45
2.3	<u>Interim Use</u>	47
2.4	<u>Proof of Use</u>	49
2.5	<u>Use Priorities</u>	50

C.....CONCERNING APPLICATIONS, PERMITS, LICENSES: SUBSTANCE & PROCEDURE...53

TOPIC NUMBER		PAGE NUMBER
3.1	<u>Applications</u>	
3.11	Generally	54
3.12	Extensions/Deferrals/Amendments	55
3.13	Showing of Plan, Purpose, Intent	56
3.14	Ability to Proceed/Feasibility	58
3.15	Duplication	59
3.16	Priorities/Assignment/State Filings	60
3.17	Access to Source	63
3.18	Denial/Dismissal/Cancellation	65
3.2	<u>Permits</u>	
3.21	Generally	67
3.22	Extensions/Assignments/Amendments	68
3.23	Terms, Conditions and Special Considerations	
3.23.1	Generally	70
3.23.2	Storage/Reservoirs/Flow Regulation	76
3.23.3	Access Conditions in Permit	82
3.23.4	Fish and Game Protection	83
3.23.5	Water Quality	87
3.23.6	The Public Interest	
	3.23.61 Generally	91
	3.23.62 Recreation/Public Access	96
3.23.7	County of Origin/Watershed Protection	99
3.3	<u>Protests and Protestants</u>	
3.31	Filing and Appearance	103
3.32	Showing of Harm	104
3.33	Dismissal	112
3.4	<u>Stipulations and Agreements between Parties</u>	113
3.5	<u>Changes/Additions in Applications, Permits, Licenses: Purpose, Place of Use, Point of Diversion or Rediversion, and Redistribution of Storage</u>	116
3.6	<u>Revocation of Permits and Licenses</u>	
3.61	Generally	119
3.62	Changed Circumstances	120
3.63	Failure to Proceed/Abandonment of Project	121
3.64	Duplication	122

D.....CONCERNING BOARD JURISDICTION AND PROCEDURE.....123

TOPIC NUMBER		PAGE NUMBER
4.1	<u>Evidentiary Matters and Procedure</u>	124
4.2	<u>Jurisdiction/Duties/Authority of Board</u>	
4.21	Generally	127
4.22	Consideration of Issues as Presented	132
4.23	Jurisdiction over Particular Waters	134
4.24	Retention/Reservation of Jurisdiction	137
4.25	Limitations: Federal, Statutory, Interstate Compact	142
4.3	<u>Reconsideration of Decision</u>	145

\*\*\*\*\*

INDEX	147
-------	-----

A.....CONCERNING AVAILABILITY OF WATER FOR APPROPRIATION

TOPIC NUMBER		PAGE NUMBER
1.1	<u>Effect of Prior Interests</u>	
1.11	Generally	2
1.12	Prior Appropriation, Reservations, Allocations	3
1.13	Pre-1914 Rights	
1.13.1	Generally	6
1.13.2	Water Commission Act Section 12 Filings	7
1.14	Riparian Rights	8
1.15	Decrees and Judgments	11
1.16	Prior Decisions, Change Circumstances, Adjusted Diversion Seasons	13
1.2	<u>Effect of Physical Determinations</u>	
1.21	Generally/Observations/Measurements	17
1.22	Duty of Water/Requirements Criteria	20
1.23	Hydraulic Continuity	23
1.3	<u>Particular Waters</u>	
1.31	Foreign, Artificial and Mine-Tunnel Waters	24
1.32	Ground Water	
1.32.1	Generally	25
1.32.2	Known and Definite Channels	26
1.32.3	Correlative Rights	27
1.33	Springs/Cienegas	28
1.34	Lakes and Littoral Waters	29
1.35	Return Flows	30
1.36	Waste, Drainage and Seepage Waters	31
1.37	Surplus Waters	32
1.38	Developed and Salvaged Waters	33
1.4	<u>Alternate/Supplemental Supplies and Exchange/ Purchase/Sale of Water</u>	35
1.5	<u>Rotation</u>	37
1.6	<u>Reservoirs and Effect of Stored Water</u>	38



## 1.1 Effect of Prior Interests

### 1.11 Generally

Licensee's protest alleging that there was no unappropriated water due to illegal diversions not considered sufficient to bar approval of an application on same stream but rather tends to show the existence of unappropriated water, it being the responsibility of protestant to defend his rights under license.--D 715, A 13845, Myers.

Application approved where the proposed project controlled the winter runoff from only approximately seven percent of the watershed available to protestants. When water is available at applicant's proposed point of diversion, there is sufficient water from the remaining watershed to supply the needs of the protestants.--D 1212, A 20906, Barboni, Unnamed Stream, Marin Co.

Board has no jurisdiction to validate riparian rights, pre-1914 appropriative rights or rights by grant, prescription or by issuing a permit covering past use under any such claimed rights.--D 1324, A 22782, Cuesta La Honda Guild, Woodhams Creek, San Mateo Co., 1/9/69.

No unappropriated water available where a city in the exercise of its public right already uses all the water and must purchase from other sources.--D 1349, A 23119, Boardman and Beck, Boulder Creek, San Diego Co., 11/6/69.

Applicant's contention that his project would be ecologically beneficial did not change the fact that there was no unappropriated water available to carry it out.--D 1367, A 23312, Dodd, North Fork Cosumnes River, El Dorado Co., 2/18/71.

Outflows necessary to supply the quality of water, fish, wildlife and vested rights require, to the extent such outflows conform to constitutional mandate, constitute a prior demand on the supply which is not available for appropriation.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

## 1.12 Prior Appropriation, Reservations, Allocations

Protest by county board of supervisors that action be withheld on application to appropriate from American River until definite plans are formulated for the development of the area considered not sufficient to bar application, particularly in view of prior state filings covering 1,200,000 afa which were filed under provisions of the Water Code providing for reservations of supplies of water commensurate with planned future development and utilization of water resources.-- D 645, A 9142, North Fork Ditch Co.

In the face of insufficient information as to the requirements of holders of vested rights, a special term was included in the permits requiring the Bureau at Board's request to make measurements and furnish records to the Board of quantities that have been put to beneficial use under the permits and to take necessary measures to insure satisfaction of vested rights in view of insufficient information as to requirements of vested rights on the Sacramento River and Delta.--D 990, A 5625, U. S. Bureau of Reclamation.

A specific quantity of water (not to exceed 90,000 afa in a three-year period) was reserved to county of origin for future development.--D 1114, A 11792, etc., Calaveras and Tuolumne County Water Districts, Stanislaus River, Calaveras and Tuolumne Cos.

Applications to appropriate from the Kern River and various distributaries denied upon finding of no water surplus to uses under long established rights. This conclusion was supported by the fact of declining ground water within the service areas, and agencies within the area have entered into or are negotiating contracts to purchase water from the Bureau and proposed state facilities.--D 1196, A 9446, etc., Buena Vista Water Storage District, et al, Kern River, Kern Co.

Held not to be in public interest to give unqualified approval to storage application on tributary to Lake Tahoe which was for exclusively recreational use. Permit term provides that domestic or municipal purposes will be prior to use thereunder, the clause becoming operative when California's allotment under California-Nevada Compact is exhausted.--D 1200, A 19965, Tahoe Paradise, Inc., Upper Truckee River, El Dorado Co.

Water in Upper Putah Creek watershed deemed unappropriated to the extent 33,000 afa reservation provided by Decision D 869 is not depleted. Board established tentative criteria to determine depletion pending further information as to upper uses.--D 1218, A 20772, etc., Stinson, et al, various tributaries, Putah Creek, Lake and Napa Cos. See also D 1131, A 19934; D 1183, A 20060.

Application denied where all the available water in the sources was covered by a license held by the applicant.--D 1246, A 21787, Gutierrez, Unnamed Spring, San Bernardino Co.

Application for domestic use denied where entire supply of source subject to prior appropriation for part of each year.--D 1329, A 22577, Beers, Unnamed Spring and Stream, Butte Co., 2/7/69. See also D 1130, A 18932.

Proposed California-Nevada Compact allocates 10,000 afa of unappropriated water to California for use within the Truckee River Basin.--D 1342, A 22822, A 22823, Trimont Water Co., West Martis Creek, Sawmill Flat Springs and Unnamed Stream, Placer Co., 6/19/69.

All permits issued subject to vested rights, which obliges permittees to cease diverting in inverse order of their priorities when the source flow decreases to a rate sufficient only to satisfy prior rights.--D 1344, A 22039, Newhall, A 22061, Paradise, A 22321, Gorrill, A 22333, Johnson and Foraker, A 22534, Patrick, A 22564, Camenzind, A 22653, Skinner, Butte Creek, Little Butte Creek and Clear Creek and tributaries, Butte, etc., Cos., 9/18/69.

Permittee put on notice that water reservations above Monticello Dam pursuant to Decision D 869 may in some years not allow him to divert.--D 1363, A 23085, Tiegel, Mine Tunnel, Napa Co., 9/3/70.

Quantities of water to be diverted or rediverted under permits, to the extent such quantities are to be applied to beneficial use without the watershed tributary to Folsom and Auburn Reservoirs, subjected to reduction by future appropriation for reasonable beneficial use within the watershed.--D 1356, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, etc., Placer Co., 2/5/70, as amended 12/17/70.

Although watershed protection considerations may not be applicable in a particular case, the Board may nevertheless condition permits in the public interest to reserve water for future development within the watershed above permittee. However, where the downstream supply would be impaired and the reservation of little or no value, it will not do so.--D 1365, A 18714, U. S. Bureau of Reclamation, Chowchilla River, Madera Co., 11/19/70.

Appropriations under permit subject to future upstream appropriations of water for stockwatering and recreational purposes, provided that reservoirs for such purposes are smaller than specified size and are kept free of phreatophytes.--D 1365, A 18714, U. S. Bureau of Reclamation, Chowchilla River, Madera Co., 11/19/70.

Effect of Water Code §§ 12201 to 12204 is to give first priority to satisfying all needs for water in the Delta and relegate to second priority all exports for any purpose. Questions regarding the applicability of Watershed Protection Laws to portions of the Delta were not considered proper issues, as the Board found that any area illegally deprived of watershed protection benefits has a legal remedy in court.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.



## 1.13 Pre-1914 Rights

### 1.13.1 Generally

Protestant's alleged prior 1914 right to appropriate water by direct diversion could not give protestant the right to store, as a direct diversion right can be converted to a storage right only to the extent that there is no change in rate of diversion from the stream or in the period of the year during which the water is diverted.--D 940, A 16849, Baker.

Evidence showed that practically all of the water from source was beneficially used by protestant under his proven prior 1914 right, therefore application denied.--D 964, A 16403, Mogle.

Protestant's claimed pre-1914 appropriative rights acquired through Civil Code procedure were not recognized when it appeared that the construction of the diversion works was not commenced within 60 days after the posting of notice as required by Section 1416 of the Code.--D 1046, A 17179, etc., Mills Ranch, et al, Wagon Creek, Siskiyou Co.

It is for the courts to determine whether an injury takes place when the holder of a pre-1914 appropriative right changes his point of diversion or place of use. No such jurisdiction over pre-1914 appropriative rights is given to the Board.--D 1290, A 353, etc., Fresno Irrigation District, et al, Kings River, etc., Fresno, etc., Counties.

Validity of claimed right dating back to 1894 unaffected by failure to comply with statutory requirements in several particulars, as water right under such claim depends upon what water was actually diverted and put to beneficial use.--D 1387, A 23441, Flack, Collins Creek, Siskiyou Co., 1/6/72.

### 1.13.2 Water Commission Act Section 12 Filings

Section 12 of the Water Commission Act, Stat. 1913, Ch. 586, provided a means whereby appropriators claiming rights initiated prior to December 19, 1914, the effective date of the Act, but incomplete by that date, could be given a Certificate of Diligence setting a schedule of completion for the appropriation, that is, for placing the water claimed to full reasonable and beneficial use. The only question which could be considered by the Water Commission or the Division of Water Resources was that of reasonable diligence in carrying out the work necessary to place the water to such use. No obligation to inspect applications pursuant to Section 12 devolved upon the Division. The completion schedule could be extended upon a showing of good cause. Adequate legal notice and recording thereof were required before the Division would take any action regarding extensions. Failure to file an application for a Certificate did not operate to the detriment of the claimed right. Any denial of extensions of time by the Division was not considered a cancellation of the application or a conclusion by the Division that the right had been forfeited. It merely indicated that in the Division's judgment, further time should not be allowed within which to complete the appropriation, and that the amount of such appropriation should not be increased beyond the amount which had been beneficially used prior to the denial. The Division was vested with no right to inspect works. This could be undertaken with the claimant's permission only, for informational purposes, e.g., to determine the amount of flow remaining after the claimant's appropriation. When the Water Code was enacted in 1943, the Legislature apparently considered that approximately 30 years was sufficient time to complete all of the Section 12 rights, and consequently, no further provisions for the matter were made.

#### 1.14 Riparian Rights

Anticipated future use of water by a riparian held an insufficient bar to the approval of an application by another party to appropriate and use water meanwhile from the same source.--D 712, A 13613, American River Pine Co.

Protests based on alleged riparian rights held to be without merit as the waters in question originated outside the watershed of the protestants' lands.--D 750, A 13557, Potter Valley, I.D.

Flow from an abandoned mine tunnel considered artificial flow to which riparian right would not attach.--D 754, A 13050, Rubins. See also D 938; A 18073.

Board's predecessor found all water in proposed source being used beneficially under riparian right held by protestant arising from construction of a reservation in a deed.--D 795, A 15408, Richart.

Application denied to appropriate from a spring when the owners of a mining claim within which the spring was located were entitled to use all available water under the riparian doctrine.--D 802, A 15239, Wann.

Applicant attempted to appropriate water from a spring that flowed through the property of the protestant who erroneously claimed a pre-1914 appropriative right. A riparian right of the protestant upheld and application denied when it was shown that the protestant had used the entire supply. "When the yield of a source is being used in its entirety, beneficially, by a riparian owner and cannot be otherwise intercepted or diverted without detriment to said owner, no portion of that yield may be considered subject to appropriation."--D 834, A 15850, Dougherty.

A riparian use, which is prospective only, cannot be urged as a basis for the denial of an application.--D 863, A 16183, Pompio Ranch.

A prospective future use under claim of a riparian right was not a bar to approval of an application to appropriate such water as may be available in the meantime.--D 880, A 17198, San Mateo Co.

A riparian owner who had not been using the water applied for could not prevent the granting of a permit to appropriate on the basis of any "latent" riparian right.--D 890, A 16154, PG&E.

Duty of water under prior permits used to determine needs of riparians in determining unavailability of unappropriated water.--D 948, A 17960, Pereira.

Protestant could not assert a right to store water in a reservoir from the wet season to the dry season as part of his riparian right.--D 985, A 18537, Malibu Lakeside Mutual Water Co.

Prospective riparian use is not a bar to approval of a present application to appropriate water. However, Board directed applicant's attention to possible assertion of a prior riparian right in order that he might consider amount of water available for a project pursuant to a permit to be issued.--D 1120, A 19897, Wilson, Unnamed Stream, Mono Co.

Term in decision disclaiming any implication that it would affect applicant's claimed riparian rights.--D 1168, A 20712, Miller, Neds Gulch, Calaveras Co.

Protestant property held not to have lost its riparian rights through severance by a predecessor's grant of an intervening parcel for road purposes.--D 1176, A 20664, Bryson, Newberry Creek, Monterey Co.

Competing applications to appropriate water from a reservoir formed by old mining operations denied where it was found that there was no water in excess of quantities necessary to satisfy the applicants' uses under riparian rights.--D 1225, A 21349, etc., Scott, et al, Pacific-Placer Reservoir, Calaveras Co.

A special term imposed providing that the permittee shall not divert water at times when there is insufficient water in the stream or in pools to water the cattle of the protestants claiming riparian rights.--D 1239, A 21891, Wixon, tributary of Kekawaka Creek, Trinity Co.

Petition for change in place of use denied where injury to vested rights could be shown. Petitioners were not allowed to transfer appropriative right obtained for land adjacent to river to other parcel and then revive their "dormant" riparian rights to the river parcel. The petitioners' share of the licensed appropriation is included in their riparian right and is not in addition thereto. Transfer of the license to new land would give petitioners the right to use their share on the new land in addition to whatever quantity is reasonably required on the present place of use would therefore be illegal, at least against junior appropriators.--D 1282, A 882, Dixon, et al, Sacramento River, Sutter Co., 8/31/67.

The Board has no power to adjudicate riparian rights.--D 1282, A 882, Dixon, et al, Sacramento River, Sutter Co., 8/31/67.

A riparian owner's title to water begins only when it reaches his land and he has no right to go upstream above his land and divert water which would not naturally flow there.--D 1283, A 22539, Canebrake County W.D., Canebrake Wash, San Diego Co., 9/27/67 (Citing Cases).

The only water rights a water district can claim pursuant to Water Code § 35602 are those held by the State by virtue of its ownership of riparian lands within the district.--D 1286, A 22041, Fruetel and Middleton, Coon Creek, Sutter Co., 11/30/67.

An additional claim of riparian rights to the use of water sought to be appropriated in the application is unaffected by denial of said application.--D 1339, A 22345, Barrett and Rabe, Lake Mary, Mono Co., 4/17/69.

Where protestants who divert immediately below applicant's proposed point of diversion and use practically all of the water under apparent claim of riparian right, Board found no unappropriated water available.--D 1393, A 23456, Cox, Unnamed Stream, Kern Co., 2/17/72.





### 1.15 Decrees and Judgments

Determination that water supply was such that runoff in tributaries whose water was applied for was insignificant to protestant some 26 miles below on main stream. Also, during month protestant would have been affected, he was enjoined from diverting by order of Superior Court under previous stipulated judgment.-- D 922, A 17681, etc., Murphy, et al.

Where there had been a change in the use of water since a superior court adjudication of rights and where there was water not being used at the time of the hearing, water was available for riparian use and any surplus was available for appropriation.--D 928, A 16162, North Coast County W.D.

Permits were conditioned to conform to a final judgment in pending federal court proceedings in regard to rights of riparian owners to have certain flows in the river to sustain ground water levels underlying their lands.--D 935, A 234, etc., U.S.A.

Board found no unappropriated water existed, as a superior court judgment divided the water from the source between two other parties.--D 969, A 18103, Compton.

Application was approved for a portion of the applicants' proposed diversion season upon a showing that water occurred during those months in excess of amounts necessary to satisfy decreed rights following statutory adjudication proceedings.-- D 1105, A 19121, Myers, et al, Treasure Spring, Sierra Co.

A proposed diversion held not to interfere with protestant's adjudicated rights to water from the Whitewater River for underground storage in the Coachella ground water basin on a showing that the water during the proposed diversion season had been lost through evaporation and transpiration prior to reaching protestant's point of diversion.--D 1128, A 20369, Van Pelt, Unnamed Stream, Riverside Co.

Board found water surplus to uses under decreed rights (Ash Creek Decree, Superior Court, Modoc Co.) which was available for appropriation by applicant.-- D 1161, A 20099, Van Allen, Butte Creek, Lassen Co. See also D 1257, A 21805.

Application approved for a portion of the requested diversion season when the holders of decreed rights had not been using their full entitlements during that period.--D 1237, A 21478, Albaugh, Willow Creek, Lassen Co.

Where project stored water would be commingled with water covered by decreed rights, a special term was included in the permit subjecting it to existing rights defined by the decree.--D 1240, A 21667, Weber, Unnamed Stream, Modoc Co.

Question of the right of a city which has an existing right to pump ground water, to increase such pumping to meet expanding municipal requirements after a right has been acquired by an appropriator from a surface source having hydraulic continuity with the ground water has never been adjudicated in California.-- D 1259, A 21424, City of Blue Lake, North Fork Mad River, Humboldt Co., 8/31/66.

Holders of prior appropriative rights have first claim to foreign waters introduced into a stream, even if waters are introduced subsequent to an adjudication of stream.--D 1274, A 22210, etc., Reynolds, et al, Little Shasta River, Siskiyou Co., 5/11/67.

Holders of decreed rights, technically speaking, do not divert under the decree, but under rights the court has determined to exist.--D 1274, A 22210, etc., Reynolds, et al, Little Shasta River, Siskiyou Co., 5/11/67.

Desired appropriations for proposed uses reduced by amounts of decreed rights.--D 1344, A 22321, Gorrill, A 22039, Newhall, Butte Creek and Tributaries, Butte, etc., Cos., 9/18/69.

Rights under permit are and shall be subject to existing rights defined by (Butte Creek) adjudication, and such other rights as presently exist, insofar as they are maintained.--D 1344, A 22039, Newhall, etc., Butte Creek, etc., Butte, etc., Cos., 9/18/69.

Permit specifically made subject to Shasta River Adjudication (Superior Court, Siskiyou County #7035), thus affecting permittee's rights to appropriate to the extent decided by the court.--D 1367, A 23117, Belcher, Little Shasta River and Unnamed Stream, Siskiyou Co., 12/3/70. See also D 1391, A 23443, etc. (Middle Fork Feather River Adjudication, Superior Court, Plumas County #3095); D 1392, A 23049, etc. (Susan River Adjudication, Superior Court, Lassen County #4573).

Applicant's desire to convert part of an adjudicated water right appurtenant to his acreage into one used to offset evaporation and seepage losses was deemed a matter for supplemental court decree and not a part of the appropriation covered by the applications.--D 1391, A 23443, A 23444 and A 23445, Occidental Petroleum, Smithneck and Bear Valley Creeks, Sierra Co., 2/3/72.

Season for irrigation defined in court decree.--D 1391, A 23443, etc., Occidental Petroleum, Smithneck and Bear Valley Creeks, Sierra Co., 2/3/72.

### 1.16 Prior Decisions, Changed Circumstances, Adjusted Diversion Seasons

Application for year-round use denied in its entirety when applicant proved existence of unappropriated water during five months of year but also showed that irrigation was unnecessary during those months.--D 769, A 14376, Wilson.

Where the water supply from a tunnel was incapable of definite determination but evidence at the hearing showed water in excess of an amount necessary to satisfy existing licenses during some periods, a permit was granted to the applicant unconditionally approving the season of diversion applied for, as the permit was subject to use by holders of prior rights.--D 932, A 18182, Bronson.

An application for irrigation purposes for the season from March 1 to November 1 denied when there was no unappropriated water in the source between June 1 and October 15 of each year.--D 1021, A 18927, Cima, Jones Creek, Napa County.

A portion of an application was not approved that sought approval for direct diversion from a proposed canal when the evidence showed that only winter flows could be diverted in view of prior rights.--D 1030, A 12919A, etc., Russian River, Mendocino and Sonoma Counties.

Though the applicants' proposed use was the same as it had been in the past and the protestants had experienced no shortage of water, the fact that the Board previously found a shortage in the American River watershed and reaches of the Sacramento River during certain months required denial of the application for those months.--D 1098, A 19632, Milo, Bear Creek, El Dorado County.

Permit issued on North Fork American River limited to diversion season in view of findings in previous decisions that the entire flow of the American River during the months of July through October is required to satisfy downstream rights on the American River and in the Sacramento-San Joaquin Delta.--D 1108, A 20478, Hance, North Fork American River, Placer County.

No unappropriated water in Delta in Reach 3 during the months of July and August in accordance with Decision D 990.--D 1117, A 16749, Baird, Walthall Slough, San Joaquin County.

Application approved where it was shown that little, if any, of the water in springs reached the protestant on a tributary creek during the critical summer months, and the applicant's return flow would compensate for any diminution in the creek resulting from the proposed diversion.--D 1119, A 20547, Oversoul Foundation, five springs, Butte County.

No unappropriated water during July and August in the Feather River due to lack of unappropriated water in the Sacramento River during the same period.--D 1135, A 18025, City of Yuba, Feather River, Sutter County.

No unappropriated water in Russian River during the summer season after providing for fish and recreation.--D 1151, A 20540, Oswald, Russian River, Mendocino County.

An application filed primarily for irrigation use denied in its entirety upon a finding of lack of unappropriated water during the summer months.--D 1153, A 20725, Tolliver, Arroyo Calero, Santa Clara County.

Board found that water occurring in Sweeney and Ulatis Creeks at the applicant's proposed point of diversion is drain water originally diverted from Putah Creek for the irrigation of lands within Solano I.D. and if not diverted would reach the Sacramento-San Joaquin Delta. Water surplus to existing rights found not to occur during July and August and permit accordingly limited.-- D 1156, A 20698, Maine Prairie W.D., Sweeney and Ulatis Creeks, Solano Co.

No unappropriated water available in upper tributary of South Fork American River during August, September and October on basis of Decision D 893 finding no unappropriated water in the American River during that period.--D 1166, A 20607, August, Johntown Creek, El Dorado Co.

Earlier unprotested permits issued on tributaries of the Sacramento River without restriction as to season gave no legal advantage over later permits so restricted, as permits only authorize the appropriation of unappropriated water and if there is no such water at certain times of the year, there is no right to divert during such times.--D 1185, A 15572, etc., Natomas Central Mutual Water Co., et al, tributaries to Sacramento River, Colusa, etc., Cos.

Diversion season limited on sloughs and drains of Sacramento River in accordance with studies and Board's Decision D 1045.--D 1185, A 15572, etc., Natomas Central Mutual Water Co., et al, tributaries to Sacramento River, Colusa, etc., Cos.

Application denied in its entirety when a permit for the months when water was available would have been of little or no value to the applicant.--D 1186, A 20054, etc., Legare, Morrison Creek, Sacramento Co. See also D 1187; D 1130, A 18932; D 1329, A 22544.

Application on tributary of Mokelumne River approved with the months of July through November eliminated on basis of Decision D 858 and CVP operation studies.--D 1188, A 20768, Spink, Indian Gulch, Calaveras Co. See also D 990, A 5625.

Water from Stanislaus River reaches the Sacramento-San Joaquin Delta where it is required to satisfy prior rights of local water users and the Bureau for its Central Valley Project, including salinity control, during months of August and September in every year and during the month of July in most years.--D 1206, A 18526, Santos, Stanislaus River, San Joaquin Co.

Board limited season in appropriation from tributary of the American River in accordance with D 893, etc., finding that downstream existing rights on American River and Sacramento-San Joaquin Delta requires entire flow of the river during the months of July through October of an average year.--D 1211, A 20305, etc., Vahan Eghoian, etc., Brush Canyon, El Dorado Co.

There is no unappropriated water within the Mokelumne River during the months of July through September due to its hydraulic continuity with the Delta.-- D 1219, A 21578, Piazza, Mokelumne River, San Joaquin Co. See also D 1109, A 19725 (citing D 858 and D 990).

Although the Board previously found that there is no unappropriated water in the Cosumnes River stream system from July 1 to October 15, an application was approved for year-round diversion from a source tributary to the river upon a finding of no hydraulic continuity during those months.--D 1238, A 21816, Cochrane, Unnamed Spring, El Dorado Co.

Approval of application for diversion of water from Russian River depends on whether the quantity applied for has been continuously used since January 28, 1949 in accordance with the standard established by the Board in Decision D 1247 (no continuous use if applicants have failed to use water for three consecutive years).--D 1266, A 22208, Golden, Russian River, Mendocino Co., 2/15/67. See also D 1030, D 1258, D 1333.

Issuance of permit to appropriate water at times other than November-June would interfere with downstream riparian, prior appropriative and adjudicated rights.-- D 1273, A 22019, Fenton, et al, Williams Gulch, Siskiyou Co., 5/11/67.

When there is a reasonable expectation that substantial quantities of unappropriated water will occur during a particular month with such frequency that it can be put to beneficial use by applicant, that month should be included in the authorized season of diversion.--D 1291, A 5629, etc., California Department of Water Resources, Feather River, etc., Butte, etc., Cos., 11/30/67.

Previous findings of Board are to the effect that no unappropriated water is available in the Sacramento River and its tributaries between Shasta Dam and Knight's Landing from June 15 to August 31, and diversion seasons for this water source are set accordingly.--D 1344, A 22333, Johnson and Foraker, Butte Creek, etc., Butte, etc., Cos., 9/18/69.

Where prior decision (D 1045) found that unappropriated water occurred in most years of applicant's proposed diversion season and there existed no change in circumstances from those in the past decision, Board found unappropriated water available to supply applicant.--D 1359, A 23140, River Development Co., Sacramento River, Tehama Co., 5/21/70.

Board's predecessor found (D 855, D 1077, D 1163) there was no unappropriated water in Cosumnes River system July 1 to October 31. Since applicant presented no evidence of changed circumstances since that time to justify a different conclusion, Board concurred in the prior findings.--D 1369, A 23312, Dodd, North Fork Cosumnes River, El Dorado Co., 2/18/71.

Where there have been no changes in circumstances which called for a finding of lack of unappropriated water in the past, the Board did not feel justified in arriving at a different conclusion.--D 1373, A 23566, Coastside Co. W.D., Pilarcitos Creek and Unnamed Stream, San Mateo Co., 2/18/71.

No showing of changes since prior decision (D 543, Squirrel Creek) resulted in no different conclusion by the Board regarding the availability of unappropriated water.--D 1374, A 23470, Garbero, Unnamed Stream, Nevada Co., 5/6/71. See also D 1389, A 23579 (citing D 1124, Deer Creek); D 1399, A 23729 (citing D 1137, D 1217, D 1324, San Gregorio Creek).

Measured flows in Dry Creek at Galt Gaging Station increased as a result of escaped irrigation water and increased tailwaters of irrigation users so as to justify different conclusions as to availability of unappropriated water in summer.--D 1376, A 23284, Calosso, Dry Creek, Sacramento Co., 7/1/71.

Season for irrigation defined in court decree.--D 1391, A 23443, A 23444 and A 23445, Occidental Petroleum, Smithneck and Bear Valley Creeks, Sierra Co., 2/3/72.

Board found that direct diversion would be of little value to applicant as no unappropriated water existed in source from June to September, such finding being consistent with determination of availability as stated in prior decision (D 1124).--D 1394, A 23535, Shinn, Willow Valley Creek, Nevada Co., 3/2/72.

Availability of unappropriated water for applicant subjected to beginning of irrigation season.--D 1397, A 23491, Mace, Inc., Pioneer Creek, Amador Co., 4/6/72.

Diversion season restricted in instant decision pursuant to prior decisions of the Board (D 893 and D 1356).--D 1400, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, Placer Co., 4/11/72, as clarified 5/4/72.

## 1.2 Effect of Physical Determinations

### 1.21 Generally/Observations/Measurements

Where there were no flow records of stream on which there was an application for storage, permit was granted upon showing via other evidence that unappropriated water existed.--D 752, A 13916, Romaggi.

Field investigation showed that the amount of water sought under application and available from the sources would probably be lost by evapo-transpiration before reaching the protestant's point of diversion, so permit granted.--D 792, A 13868, Grizzle.

While the flow to the applicant might fail due to prior upstream diversions, the permit was granted upon a showing that there was substantial return flow, seepage and water backing up in the Delta.--D 805, A 15250, Steffan.

Mere possibility that there might not be unappropriated water in the stream during three months of the year would not bar approval of an application when the amount of water applied for (.019 cfs) was small in comparison with either the protestants' claimed rights or probable diversions (225 cfs).--D 865, A 16215, etc., Jennings, et al.

Due to sporadic occurrence of the unappropriated water, application for direct diversion denied but granted for storage.--D 906, A 16832, Taylor. See also D 911, A 16850.

When flow of stream was in question, a permit was conditioned on there being in excess of 11 cfs at a gage above the applicant and protestant during the months involved.--D 917, A 17814, U. S. Inyo National Forest.

Application to appropriate domestic water denied for the reason that the unappropriated water in this source occurred too infrequently (once in 32 years of record) after providing for amounts under prior M.U.D. license of protestant.--D 927, A 17855, Holmes.

Where the water supply from a tunnel was incapable of definite determination but evidence at the hearing showed water in excess of an amount necessary to satisfy existing licenses during some periods, a permit was granted to the applicant.--D 932, A 18182, Bronson.

Application was denied where a considerable portion of the water pumped by the applicant was actually his own return water from another license. Further, rainfall records showed a negligible amount of water available to the users of the stream from precipitation during the proposed season of direct diversion.--D 943, A 17260, Fiddyment.

In order to protect protestant's prior rights during years of inadequate supply, the permit required the release of impounded water to the extent necessary to satisfy those prior rights whenever it appeared from the May 1 runoff forecast of the Department of Water Resources that there will not be sufficient water during the current year.--D 1049, A 19115, Jaenecke, Dutch Creek, Mariposa Co.



A decision ordering permittee to maintain a certain flow from a stream during dry years defined a dry year when Department of Water Resources April 1 forecast found 500,000 acre-feet or less runoff at Goodwin dam.--D 1092, A 5648A, etc., Oakdale and SSJID, et al, tributaries to Stanislaus River, Calaveras and Tuolumne Cos.

Water company, which was required by court decree to keep water in lake from rising too far, released water from lake 59 percent of time between 1921 and 1964. This water is subject to appropriation.--D 1257, A 21805, Crawford, Unnamed Stream, Lake Co., 8/31/66.

Applicant permitted to appropriate water spilling from the protestant's diversion ditch or over its diversion dam.--D 1270, A 22266, Perazzo Properties, Perazzo Canyon, Sierra Co., 5/11/67.

Determination that unappropriated water was available on a stream with no flow records was made by using a ratio of size of watershed in question and adjacent watershed in which streamflow records were available.--D 1271, A 22297, Hunt, East Fork Tunitas Creek, San Mateo Co., 5/11/67.

Unappropriated water which was in the stream 59 percent of the time was available for appropriation.--D 1277, A 21758, Sandage, Lower Blue Lake, Lake Co., 7/6/67.

Application to appropriate water denied since it could not be determined whether the increase in capacity of a waste treatment plant would increase the discharge of sewage effluent into the stream and, if increased, whether there would be enough water to satisfy prior downstream rights.--D 1289, A 22741, Peterson, Union Creek, Solano Co., 11/30/67.

While there were no records of the flows of the creek, a correlation of precipitation records in the area with several spot measurements taken over a number of years indicates there is unappropriated water.--D 1296, A 22094, Nachand, Pony Bar Creek, Trinity Co., 4/4/68.

Unappropriated water available, since protestants had not used water for working their mine for 13 years and instead, the water overflowed their storage tank and wasted into the ground.--D 1300, A 22265, Tschopp, Wixon Spring, Sierra Co., 5/2/68.

Despite uncertainty as to flow surpluses and depletions, applicant is entitled to appropriate unappropriated water when it is available.--D 1320, A 22980, Western Lake Properties, Inc., Big Creek, Tuolumne Co., 12/5/68.

Past flows and uses and present showings of same having been considered, unappropriated water will be available to applicant.--D 1344, A 22321, Gorrill, Butte Creek, etc., Butte, etc., Cos., 9/18/69.

Board found that water was available for storage only, and not for direct diversion, where no flow records for stream existed and the average annual runoff of the watershed above applicant's reservoir was small and concentrated within a short span of time.--D 1368, A 22918, Norvell and Mann, Unnamed Stream, Sierra Co., 12/17/70.

Where there was no measured flow at protestants' point of diversion during the diversion season, protest was disregarded.--D 1375, A 23365, Howard, Indian Creek, Siskiyou Co., 5/20/71.

November 1 to June 1 diversions limited to times when there is continuous visible surface flow in river at designated gage.--D 1378, A 23416, Bank of America, Cosummes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Board stated that quantitative determinations to the extent of vested rights are meaningless. The measure of a water rights entitlement in the Delta is the quality of the entitlement.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Where measured flows of creek amounted to less than amounts of existing rights, and holders of such rights were receiving only about one-third of their entitlements, application was denied for lack of unappropriated water.--D 1382, A 23363, Brickwedel, Unnamed Stream tributary to Jordan Creek, Del Norte Co., 9/2/71.

Unnecessary to determine precisely the quantity of unappropriated water available in view of magnitude of flows beyond protestant's point of diversion, his past historic diversions, and the comparatively small quantity of water requested by applicant.--D 1386, A 23626, Brown, Diablo Canyon and 3 unnamed streams tributary to Shingle Mill Gulch, Santa Cruz Co., 12/2/71. See also D 1390, A 23661.

Availability of water for storage measured by streamflow records and confirmed as to season by watermaster records.--D 1391, A 23443, A 23444 and A 23445, Occidental Petroleum, Smithneck and Bear Valley Creeks, Sierra Co., 2/3/72.

## 1.22 Duty of Water/Requirements Criteria

Permit reduced amount applied for in application where evidence showed applicant applied for larger amount of water than appropriate for acreage proposed to be irrigated.--D 778, A 14162, Whitehead.

Permit reduced requested flow for alfalfa irrigation as constituting an excessive amount for the acreage involved.--D 787, A 15169, Stenberg.

While unappropriated water existed, the amount was not commensurate with the requirements of large storage and irrigation development and therefore permit denied.--D 839, A 2432 and A 7721, Sierra Land and Water Co.

Application for direct diversion from stream denied when evidence disclosed that during the period applied for, the flow was of such small quantity as to be of no possible material benefit to the applicant.--D 901, A 16995, Kelly.

Upon application for domestic and irrigation uses where evidence showed that available unappropriated water was of such small quantity as to make irrigation use negligible, permit was denied as to irrigation and granted for domestic use only.--D 909, A 15732, Anderson.

As no evidence was before Board or available as to reasonable water requirements for land being served by the protestants, the Board considered studies of duty of water in similar mountain valleys.--D 917, A 17814, U. S. Inyo National Forest.

Duty of water under prior permits used to determine needs of riparians in determining unavailability of unappropriated water.--D 948, A 17960, Pereira.

Application for water for domestic and stockwatering uses approved only as to the amount reasonably necessary for such purposes under the criteria set forth in Title 23, § 657, of the California Administrative Code.--D 1017, A 18821, Lemos.

Water requirements of protestants estimated in accordance with values set forth in § 657 of Title 23 of the California Administrative Code, in order to aid in the determination of the existence of unappropriated water, but decision pointed out that the estimate was not to be construed as a determination or limitation of rights of protestants.--D 1029, A 19222, Lowery, Deer Creek, Trinity Co.

Applicant's assumption that 450 gallons per day per person was necessary and reasonable was rejected in light of evidence of other applicants' testimony pointing to 250 gpd. Permit granted for reduced amount.--D 1056, A 17139, etc., Oakwood Investment Co., Placer and El Dorado Cos.

On an application to appropriate from the subsurface flow of the stream which was based on what a community of homes normally use and no showing having been made that such a supply could be developed from the source, the application was denied.--D 1078, A 19734, Ribbonwood Estates, Palm Canyon, Riverside Co.

Protestants' claim that amount of water applied for was excessive was not grounds for denying application, as an appropriative right obtained pursuant to permit is eventually measured by the amount of water placed to beneficial use.--D 1131, A 1993<sup>4</sup>, U. S. Bureau of Reclamation, Putah Creek, Napa Co. See also D 935, A 234, etc.; D 1152, A 19111, etc.; D 1153, A 20725; D 1207, A 20487, etc.

Application approved for use of water on land already covered by a license where reclaiming of land required more use of water.--D 1199, A 17966, McMullin Reclamation District No. 2075, Stanislaus River, San Joaquin Co.

Decision discusses duty of water (rice) where protestant claimed a wasteful use of water was being proposed.--D 1224, A 13681, etc., Richvale I. D., etc., Middle Fork Feather River, Plumas and Butte Cos.

Application approved since if water was not diverted by applicants it would be consumed by phreatophytes and wasted.--D 1263, A 22254, Donaldson, Tunnel No. 4, Keysville Mine, Kern Co., 12/22/66.

Where applicant was presently allowed a certain maximum amount of water to irrigate a specific tract of land, the Board refused to grant permit for increase in acreage, as permittee was not granted the specific maximum amount, but only so much water as was required to irrigate the tract originally specified in the permit.--D 1333, A 21516, Hansen, Russian River, Mendocino Co., 3/6/69.

Duty of water (rice and general crops) discussed and applied to proposed operations of applicants to determine allowable diversion quantities.--D 1344, A 22039, Newhall, A 22321, Gorrill, Butte Creek, etc., Butte Co., 9/18/69.

Permittees, although subject to maximum diversion limits, will nevertheless acquire rights to only such quantities as are actually diverted and put to beneficial use in accordance with law, regulations and permits.--D 1344, A 22534, Patrick, A 22564, Camenzid, Butte Creek, etc., Butte Co., 9/18/69.

Water appropriated is limited to the quantity which can be beneficially used, not to exceed set maximum amount.--D 1346, A 22913, Warm Springs, Unnamed Spring, Inyo Co., 10/16/69. See also D 1331, A 22703; D 1131, A 19534.

Where the maximum irrigable area was between four and five acres, the total water requirements were set so as not to exceed 0.1 cfs or 32 afa.--D 1375, A 23365, Howard, Indian Creek, Siskiyou Co., 5/20/71.

Board set net Delta outflow requirements for normal and critical years pursuant to staff measurements and estimates and Board Resolution 68-17.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Analysis of water requirements in the Delta broken down into five categories: channel depletion in Delta lowlands; consumptive use in uplands; Contra Costa Canal diversions; offshore supply to municipalities and industries in western Delta; and outflow for salinity repulsion.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Where leaking diversion works, if repaired, would assure adequate water for both protestants and applicants even in an unusually dry season, Board found unappropriated water available (thus effectively forcing protestants to repair their works to prevent waste and assure their own supply).--D 1385, A 23317, Olson, Macks Creek, Siskiyou Co., 10/13/71.

Board determined quantities of water reasonably required to irrigate set acreage and for other uses, and found that protestant would be sufficiently supplied provided he repaired and properly maintained his wasteful diversion system.--D 1387, A 23441, Flack, Collins Creek, Siskiyou Co., 1/6/72.

### 1.23 Hydraulic Continuity

An application to appropriate from a tributary to Los Banos Creek was granted upon a showing of lack of hydraulic continuity between the source and the San Joaquin River along which protestant was located.--D 1088, A 19962, Lopez, Unnamed Drain tributary to Los Banos Creek, Merced Co.

In acting on application to appropriate from the Mokelumne River, the Board took official notice of its Decision D 990 relating to the Sacramento River, which is in hydraulic continuity with the Mokelumne, to show no unappropriated water during the summer months and also took official notice of Decision D 858 of its predecessor to show lack of unappropriated water in the Mokelumne in the summer.--D 1109, A 19725, Simmons, Mokelumne River, San Joaquin Co.

No continuity of flow during September between Fresno River below Miami Creek and San Joaquin River. Diversions to storage during that month by applicant held not to injure any user holding rights to San Joaquin River and Delta though there is a shortage during that month.--D 1205, A 19866, Ashby, Peterson Creek, Madera Co.

Where entire flow of stream and its tributaries is already subject to adjudicated user rights to the exclusion of applicant, a showing of hydraulic continuity between his proposed source and the adjudicated stream served to make such source tributary to said stream, and, as such, subject the applicant to the prior rights therein.--D 1329, A 22577, Beers, Unnamed Spring and Stream, Butte Co., 2/7/69.

### 1.3 Particular Waters

#### 1.31 Foreign, Artificial and Mine-Tunnel Waters

Protests based on alleged riparian rights held to be without merit as the waters in question originated outside the watershed of the protestants' lands.--D 750, A-13557 Potter Valley I.D.

Application denied when part of unappropriated water was from leakage of EBMUD spillway and evidence showed leakage elimination operations in progress. Also additional water to be developed on stream storage considered infeasible due to inadequacy of storage space.--D 760, A-11816 City of St. Helena.

Application to appropriate imported (foreign) water denied since water was released only during infrequent and unpredictable periods of short duration.--D 1274, A-22210 etc., Reynolds et al., Little Shasta River, Siskiyou Co., 5/11/67.

Holders of prior appropriative rights have first claim to foreign waters introduced into a stream, even if waters are introduced subsequent to an adjudication of stream.--D 1274, A-22210 etc. Reynolds et al., Little Shasta River, Siskiyou Co., 5/11/67.

Mine tunnel waters are within the jurisdiction of the Board and their availability for appropriation is subject to the same considerations of prior rights etc. as other waters within Board's jurisdiction.--D 1325, A-22956 Bradley, Mine Tunnel, Nevada Co., 3/20/69. See also D 1263, A-22254; D 1363, A-23085.

## 1.32 Ground Water

### 1.32.1 Generally

Permit refused when evidence showed that flow of river at the point where applicants sought to appropriate was ordinarily needed in its entirety to maintain ground water levels.--D 830, A-14569 Himes.

Protest based on interference with ground water supply.--D 836, A-15629 Whittle; see also D 702, A-1506; D-644, A-11751.

Special condition required permittee to make releases sufficient to maintain percolation of water from the stream channel as such percolation would occur from unregulated flow under prior conditions, that the operation of permittee's project would not reduce the natural recharge of ground water of the stream.--D 991, A-11389 etc., Yolo Co. See also D 1338, A-22454.



### 1.32.2 Known and Definite Channels

Where water flowed underground at a very slow rate, and the geological strata through which it flowed were sometimes a mile wide, Board's predecessor found that this water was subject to appropriation, the only pertinent criteria being that the flow be discernible and confined to a known and definite channel.--D 432, A-8156 etc., Fallbrook PUD etc., San Luis Rey River, San Diego Co., 10/7/38.

When neither the information furnished by applicant, nor that resulting from a field inspection, supported a conclusion that the source filed upon was a subterranean stream flowing through a known and definite channel rather than natural ground water not subject to appropriation under the Water Code, the application was denied.--D 724, A-12328 Alexis.

Evidence showed that the underground source filed upon was a subterranean stream flowing in a known and definite channel.--D 729, A-12869 Sawyer.

### 1.32.3 Correlative Rights

Protestant held to have no right to insist on maintenance of an underground water level for the sole purpose of avoiding additional pumping costs but must yield to the public policy declared in Water Code § 100.--D 723, A-13538 Maxwell.

Board found that the draft on a lower basin could be increased by 700 feet without violating safe yield criteria and that the granting of the application would not harm a protestant diverting from wells  $\frac{1}{4}$  mile below.--D 1024, A-17840 Righetti, San Luis Obispo Co.

Overflow and seepage from an upper lake found to contribute to protestants' supply from the surface and underflow of the Santa Ana River and from the San Bernardino ground water basin.--D 1060, A-19714 SBVMWD, Lost Lake, San Bernardino Co.

1.33 Springs/Cienegas

Where application depended on development of springs other than the spring from which the protestant was supplied, the application was granted.--D 732, A-12410 Bushati.

Evidence showed that an unnamed spring did not contribute to the supply of Raymond Basin and so application to appropriate granted as not interfering with Raymond Basin water agreement.--D 796, A-14912.

Application denied to appropriate from a spring when the owners of a mining claim within which the spring was located were entitled to use all the available water under the riparian doctrine.--D 802, A-15239 Wann.

Application approved where it was shown that little, if any, of the water in springs reached the protestant on a tributary creek during the critical summer months, and the applicant's return flow would compensate for any diminution in the creek resulting from the proposed diversion.--D 1119, A-20547 Oversoul Foundation, five springs, Butte Co.

While not determinative of the existence of unappropriated water, the Board considered the fact that the supply from a spring would be increased by the applicant in salvaging water being lost through fractures in a tunnel through which the spring flowed.--D 1126, A-19569 Christian Churches, Unnamed Spring, Placer Co.

Return flow from applicants' use considered to offset whatever contribution made by spring to a flow of stream from which protestant diverted.--D 1134, A-20418 and A-20467 Boone, Knass Stream, Tehama Co.

Portion of application relating to a spring approved where spring made no contribution to protestant's supply and approved in part as it related to an unnamed stream where it would cause interference with riparian protestants during a portion of the year.--D 1162, A-20786 Krause, Unnamed Stream and Spring, Plumas Co.

Application approved for appropriation of developed spring water to which protestants holding prior vested rights were not entitled.--D 1209, A-20250 Fink, Unnamed Spring, Tehama Co.

### 1.3<sup>4</sup> Lakes and Littoral Waters

Mere apprehension on part of protestant that new wells adjacent to a lake would lower his own water table held insufficient reason to deny application.--D 780, A-14915 Kantel. See also D 719, A-11852.

Where a protest to an application for storage on a creek tributary to Clear Lake was based on protestant's prior right to store water in lake to a certain level, the permit was issued subject to the right of protestant to have the lake level so maintained, and further provided that any release of water from the lake by the protestant other than for irrigation would be considered surplus and the permittee would be entitled to retain an equivalent amount for storage on an upper tributary to Clear Lake.--D 931, A-18024 Graham.

Board had previously found that, due to possible limitations of water supply from Lake Tahoe to California through interstate compact for allocation of water in Tahoe Basin, the reservation of large quantities for long-range future development was against the public interest, and prospective uses were considered only through 1970. The board accordingly limited estimated project uses, which were projected to the year 2000, to the year 1970 and revised claimed requirements.--D 1173, A-18934, Lake Tahoe Gold Mining Co., Madden Creek, Placer Co.

### 1.35 Return Flows

Application to appropriate water, which was principally return flow and therefore erratic, was approved where the evidence showed that they were apt to occur repeatedly during the irrigation season.--D 722, A-13698 Wilson.

Applicant sought to appropriate water from a slough used to convey foreign waters to an irrigation district's customers on the basis that the slough also contained return waters from lands irrigated by wells. Denied, as the timing of the applicant's proposed diversions to accord exactly with occasional upsurges of return flow would be prohibitively difficult.--D 842, A-15422 Vandegrift.

Ditch found not to be supplied by return waters of an irrigation district and a reclamation district and therefore subject to appropriation by the applicant.--D 866, A-16350 Johnson.

An irrigation district claiming ownership of return flow by virtue of Water Code § 22078 must establish that the water was originally the property of the district and an unsworn statement by way of letter declaring that as a fact, with no opportunity afforded for cross-examination of the writer, is not admissible evidence.--D 889, A-17223 Ferreira.

Board refused to include a special term in permit at the request of protestant that certain spill and return water not being used belonged to it and could be reclaimed at a later time. Considered not necessary and the Board was without power to determine such rights as the protestant might have to such water.--D 1061, A-17482 etc. Ralph Moss et al., Sweeney Creek etc., Solano Co.

A decision denying the existence of unappropriated water in a drain pointed out the decision in no way affected the applicants' right to recapture return flows from their own property which might occur in the drain.--D 1079, A-19644 Stevinson, Southside Drain, Yolo Co.

Application approved where it was shown applicant's return flow would compensate for any diminution in creek resulting from proposed diversion.--D 1119, A-20547 Oversoul Foundation, five springs, Butte Co.

Return flow from applicants' use considered to offset whatever contribution made by spring to a flow of stream from which protestant diverted.--D 1134, A-20418 and A-20467 Boone, Knass Stream, Tehama Co.

The application of a member of an irrigation district to appropriate water which was principally return flows and seepage from lands served by the district denied, as not in the public interest.--D 1223, A-21446 DeGregory, Wilson Ranch Ditch, Merced County.

Protest by owner of property lying upstream from applicant's point of diversion dismissed as he had a right to recapture the return water covered by the application before it reached the applicant.--D 1234, A-21686 Hanlon, Unnamed Creek, Tehama Co.

Credit for return flow from urban use held proper.--D 1320, A-22980, Western Lake Properties, Inc., Big Creek, Tuolumne Co., 12/5/68.

### 1.36 Waste, Drainage and Seepage Waters

Permit will not be issued for purpose of recapture of applicant's own drainage water, as while under his control permit not necessary, and if allowed to escape, it is subject to appropriation only so far as it exceeds demand under prior rights downstream.--D851, A-15712 and A-15713 Barrera. See also D 849, A-15657.

Evidence showing that upstream owners intended to recover their own drain water supported Board's finding that no unappropriated water existed under application.--D 925, A-17752 Busi.

A protest based on objections to the methods and means by which the applicant disposed of drainage water and surplus flows was disregarded as being outside the Board's jurisdiction.--D 937, A-17639 Drummond.

Application to appropriate water denied since it could not be determined whether increase in capacity of waste treatment plant would increase the discharge of sewage effluent into the stream and, if increased, whether there would be enough water to satisfy prior rights downstream.--D 1289, A-22741 Peterson, Union Creek, Solano Co., 11/30/67.

Application approved to appropriate sewage effluent since the flows were expected to be fairly constant and to tend to increase in volume.--D 1297, A-22479 Barnby, Morrison Creek, Sacramento Co., 4/4/68.

Application for permit to appropriate abandoned water (effluent discharge of a user with no intent/effort to recapture) denied where such discharge did not increase source flow sufficiently to satisfy all prior appropriative rights for the requested diversion season.--D 1334, A-22859, Greening, Sacramento River, Shasta Co., 3/6/69; S.a. D 1274; D 1289, A-22741.

1.37 Surplus Waters

A determination of surplus water in relation to a court decree and the extent of riparian interest was made necessary for the Board's own guidance in determining surplus water and would not constitute a further adjudication of the water rights which could be attainable only by court action.--D 928, A-16162, North Coast County W.D.

### 1.38 Developed and Salvaged Waters

Removal of native vegetation salvaged water which otherwise would have been totally lost by evapo-transpiration, and such removal resulted in water being available for appropriation.--D 967, A-17239 Baker.

Evidence submitted by applicants to the effect that their burning and clearing of brush and trees created additional runoff that would compensate for water sought to be appropriated held to be too general in nature and indefinite as to quantity of water to be the basis for the required finding of unappropriated water.--D 1018, A-15931 etc. Gill et al., Tule River, Tulare Co.

Application approved to appropriate water which applicant had developed by excavating a shallow hole and driving pipes into the side of a hill. Prior to such development all the spring water had been consumed by vegetation within 100 feet of spring and did not reach protestants.--D 1022, A-19375 Huntley, San Diego Co.

Water salvaged by reduction of evaporation losses as a result of reduction of surface area of lake held to be available for appropriation but in this particular case it would amount to such a small amount in view of applicant's proposed use that the application was denied.--D 1060, A-19714 SBVMWD, Lost Lake, San Bernardino Co.

While not determinative of the existence of unappropriated water, the Board considered the fact that the supply from a spring would be increased by the applicant in salvaging water being lost through fractures in a tunnel through which the spring flowed.--D 1126, A-19569 Christian Churches, Unnamed Spring, Placer Co.

Applicants who had no rights to the source under a court decree claimed that by clearing brush and vegetation they would develop sufficient water to cover their application, but they did not meet their burden of proving that water surplus to the rights of protestant would be so developed.--D 1157, A-20581, Wight, et al., Unnamed Stream, Tuolumne Co.

Application approved to appropriate from fully appropriated Santa Ana River watershed where the water was to be salvaged or conserved by eliminating consumptive waste created by phreatophytes along a 15-mile stretch of the river. Quantity determined by comparison of consumption under prior and present land use methods.--D 1194, A-11036 etc. Santa Ana Valley Irrigation Co. et al., Santa Ana River, Orange Co.

Application approved for appropriation of developed spring water to which protestants holding prior vested rights were not entitled.--D 1209, A-20250 Fink, Unnamed Spring, Tehama Co.

Only unappropriated water available in most years was salvaged water. A critical factor in determining the amount salvaged is the water storage capacity of the soil. Applicants have shown that amount of water salvaged exceeds amount requested by applications.--D 1264, A-21587 etc. Reeves, Swamp Creek etc., Monterey Co., 2/15/67.

Board will give recognition to brush clearing programs insofar as they conserve water which the brush normally consumes.--D 1290, A-353 etc. Fresno I.D. etc., Kings River etc., Fresno etc. Cos., 11/30/67.



Water developed by applicants' clearing program will be in excess of the water consumed under the application and therefore no harm will result to protestant. --D 1303, A-22584 Oneto et al., Paramae Gulch, Calaveras Co., 5/16/68.

Applicant is entitled to the water that is salvaged by his work.--D 1305, A-22241 etc. Johnson Stock Co., 11 Unnamed Streams tributary to Tule-Lake Sump, Modoc Co., 6/20/68.

The fact that protestant will receive water that is salvaged by brush-clearing operations rather than natural flow is no ground for protest.--D 1315, A-21144 and A-22335, Mariposa Co. Fish and Game Prot. Ass'n, West Fork Chowchilla River, 10/24/68.

Waters salvaged by applicant available for replacement of evaporation losses from his reservoir.--D 1398, A-23570 Hazeltine, Ash Creek, Shasta Co., 4/6/72.

1.4 Alternate/Supplemental Supplies and Exchange/Purchase/Sale of Water

Permit condition that no water be diverted under it until an agreement had been consummated between the permittee and the U. S. providing for a concurrent exchange of water from CVP for water diverted under the permit from the Feather River to the extent necessary to supply prior rights of Sacramento River and Sacramento-San Joaquin Delta.--D 949, A 14803, Feather Water District.

Upon finding of lack of unappropriated water for domestic use during most of proposed diversion season, application denied when applicant had no supplemental supply.--D 1130, A 18932, Fowler, Unnamed Stream, Plumas County.

Even though there was no unappropriated water in river during summer, a permit could properly be issued for unappropriated water to be made available by furnishing water to protestant from a substitute source, i.e., a physical solution.--D 1259, A 21424, City of Blue Lake, North Fork Mad River, Humboldt County, 8/31/66.

Board deferred action on a series of applications to give applicants the opportunity to enter into exchange agreements so that their water supply would be ensured in case of shortages in some years. Board expressly stated its approval of such agreements.--D 1290, A 353, etc., Fresno I. D., etc., Kings River, etc., Fresno, etc., Counties, 11/30/67.

Application approved since there was generally sufficient unappropriated water in stream. However, when the amount of unappropriated water is insufficient, the applicants are able to purchase water from others.--D 1292, A 21888, Ross, Unnamed Stream, Placer County, 1/4/68.

The possibility of deficiencies in stream flow for intended uses did not preclude approval of application since it was highly probable that such deficiencies could be made up by the purchase of other water.--D 1322, A 20862, Lake County F.C.&W.C.D., 1/9/69.

Permit for domestic use would be issued despite the fact that part of the year no unappropriated water is available, if applicant were able to obtain an alternate supply for that period via an exchange agreement method proposed by the Board.--D 1329, A 22577, Beers, Unnamed Spring and Stream, Butte County, 2/7/69.

Permittee required to release water to meet downstream reservations unless replacement water were provided on an exchange basis.--D 1347, A 22739, Usibelli, Maxwell Creek and Unnamed Stream, Napa County, 10/16/69.

Where applicant had permission to obtain water from an alternate source, Board found that waters from creek sought to be appropriated were not required and denied application.--D 1354, A 22880, Blake, Unnamed Creek, Humboldt County, 1/23/70.

Policy of state is to encourage development and beneficial use of water to the fullest extent possible without infringement of prior vested rights. Physical solutions which enable the beneficial use of water by subsequent appropriators without material injury to owners of prior rights generally take the form of a substitute supply of water furnished to the user in place of the existing supply, and have on numerous occasions been upheld by the courts.--D 1365, A 18714, U. S. Bureau of Reclamation, Chowchilla River, Madera County, 11/19/70.

Permittee required to provide satisfactory evidence of continuing supplemental supply for times when no water available for appropriation under permit.--D 1376, A 23284, Calosso, Dry Creek, Sacramento County, 7/1/71.

Allowed diversion conditioned on water exchange agreement to replace water in river which is stored in permittee's reservoir.--D 1377, A 23181, Rancho Encino Co., Poppet Creek, Riverside County, 8/5/71.

Permittee's negotiations for firm water supply to be reported on annual basis, once Congressional approval for Bureau of Reclamation project on same river received.--D 1378, A 23416, Bank of America, Cosumnes River and Unnamed Stream, Sacramento County, 8/5/71, as amended 9/16/71.

Board found that appropriate method for Delta users to assure themselves of continued availability of good quality water throughout the year is to contract with permittees therefor.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board found that since the Legislature has indicated that in furtherance of a policy of maintaining an adequate supply of water for all uses in the Delta, permittees could be relieved of some requirements as to holders of senior rights regarding quality of the supply if they were able to provide an adequate substitute water supply, provided that no additional cost to users is caused thereby, since availability of water is not so much the problem as the quality of that which is available.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

## 1.5 Rotation

Permit reduced flow requested under the application to irrigate alfalfa as constituting an excessive amount for acreage involved. However, due to intermittent nature of service, the equivalent of the continuous flow allowance for any 30-day period was allowed to be diverted in a shorter time if there would be no interference with vested rights.--D 787, A 15169, Stenberg. See also D 1328, A 22946; D 1333, A 15098; D 1364, A 22711 and A 22949; D 1375, A 23365.

Permit providing a rotation clause allowing the equivalent of the continuous flow allowance for any 30-day period could be diverted in a shorter time if there was no interference with vested rights.--D 961, A 16983, Tallman.

Applicant required to limit his diversion to offstream storage to times when the flow passing his intake exceeded the requirements for fish life when it appeared that at the rate of diversion proposed by the applicant the full appropriation could be accomplished in one-third of the requested season.--D 987, A 17055, Thompson.

Equivalent of continuous flow allowance for any seven-day period may be diverted in a shorter time if there is no interference with vested rights.--D 1371, A 23400, Rinta, Bean Creek, Santa Cruz County, 2/18/71. See also D 1380, A 23273.

## 1.6 Reservoirs and Effect of Stored Water

Protest by power company based on the apprehension that applicant's proposed storage in federal reservoir to be released to its point of redirection would be so commingled with releases to which protestant was entitled that it would not receive its entitlement held an invalid ground for protest.--D 645, A 9142, North Fork Ditch Co.

Operation of Shasta Dam for flood control required releases downstream faster than the water could be beneficially used. Such excess water held to be available to an appropriator without regard to the time of the year when diversion was made, when operation of dam resulted in a holdover from year to year.--D 877, A 16358, Caswell.

Where protest was based on prior right to store water in lake at a certain level, permit was issued subject to such right, with further provision that permittee entitled to retain an equivalent amount of water for storage on upper tributary to lake whenever protestant released water for other than irrigation purposes.--D 931, A 18024, Graham.

Where protestant's license for a power project contained a provision that its direct diversion feature was not to interfere with future irrigation development, permit was granted upon showing that there were flows in excess of that needed to satisfy protestant's storage features of the project.--D 954, A 18366, Albasio.

The prerequisite of a finding of unappropriated water before a permit may be issued applies even in respect to applicants (stockwatering dams) who have existing rights to divert and use water and who desire a permit only to add the authority to store water.--D 1018, A 15931, etc., Gill, et al, Tule River, Tulare County.

Protests based on vague and indefinite future plans for water were disregarded, for meanwhile water which would be available would waste into the ocean if permit were conditioned so as to fully satisfy protestant's storage rights, since project was not complete.--D 1086, A 19466, White, Hobart Creek, Trinity County.

Water released by permittee for any reason other than to satisfy downstream rights, for fishlife, and to fulfill protestant's licensed rights, would be considered surplus which could be retained.--D 1091, A 20105, etc., Landau, et al, Wolf Creek, Nevada County. See also D 1094.

Application denied upon a showing that the surface and underflow of river required to offset seepage and evaporation losses in an adjacent reservoir maintained by protestants, i.e., flow not available for appropriation.--D 1096, A 19864, Alsip, Unnamed Spring tributary to Santa Clara River, Los Angeles County.

A reservoir formed by old mine dredging operations considered to have assumed the characteristics of a natural body of water through existence and use over a long period of time, and its waters are subject to same appropriative, etc., laws.--D 1225, A 21349, etc., Scott, et al, Pacific-Placer Reservoir, Calaveras County.

Full season of diversion justified despite fact that source creek ceases to flow in driest part of summer, since sufficient water occurs during the average year to fill the reservoir.--D 1288, A 21901, etc., Moores, et al, Moores Creek and Irish Gulch, Mendocino County, 11/30/67.

Water stored less than 30 days is classified as regulated direct diversion.-- D 1361, A 20350, U. S. Bureau of Reclamation, American River and Deer Creek, Sacramento County, 7/16/70.

An appropriator of water who collects water to storage does not acquire ownership of the water but only the right to use it. Water appropriated under the Board's jurisdiction, once used for the permitted purpose and returned to a stream, is again subject to Board's jurisdiction, and cannot be made part of the permitted water right without Board approval.--Order Denying Reconsideration of D 1400 (D 1400, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, Placer County, 4/11/72, as clarified 5/4/72), 6/1/72.

B.....CONCERNING USES OF WATER

TOPIC NUMBER		PAGE NUMBER
2.1	<u>Generally/Reasonable and Beneficial Use</u>	41
2.2	<u>Future Use and Development</u>	45
2.3	<u>Interim Use</u>	47
2.4	<u>Proof of Use</u>	49
2.5	<u>Use Priorities</u>	50

## 2.1 Generally/Reasonable and Beneficial Use

Utilization of the flow of a creek to maintain the surface of a lagoon at a level satisfactory to home built along its shores, and to support wild life and the general public's recreation, was deemed a beneficial use that should be preserved in the public interest as against an appropriation for irrigation use.--D 719, A-11852 Thibodo.

Maintenance of fish life recognized as a beneficial use but will not take precedence over higher uses such as municipal, domestic and irrigation purposes.--D 858, A-11792 etc., Calaveras Co. W.D. et al.

Upon application to appropriate water for fire fighting use, the diversion was allowed as against a subsequent appropriator only during such time as there exists an actual need of water for fire fighting.--D 890, A-16154 and A-16125 PG&E.

Equitable proportion of flow of river as to consumptive use and salinity control considered.--D 893, A-12140 etc. City of Sacramento.

Use of water for fish culture by an individual is a beneficial and lawful riparian use of water. The Board could not subordinate such a right to a subsequent appropriator for use by a higher priority as defined by Water Code § 106.--D 928, A-16162 North Coast. Co. W.D.

Storage of water underground is a beneficial use.--D 935, A-234 etc., U.S.A.

The right to the use of water by appropriation does not vest by virtue of application, permit or license, although these are necessary steps in the process of acquisition of the right, which vests by application of water to beneficial use upon the land.--D 935, A-234 U.S.A., p. 97; S.a. D-1131, A-19934.

Maintenance of flow of stream to keep channel "charged" during summer months so as to aid movement of water downstream in late fall when the runoff increased held not to be a reasonable and beneficial use of water.--D 966, A-17208 Davis.

Subirrigation of natural grasses from water in a channel not considered a reasonable method of diversion in area of water shortage.--D 966, A-17208 Davis.

A protest was disregarded when evidence showed that protestants were not employing reasonable methods of use and diversion as required by Water Code § 100, only 10 percent of the water diverted by the protestants being put to beneficial use due to excessive conveyance losses.--D, A-19077 Evans.

Petitions to change the character of use under irrigation application to include municipal, industrial, and recreational purposes and to add additional lands to the place of use which did not result in the change in quantity or season granted as not having an adverse effect on existing rights.--D 1020, A-15764 U. S. Bureau of Reclamation.

Typical term requiring that the site of the proposed reservoir be cleared to allow use for recreation purposes in accordance with Water Code § 1393.--D 1026, A-19127 Blanchard, Napa Co.; S.a. D-1338, A-22454; D-1344, A-22061; D-1353, A-19469; D-1367, A-23117.

An application for a permit to simply allow a certain flow of the river to remain undisturbed for the benefit of recreational facilities denied as lacking in the necessary control by the applicant through some form of diversion.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Cos.



Flows necessary for uses common to resorts and recreational establishments, such as boating, swimming, etc., held to be a reasonable beneficial use of such water although from that reach of the river the water wasted into the ocean.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Cos.

A petition requesting the addition of fire fighting as an authorized use granted upon a finding that no other use would be prejudiced.--D 1033, A-19144 Wilcox, two Unnamed Springs, San Bernardino Co.

Where there was sufficient water available to germinate crops, but not to mature them, a contention that a beneficial use of water could not result was dismissed--and the application approved--where the applicants were negotiating for additional water.--D 1045, A-16185 etc., Whitmire et al.

Protestant failed to show that there would be any substantial interference with its claimed right to recreational use of certain lakes resulting from the approval of applications of the U.S. to appropriate the same water for the same purpose.--D 1051, A-18744 etc., Tahoe National Forest, Unnamed Stream, etc., Sierra Co.

Held to be in the public interest that a permit for irrigation should also include domestic and municipal uses when applicant appeared ready to proceed on the irrigation aspect of the project.--D 1064, A-17083 etc., Coastside County W.D., Frenchman Creek, etc., San Mateo Co.

Applications to appropriate from Eagle Lake were denied when the evidence indicated that any lowering of lake levels would be detrimental to fish, wildlife and recreation, which are beneficial uses of water.--D 1073, A-18686 etc., Eagle Lake, Lassen Co.

Amount of water authorized by a permit for storage for fire protection purposes limited to the amount sufficient to replace evaporation and seepage losses.--D-1076, A-19532 Custer, Unnamed Stream, Placer Co.

Application for direct diversion for the Bureau's Black Butte-Stony Creek project denied where the irrigation demand would not be sufficient to justify it and there was no showing that the water to be appropriated by direct diversion would be used for any other beneficial purpose within the project service area.--D 1100, A-18115 and A-19451 U.S. Bureau of Reclamation, Stony Creek, Tehama Co.

"Bleeding", that is, allowing water to pass freely through pipes to prevent freezing, held not to be a beneficial use of water.--D 1152, A-19111 etc. Sierra Nevada Water Co. et al, Lake Tahoe/Coyote Creek, El Dorado and Placer Cos.

An application filed primarily for irrigation use denied in its entirety upon a finding of lack of unappropriated water during the summer months.--D 1153, A-20725 Tolliver, Arroyo Calero, Santa Clara Co.

Held not to be in public interest to give unqualified approval to storage application on tributary to Lake Tahoe which was for exclusively recreational use. Permit term provides that use thereunder will be subordinate to future requirements for domestic or municipal purposes, the clause becoming operative when California's allotment under California-Nevada Compact is exhausted.--D 1200, A-19965 Tahoe Paradise, Inc., Upper Truckee River, El Dorado Co.

Board approved applications for multipurpose project after making substantial modifications in public interest which provided greater recreational benefits and less damage to fishing resources than proposed by the original project where applicants had agreed the modified plan would actually provide additional yield of water for irrigation purposes.--D 1224, A-13681 etc. Richvale I.D. et al., Middle Fork Feather River, Plumas and Butte Cos.

Decision discusses duty of water (rice) where protestant claimed that a wasteful use of water was being proposed.--D 1224, A-13681 etc., Richvale I.D. et al., Middle Fork Feather River, Plumas and Butte Cos.

Application denied as not in public interest which covered a reservoir to be used for recreation and fish culture at a proposed subdivision when a county water district had a right to draw down the entire capacity of the reservoir whenever it deemed necessary and the water was the sole source of supply for most of the district during the summer months.--D 1242, A-21552 French Corral Land Co., Shady Creek, Nevada Co.

On reconsideration, the Board refused to impose a permit term requiring permittee to furnish assurance that recreation facilities would be constructed, operated and maintained, or requiring him to accommodate visitor days and generate recreational expenditures, since the Department of Water Resources and not the Board had a statutory duty to pass on the adequacy of recreational facilities under the Davis-Grunsky Act.--D 1248, A-13681 etc., Richvale I.D., Middle Fork Feather River, Plumas and Butte Counties.

Application denied since applicant could not show that he could beneficially use the unappropriated water available during part of the year without an additional source of supply or additional storage to provide water during the critical period.--D 1253, A-21635 Thrash, Unnamed Stream, Plumas Co., 7/27/66.

Not all summer diversions were used beneficially since the water which was diverted into a small reservoir which was filled with sediment often exceeded the reservoir capacity and was wasted. Also, transmission losses in ditch are high: 46%+.--D 1254, A-21867 Irvine, Little Bear Creek etc., Placer Co., 7/27/66

Water unreasonably diverted or wasted cannot be regarded as part of a water right.--D 1254, A-21867 Irvine, Little Bear Creek, etc., Placer Co., 7/27/66

Reservoirs under permit required to be kept open to public for recreation use, subject to reasonable charge for facilities and/or services provided, except that reservoirs solely for domestic/municipal supplies are exempt.--D 1378, A-23416 etc., Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Board's reservations of jurisdiction regarding beneficial uses to be protected encompass uses which state and federal governments have designated for protection pursuant to the Federal Water Pollution Control Act: agricultural supply, protection of fish and wild life, municipal supply and industrial supply.--D 1379, A-5625 and 38 others, U.S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Protestant's use of leaking and high-consumption diversion facilities held to be wasteful and unreasonable method of diversion.--D 1387, A-23441 Flack, Collins Creek, Siskiyou Co., 1/6/72

Permittee required to accord access to impounded waters to the public for fishing purposes.--D 1391, A-23443, A-23444 and A-23445 Occidental Petroleum Smithneck and Bear Valley Creeks, Sierra Co., 2/3/72. S.a. D-1398, A-23570.

Use of water for pre-irrigation, where some water will pond and be wasted, while not an unreasonable use and as some benefit will be derived therefrom, must nevertheless be rated toward the lower end of the scale of reasonable beneficial uses.--D 1392, A-23049 Mapes Ranch, A23050 Tanner, and A-23142 McClelland Ranch, Susan River Sloughs, Lassen Co., 2/17/72

## 2.2 Future Use and Development

Protest by county board of supervisors that action be withheld on application to appropriate from American River until definite plans are formulated for the development of the area considered not sufficient to bar applications, particularly in view of prior state filings covering 1,200,000 afa which were filed under provisions of the Water Code providing for reservations of supplies of water commensurate with planned future development and utilization of water resources.--D 645, A-9142 North Fork Ditch Co.

Anticipated future use of water by a riparian held an insufficient bar to the approval of an application by another party to appropriate and use water meanwhile from the same source.--D 712, A-13613 American River Pine Co.

Under facts disclosed at hearing, partial assignment of an application would neither hinder future development under California Water Plan nor deprive county in which water originated of water necessary for its development.--D 855, A-13707 and A-13708 U.S. Bureau of Reclamation.

A riparian use, which is prospective only, cannot be urged as a basis for the denial of an application.--D-863, A-16183 Pompio Ranch.

Where evidence showed that Bureau applications for a project would cover substantially all the waters of a creek, the Board found it to be in the public interest that the amounts under the permits should be subject to depletion of a certain quantity annually by future appropriations for beneficial use in the watershed above applicant's proposed dam.--D 869, A-11198 U.S. Bureau of Reclamation. S.a. D-1131, A-19534; D-1183, A-20060.

An application is not a proper instrument to make a reservation of water for development at an indefinite and uncertain time in the future.--D 893, A-12140 City of Sacramento.

Where the protestant municipal water district's plans for full development of a storage project to its authorized impounding capacity were indefinite and dependent on future contracts and possible industrial growth, its request that the applicants' permit be limited to times when its storage rights were fully satisfied, was denied, as it would result in water wasting into the ocean.--D 1086, A-19466 White, Hobart Creek, Trinity Co.

An anticipated expansion in riparian uses held not to be sufficient grounds for denying an application.--D 1101, A-19830 Evens and Strahle, Butler Creek, Nevada Co.

A specific quantity of water (not to exceed 90,000 afa in a 3-year period) was reserved to county of origin for future development.--D 1114, A-11792 etc., Calaveras and Tuolumne County Water Districts, Stanislaus River, Calaveras, Tuolumne and Alpine Cos.

Prospective riparian use is not a bar to approval of a present application to appropriate water. However, Board directed applicant's attention to possible assertion of a prior riparian right in order that he might consider amount of water available for a project pursuant to a permit to be issued.--D 1120, A-19897 Wilson, Unnamed Stream, Mono Co.

Board denied request of Department of Water Resources to have the permit subject to all uses in the county of origin as too broad but subjected the permit to future applications for reasonable quantities for stockwatering within the Calaveras River watershed.--D 1179, A-11792 etc. Calaveras Co. Water District et al., Calaveras River, Calaveras and San Joaquin Cos.

U.S. Bureau of Reclamation's authorized diversions concomitant with Cachuma Dam project on the Santa Ynez River (D-886) did not foreclose future new or increased appropriations from groundwater for municipal use within the watershed, even though increased discharges from the reservoir may be required to maintain percolation rates. D-1338, A-22516 Buellton, A-22423 Solvang, A-22454 Petan Co., Santa Ynez River, Id., and Alisal Creek, respectively, Santa Barbara Co., 5/1/69.

Where possibility existed that some water might be required at future times for firefighting purposes, Board nevertheless allowed domestic diversions at such times when the water is not used for actual firefighting. D-1336, A-22975 McGiveran, Palo Colorado Creek, Monterey Co., 3/20/69

Applicant required to make showing that quantity of water applied for will be reasonably required for future use. D-1344, A-22061 Paradise, Little Butte Creek, Butte County, 9/18/69

A permit will be issued for a prospective intended use if there is a reasonable possibility that the permittee will proceed with diversion and use of water as proposed, and a requested permit term restricting authorized appropriation to water which could be used by presently authorized projects will be considered accordingly.--D 1356, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River, etc., Placer etc., Cos., 2/5/70, as amended 12/17/70

Permit subject to future upstream appropriations for stockwatering and recreational purposes.--D 1365, A-18714 U.S. Bureau of Reclamation, Chowchilla River, Madera Co., 11/19/70

Protestant's plan to use water in the future cannot bar present use by applicant.--D 1375, A-23365 Howard, Indian Creek, Siskiyou Co., 5/20/71

### 2.3 Interim Use

Anticipated future use of water by a riparian held an insufficient bar to the approval of an application by another party to appropriate and use water meanwhile from the same source.--D 712, A-13613 American River Pine Co.

Permits granted to appropriate water subject to later diminution when projects contemplated by earlier assigned state filings come into operation.--D 750, A-13557 Potter Valley I.D.

Individual applicant granted permit for onstream storage even though there were prior applications pending contemplating project by flood control district which would use entire flow. This temporary use was recognized by a special term in permit alerting applicant to pending prior applications.--D 781, A-14560 Alison.

Temporary permit issued to a water conservation district to appropriate surplus water to cover the temporary use of surplus appropriated by a municipality, as contemplated by Water Code § 1462.--D 858, A-11792 Calaveras W.D.

Application denied when the entire flow of the creek, except flood water, was in the process of appropriation under permits. Other projects may be assumed to be pressed with due diligence and would come into operation too soon to enable applicant to beneficially utilize such flow as would be available meantime.--D 862, A-16477 Eaton.

Decision provided that until the water to be stored in Monticello Reservoir under Bureau permits is actually required for beneficial use in project service area, it is subject to appropriation for interim use.--D 869, A-11198 U.S. Bureau of Reclamation.

A prospective future use under claim of a riparian right was not a bar to approval of an application to appropriate such water as may be available meanwhile.--D 880, A-17198, San Mateo Co. See also D 890, A-16154; D-1120, A-19897

Permit issued on finding that there existed unappropriated water pending full use under earlier permit and contained condition that it was subject to earlier permit.--D 942, A-18316 Mellin.

Permit issued subject to prior permits of public utility district when litigation has been delaying and is expected to continue to delay the construction of the district's project for a number of years.--D 955, A-18156 Bradshaw.

Interim permit issued which would expire when project authorized by protestant's earlier permits is constructed.--D 980, A-18393 Yackey and Taylor.

Decision approved application to appropriate from San Lorenzo River during the interim period before City of Santa Cruz placed water to full use under prior permits and contained a special term specifically subordinating rights to be obtained pursuant to permit to the prior rights of the city.--D 1027, A-19137 Matthiesen, Santa Cruz Co.

The fact that the applicants' proposed dam would be constructed within the boundaries of protestants' proposed reservoir under a previous permit, and subject to condemnation, held to be not a proper ground for denial of application as there may be several years before the protestants' project is constructed and in the interim water would be available.--D 1043, A-18905 Wildberger, Coon Creek, Placer Co.

Application for interim use of water from Coon Creek approved with special term that amount may be reduced or terminated upon a showing of interference with rights of the City of Napa covering Lake Hennessey after notice and an opportunity to be heard before the Board.--D 1136, A-19961 Erdahl, Unnamed Stream, Napa Co. See also D 1138, A-20616.

Since there would be a time lapse before the water district would be able to proceed on its application, the applicant can, in the interim, place the water to beneficial use.--D 1285, A-22083 Dahlem, Unnamed Stream tributary to Oliver Creek and 2 Unnamed Streams tributary to De Long Creek, Mariposa Co., 11/30/67.

Interim diversion allowed at a reduced rate until information is secured regarding rates and conditions of flow required to protect fish life.--D 1344, A-22039 Newhall, A-22321 Gorrill, Butte Creek, etc., Butte Co., 9/18/69.

## 2.4 Proof of Use

Though evidence at time of the hearing on applications by a municipal utility district for municipal use showed that the proposed use was overwhelmingly industrial as defined by Board's Rule 666, as no issue was raised by any party, permits were issued in accordance with the applications.--D 923, A-16454 and A-17291, Humboldt Bay M.U.D.

Where the federal government applies for water rights for irrigation having no intention to itself use the water, and when such use is made by others, direct proof of use must be made by the water users. The right by use is vested in those by whom the use has been made.--D 935, A-234 U.S.A., p. 98.

On reconsideration Board refused to impose a permit term requiring permittee to furnish the Board assurance that recreation facilities will be constructed, operated and maintained, accommodate the visitor days and generate recreational expenditures referred to as an objective in the previous decision, the Department of Water Resources having a statutory duty to pass on the adequacy of recreational facilities under Davis-Grunsky Act.--D 1248, A-13681 etc., Richvale I.D., Middle Fork Feather River, Plumas and Butte Cos.

Permittee required to grant representatives of Board and/or other designated parties reasonable access to project works to determine compliance with permit terms.--D-1331, A-22703 Bugni, Snake River, Sutter Co., 2/20/69. See also D 1361, A-20350; D 1366, A-23306; D 1396, A-23732.

Progress reports required to be filed promptly by permittee on forms provided by Board annually until license issued.--D 1331, A-22703 Bugni, Snake River, Sutter Co., 2/20/69. See also D 1361, A-20350; D 1368, A-22918.

Permittee required to grant reasonable access to protestant to determine permit compliance.--D 1362, A-22266 (Permit 15414) Perazzo, Perazzo Canyon, Sierra Co., 7/16/70.



## 2.5 Use Priorities

In power applications Board's predecessor considered it against public interest to have unrestricted low-head large-flow power projects on lower reaches of large streams which might interfere with higher uses of water in the future. Permit contained term providing that use of water for power purposes acquired under permit should not interfere with future appropriations of the water for domestic or irrigation use.--D 777, A-10872 etc. Oakdale I.D.

When evidence showed that stream had little more than enough water to supply present diversions and meet expanding domestic, related commercial, and recreational demands of a fast-growing recreation center, a permit was issued subject to a special term that the diversion for irrigation must not interfere with any junior appropriations for domestic or municipal uses.--D 822, A-10914 Johnson and A-11993 Globin.

Use of water for power purposes by municipal utility district inferior to municipal, domestic, and irrigation purposes.--D 858, A-11792, etc., Calaveras W.D.

Maintenance of fish life recognized as a beneficial use but will not take precedence over higher uses such as municipal, domestic and irrigation purposes.--D 858, A-11792 etc., Calaveras Co. W.D. et al.

Water Code §§ 1460-1461 establishing municipal priorities in use interpreted so as not to be limited to any particular type of public agency providing the major use is for municipal or domestic purposes by the agency or its inhabitants.--D-858, A-11792 etc., Calaveras Co. W.D. et al.

Water Code § 1460 construed to confer priority in right upon applications by municipalities for all beneficial uses customarily associated with urban areas including, but not limited to, use of water for the inhabitants thereof for domestic purposes.--D 858, A-11792 etc., Calaveras Co. W.D. et al.

Discussion of policy of subjecting permits for power purposes to priority of present and later irrigation needs on low-head power project on the lower reaches of large streams.--D 907, A-13676 OWID, A-12532 etc., County of Yuba.

Though evidence at time of hearing on applications by a municipal utility district for municipal use showed that the proposed use was overwhelmingly industrial as defined by Board's Rule 666, as no issue was raised by any party, permits were issued in accordance with the applications.--D 923, A-16454 and A-17291 Humboldt Bay M.U.D.

Use of water for fish culture by an individual is a beneficial and lawful riparian use of water. The Board could not subordinate such a right to a subsequent appropriator for use by higher priority as defined by Water Code § 106.--D 928, A-16162 North Coast Co. W.D.

It cannot be said as a matter of law that applications by a municipality for domestic and other uses are accorded a superior right over applications filed pursuant to Water Code § 10500.--D 935, A-234 U.S.A., p. 55.

Use of water for maintenance of fish life from CVP (Friant Dam) held secondary to irrigation and municipal uses under federal and state law.--D 935, A-234 U.S.A., p. 36.

Permit issued for irrigation purposes where prior license for power purposes on same source contained condition that no rights to water, except stored water, were acquired under the license which would in the future operate to the disadvantage of irrigation development.--D 954, A-18366 Albasio.

It was held to be in the public interest that permits for power purposes contain a condition reserving water for future uses on the watershed above the project which have a higher priority specified in the Water Code, i.e., municipal, domestic and irrigation.--D 989, A-14785 PG&E.

Board rejected contention that the Bureau was only obligated to satisfy watershed and area of origin needs before exporting water from the Sacramento-San Joaquin Delta when the same was compatible with project functions.--D 990, A-5625 etc., U. S. Bureau of Reclamation.

Sacramento-San Joaquin Valley held not to be one watershed under the watershed protection statute, and users along the Sacramento River and Delta were entitled to be supplied first before any export of water into the San Joaquin Valley.--D 990, A-5625 etc., U.S. Bureau of Reclamation.

Users along the Sacramento River and Delta coming under watershed protection were given a period of three years during which any request by them for water service contracts from the Bureau would be given preference over users from outside the watershed. Users within the watershed not presently diverting were given ten years in which to consummate contracts for project water with the Bureau. Users not holding appropriative rights, upon receiving permits, would be granted a preference over other permits for use outside the watershed.--D 990, A-5625 etc. U.S. Bureau of Reclamation.

Permittee placed on notice there eventually would be no water available to him under the permit upon a city exercising its first prior rights.--D 1001, A-19084 BSA (Mt. Diablo Council).

Decision approved application to appropriate from San Lorenzo River during the interim period before City of Santa Cruz placed water to full use under prior permits and contained a special term specifically subordinating rights to be obtained pursuant to permit to the prior rights of the city.--D 1027, A-19137 Matthiesen, Santa Cruz Co. See also D 1086, A-19466; D 1136, A-19961; D 1138, A-20616; D 1239, A-20621.

The usual condition contained in the assignment of a state filing providing for protection of the county of origin held to be sufficient to protect local stock-watering uses and a special term deemed unnecessary.--D 1100, A-18115 and A-19451 U.S. Bureau of Reclamation, Stony Creek, Tehama Co.

The objective of permit term proposed by El Dorado County that permittee's right to store water for power purposes be made subject to domestic and irrigation uses within the county without regard to priority was considered to be satisfied by a restatement in the decision of the county of origin term contained in the Water Commission's release of priority to the applicant of state filings.--D 1104, A-18084 etc. Placer County Water Agency, North Fork American River etc., El Dorado and Placer Cos.

No unappropriated water in Russian River during the summer season after providing for fish and recreation.--D 1151, A-20540 Oswald, Russian River, Mendocino Co.

Forest Service application covering recreational use at a lake given preference over an application of an irrigation district when the district failed to show necessary ability and interest to proceed with due diligence to construct its project.--D 1159, A-5631 etc., Yuba Co. Water Agency, etc., Yuba River System, Yuba Co., etc.

Board denied request of Department of Water Resources to have the permit subject to all uses in the county of origin as too broad but subjected the permit to future applications for reasonable quantities for stockwatering within the Calaveras River watershed.--D 1179, A-11792 etc. Calaveras Co. Water District et al., Calaveras River, Calaveras and San Joaquin Cos.

Board approved applications for multipurpose project after making substantial modifications in public interest which provided greater recreational benefits and less damage to fishing resources than proposed by the original project where applicants had agreed the modified plan would actually provide additional yield of water for irrigation purposes.--D 1224, A-13681 etc., Richvale I.D. et al., Middle Fork Feather River, Plumas and Butte Cos.

Decision makes detailed comparison of financial feasibility of two competing multi-use projects.--D 1226, A-11792 etc., Calaveras Co. W.D. and Tuolumne Co. W. D. No. 2, Stanislaus River, Calaveras and Tuolumne Cos.

Application denied to cover water for a use served by public utility. Applicant claimed that there was water in the utility system during the winter months surplus to the utility's needs.--D 1230, A-21726 Paxton, Eagle Creek, Shasta Co.

The applications of a municipal water district denied on a finding that the public interest would best be served by approval of competing applications of the USA.--D 1235, A-20621 De Luz Heights M.W.D. and A-21471 Navy, De Luz Creek and Santa Margarita River, San Diego Co.

Application denied as not in the public interest which covered a reservoir to be used for recreation and fish culture at a proposed subdivision when a county water district had a right to draw down the entire capacity of the reservoir whenever it deemed necessary and the water was the sole source of supply for most of the district during the summer months.--D 1242, A-21552, French Corral Land Co; Shady Creek, Nevada Co.

Question of the right of a city which has an existing right to pump groundwater, to increase such pumping to meet expanding municipal requirements after a right has been acquired by an appropriator from a surface stream having hydraulic continuity with the ground water has never been adjudicated in California.--D 1259, A-21424 City of Blue Lake, North Fork Mad River, Humboldt Co., 8/31/66

Need for domestic water outweighed detriment to fish.--D 1265, A 20766 Bodega Bay P.U.D., Finley Creek, Sonoma Co. 2/15/67

While decision of Board's predecessor (D-858) denied applications by municipality where irrigation use as well as domestic use was foreseen, and the irrigation quantity was grossly disproportionate to intended domestic use, the proposed amounts for each use in the instant case will not cause the same result, as irrigation quantity here is comparatively minor.--D 1344, A-22061 Paradise, Little Butte Creek, Butte, etc. Cos., 9/18/69.

Effect of Water Code §§ 12201 to 12204 is to give first priority to satisfying all needs for water in the Delta and relegate to second priority all exports for any purpose.--D 1379, A-5625 and 38 others, U.S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Permit subjected to any rights subsequently acquired to divert water for a more reasonable or higher beneficial use as determined by the Board or a court.--D 1392, A-23049 Mapes Ranch, A-23050 Tanner and A-23142 McClelland Ranch, Susan River Sloughs, Lassen Co., 2/17/72.

C.....CONCERNING APPLICATIONS, PERMITS, LICENSES: SUBSTANCE AND PROCEDURE

TOPIC NUMBER

PAGE NUMBER

3.1 Applications

3.11	Generally	54
3.12	Extensions/Deferrals/Amendments	55
3.13	Showing of Plan, Purpose, Intent	56
3.14	Ability to Proceed/Feasibility	58
3.15	Duplication	59
3.16	Priorities/Assignment/State Filings	60
3.17	Access to Source	63
3.18	Denial/Dismissal/Cancellation	65

3.2 Permits

3.21	Generally	67
3.22	Extensions/Assignments/Amendments	68
3.23	Terms, Conditions and Special Considerations	
3.23.1	Generally	70
3.23.2	Storage/Reservoirs/Flow Regulation	76
3.23.3	Access Conditions in Permit	82
3.23.4	Fish and Game Protection	83
3.23.5	Water Quality	87
3.23.6	The Public Interest	
	3.23.61 Generally	91
	3.23.62 Recreation/Public Access	96
3.23.7	County of Origin/Watershed Protection	99

3.3 Protests and Protestants

3.31	Filing and Appearance	103
3.32	Showing of Harm	104
3.33	Dismissal	112

3.4 Stipulations and Agreements between Parties 113

3.5 Changes/Additions in Applications, Permits, Licenses: Purpose, Place of Use, Point of Diversion or Rediversion, and Redistribution of Storage 116

3.6 Revocation of Permits and Licenses

3.61	Generally	119
3.62	Changed Circumstances	120
3.63	Failure to Proceed/Abandonment of Project	121
3.64	Duplication	122

### 3.1 Applications

#### 3.11 Generally

Board, in reference to Rule 778, stated: "Issuance of a permit requires not only a showing of the availability of unappropriated water and beneficial use, but applicant must have a definite project in mind and display not only the ability but also the intent to proceed with reasonable diligence with the construction work and application of the water to the proposed uses."--D 921, A-17554 Engler. See also decisions D 893 and D 907.

### 3.12 Extensions/Deferrals/Amendments

Decision on application as it related to onstream storage deferred for one year in order to afford parties an opportunity to settle the matter.--D 783, A-13617 Barron.

Ordered that action on application be deferred for 90 days to give time for applicant to file suit in court to establish alleged right to headworks and conduit described in the application. Further ordered that if suit was filed, action be deferred to give applicant time to receive final judgment and, if in his favor, applicant would be granted a permit.--D 827, A-12864 Sanderson.

Where the projects of two applicants were in physical conflict and intermixed from standpoint of priority of applications, strict priority would have effect of allowing neither applicant to proceed. Board deferred decision for a period of 6 months to allow the parties to enter into an agreement for development of a joint project for all areas and to submit necessary petitions for changes in applications to conform with such a project and failure to reach agreement would result in cancellation of either or both applications.--D 907, A-13676 etc., Oroville-Wyandotte I.D. and A-12532 etc., County of Yuba.

Though previous extensions were granted over a period of 35 years by Board's predecessor, making priority of permit subject to question, the Board accepted prior decisions in such matters as valid, there having been no attack upon them, and granted permit.--D 914, A-2652 Nevada I.D.

Request that proceedings on the applications of City of San Diego to divert from the Delta be held in abeyance until the expiration of 1961 General Session of the Legislature and the decree of the U. S. Supreme Court in Arizona v. California became final was denied. No evidence had been presented in support of the applications, and it was considered to be in the public interest to dispose of applications promptly that might conflict with the U.S. Bureau of Reclamation applications for the San Luis Project in order that the project might proceed without delay.--D 1019, A-16342 City of San Diego, S. J. River.

Board granted a joint request by applicants and protestants to defer action on a portion of an application by the Bureau to divert from Delta after a finding that the granting of the request would have no adverse effect on other applicants or users from that source.--D 1020, A-15764 U.S. Bureau of Reclamation.

Permit amended to require installation and maintenance of in- and outflow measuring devices and to require permittee to grant reasonable access to protestant to determine permit compliance.--D 1362, A-22266 (Permit 15414) Perazzo, Perazzo Canyon, Sierra Co., 7/16/70.

Application denied where applicant failed to respond to Board inquiries after expiration of extension.--D 1382, A-23363 Brickwedel, Unnamed Stream tributary to Jordan Creek, Del Norte Co., 9/2/71.

### 3.13 Showing of Plan, Purpose, Intent

No immediate plan or purpose, cancellation.--D 734, A-8942 Ridge Mines, Inc.

Applications under which the applicants have no immediate plan or purpose to proceed promptly with construction and/or with the application to beneficial use of the water sought will be denied. An application is not a proper instrument to make a reservation of water for development at an indefinite and uncertain time in the future.--D 893, A-12140 City of Sacramento.

Request to have certain applications held in abeyance pending construction of a joint project refused. There being no immediate plan or purpose to proceed with that portion of the project, to grant such a request would constitute a reservation of water for use at an indefinite time in the future.--D 907, A-13676 etc. O.W.I.D. and A-12532 etc. County of Yuba.

Applications of a development company denied when applicant was not certain as to whether or not it would furnish water as an accommodation to property purchasers, as a mutual water company, or a public utility, though construction costs approximated \$100,000, applicant had no plans for financing, no definite plans as to work to be constructed.--D 921, A 17554 Engler.

Application denied that was filed to appropriate water from an upstream dam and reservoir to be constructed by the U.S. Bureau of Reclamation when there was no indication that the dam would be constructed in the foreseeable future or at all.--D 956, A-18460 Worth et al.

Applications were denied where applicant, a charitable corporation, failed to show that it could proceed with due diligence on the project, there being no definite plans for financing, marketing power, obtaining access to the source, and proceeding with construction.--D 984, A-13694 etc. National Youth Foundation.

Board denied certain portions of the application for which, at the time of the hearing, the applicant failed to make a showing of any planned purpose or intent to proceed thereunder and rejected a request for further action on those portions of the application.--D 989, A-14785 etc. PG&E.

The applicants, having failed to present a reasonably definite and feasible plan for the appropriation of water by offstream storage and conveyance of the stored water to their respective lands for beneficial use thereon, their applications were denied.--D 1046, A-17179 etc. Mills Ranch et al., Wagon Creek, Siskiyou Co. See also D 1064, A-17083 etc.

Where it appeared that the applicant was not prepared to undertake construction of the work proposed by the application at the present or at any definite future time but planned to devote all its efforts and resources to the development of other projects, the applications were denied.--D 1083, A-16726 etc. Placer Co. Water Agency, Auburn Ravine etc., Placer Co.

When hearing was continued on an application subject to filing a feasibility report and no evidence had previously been presented on that subject, the application was denied upon a failure to present such report.--D 1140, A-20253 National Youth Foundation, Indian Creek, Spanish Creek, East Branch North Fork and North Fork Feather River, Plumas Co.

As the City of Stockton had no immediate plans to proceed with a project on the Calaveras River, its application was denied.--D 1179, A-11792 etc. Calaveras Co. W.D. et al., Calaveras River, Calaveras and San Joaquin Cos.

Claim of lack of diligence on part of applicant Navy was not established by the fact that the Congress had not authorized the Navy's project at the time of the hearing on the application.--D 1235, A-20621 De Luz Heights M.W.D. and A-21471 Navy, De Luz Creek and Santa Margarita River, San Diego Co.

Appropriator must pursue the development of his project from its inception to completion with due diligence in order to claim priority over subsequent appropriators.--D 1309, A-18410 Yuba Co. W.D., Fall River and Rock Creek, Plumas Co., 7/18/68.

Since applicants did not intend to proceed with their project, as expressed to a staff engineer, and they did not return cancellation forms to the Board, their application was canceled by Board decision.--D 1353, A-19441 Maddox, Mountain Pass Creek, Tuolumne Co., 1/8/70.

Application was denied where Board found that Buchanan Reservoir on the Chowchilla River would be capable of controlling the entire flow of the river, and holders of downstream rights were to be satisfied by releases therefrom pursuant to agreements to be consummated in the future, and applicant made no showing of a plan of operation at the hearing, merely iterating that it planned to make a future agreement.--D 1365, A-18732 Chowchilla W.D., Chowchilla River, Madera Co., 11/19/70.



### 3.14 Ability to Proceed/Feasibility

Application for storage of water for power purposes was denied where the evidence at hearing showed that though construction plans provided for future power facilities, the Bureau had not been authorized to construct same for the project and there was no showing that the power portion of the project would be authorized in the near future or at all.--D 869, A-11198 U.S. Bureau of Reclamation.

Where applicant had agreed to assign applications to a federal agency and the evidence failed to indicate any date for construction or that the agency was authorized to do so, the applications were denied.--D 893, A-12140 etc. City of Sacramento.

Where applicant was a mutual water company with negligible assets, with total authorized stock of \$24,000 escrowed by the Corporate Commissioner, owned no land, pumps, pipes or reservoirs, and had no arrangements to finance a project of the type proposed, the Board in denying the application found it was not in a position to proceed.--D 896, A-11578 Santa Margarita M.W.C. See also D 907.

While applicant is not required to establish with certainty that his undertaking will be successful, he must at least offer a reasonable basis of solution of problems confronting him. He must also show either that his project would, to a substantial extent, fully develop the water resources of the river or that it would not prevent such development by others.--D 958, A-10752 Droughy.

Application denied for lack of ability to proceed with diligence where competing projects of two public agencies for development of Yuba River system were compared, and testimony showed that as to one (Yuba Co. Water Agency), negotiations for necessary PG&E facilities would take at least several years, estimated date of commencement of construction, approximately 10 years and no definite evidence that project would commence even at that time.--D 1159, A-5631 etc., Yuba Co. Water Agency etc., Yuba River System, Yuba Co. etc.

Applicant is not specifically required to demonstrate the financial feasibility of a proposed project to justify the approval of an application. A reasonable likelihood of being able to finance is sufficient.--D 1248, A-13681 etc., Richvale I.D., Middle Fork Feather River, Plumas and Butte Cos.

Ability to proceed not necessarily hampered by rejection of bond issue sought by applicant, where defeat was by narrow margin; no bar existed to calling for subsequent bond election; showing of need for water was made; it was not feasible to obtain it from another source, and the entire plan is contingent on pending Davis-Grunsky funds. D-1344, A-22061, Paradise, Butte Creek, Butte Co., 9/18/69.

Authorization of a federal project is not a condition precedent to the effective filing of an application. Filings made prior to authorization will have priority over subsequent filings.--D 1365, A-18714 etc., U.S. Bureau of Reclamation etc., Chowchilla River, Madera Co., 11/19/70.

### 3.15 Duplication

To the extent the U.S., in operation of the Friant Project, utilizes acquired vested rights under purchase and exchange contracts, the amount so utilized shall be deducted from the aggregate water quantities under permit.--D 935, A-234 U.S.A.

Application denied when it was filed on the basis that it was to be a "sub-filing" to establish secondary right to waters of a spring that were already covered by a valid existing permit.--D 946, A-18343 Fifield.

Board approved state-assigned application for substantially the same Tri-Dam project covered by other applications with a permit term that quantities of water which permittees were authorized to store would be inclusive of and not in addition to quantities which permittee was entitled to store in reservoirs under other rights.--D 1092, A-5648A etc., Oakdale and SSJID et al., tributaries to Stanislaus River, Calaveras and Tuolumne Cos.

Application denied partly on the basis that applicant's proposed source water was bypassed into the Sacramento River, and applicant had other permits to divert from that source.--D 1100, A-18115 and A-19451 U.S. Bureau of Reclamation, Stony Creek, Tehama County.

Water diverted was not to be in addition to water diverted under riparian or other right.--D 1108, A-20478 Hance, North Fork American River, Placer Co.

Term that right under permit and claimed riparian right shall not result in a combined use of water in excess of that which could be claimed under the larger of the two rights.--D 1163, A-20893 Collini, Perry Creek, El Dorado Co. S.a. D-1282, A-882; D-1359, A-23140.

Application approved for use of water on land already covered by a license where reclaiming of land required more use of water.--D 1199, A-17966, McMullin Reclamation District No. 2075, Stanislaus River, San Joaquin Co.

Application denied where all the available water in the sources was covered by a license held by the applicant.--D 1246, A-21787, Gutierrez, Unnamed Spring, San Bernardino Co.

### 3.16 Priorities/Assignment/State Filings

Protest by county board of supervisors that action be withheld on application to appropriate from American River until definite plans are formulated for the development of the area considered not sufficient to bar application, particularly in view of prior state filings covering 1,200,000 afa which were filed under provisions of the Water Code providing for reservations of water for future development.--D 645, A-9142 North Fork Ditch Co.

Finding made that the requirements of Sections 10504 and 10505 of Water Code were satisfied as a prerequisite to release of state priority under state filings.--D 838, A-13676 etc., O.W.I.D. et al.

Under facts disclosed at hearing, partial assignment of an application would neither hinder future development under California Water Plan nor deprive county in which water originated of water necessary for its development--D 855, A-13707 and A-13708 U.S. Bureau of Reclamation.

Applications could not be considered when project was in conflict with the general purposes of state filings on the same river.--D 858, A-11792 etc., Calaveras W.D. et al.

Water Code § 1460 construed to confer priority in right upon applications by municipalities for all beneficial uses customarily associated with urban areas including, but not limited to, use of water for the inhabitants thereof for domestic purposes.--D 858, A-11792 etc., Calaveras Co. W.D. et al.

Applicant's project varied from the California Water Plan but was susceptible of integration with the plan. At the request of the Department of Water Resources, the Board included a term in the permit providing for cooperation between the Department and applicant in project planning so as to fully develop the water resources of the river--D 887, A-14804 South Sutter W.D.

It cannot be said as a matter of law that applications by a municipality for domestic and other uses are accorded a superior right over applications filed pursuant to Water Code § 10500. The priority given to municipal applications, regardless of time provided for by Water Code § 1460 and fact domestic use is established as highest use under Water Code §§ 106 and 106.5 held by Board not to override priority given state filings under Water Code § 10500.--D 935, A-234 etc. U.S.A.

Board refused to act upon Bureau's petition to change points of diversion and place of use under assigned state filings while the previous action of California Water Commission approving the same was being challenged in court. Permits issued to Bureau on Sacramento-San Joaquin Rivers and Delta incorporated the conditions contained in the assignment of the state filings to the Bureau.--D 990, A-5625 etc. U.S. Bureau of Reclamation.

Permits issued to the Bureau for San Luis Project made subject to rights initiated by applications for use within the Sacramento-San Joaquin Delta and the watershed of the Sacramento River Basin regardless of the date of filing.--D 1020, A-15764 U.S. Bureau of Reclamation, Old River, San Joaquin Co.

When it appeared that the water to be developed in the main stream was sufficient to supply the applicants' needs for many years, the permits issued on applications to appropriate from tributary streams were made subject to prior or subsequent applications for water for beneficial use within the tributary watershed.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Cos.

The usual condition contained in the assignment of a state filing providing for protection of the county of origin held to be sufficient to protect local stockwatering uses and a special term deemed unnecessary.--D 1100, A-18115 and A-19451 U.S. Bureau of Reclamation, Stony Creek, Tehama Co.

Proposed permit term subjecting storage right to domestic and irrigation uses in county of origin satisfied by restatement in decision of county of origin term contained in Water Commission's release of priority to applicant of state filings.--D 1104, A-18084 etc., Placer Co. Water Agency, North Fork American River, etc., El Dorado and Placer Cos.

Permit issued on state filings conditioned in accord with Water Code § 10505.--D 1159, A-5631 etc., Yuba Co. Water Agency, Johnson Rancho, Yuba River System, Yuba Co.

Applicant contended its applications on Calaveras River should have precedence over those of Bureau of Reclamation on basis of county of origin and watershed protection statutes. County of origin statutes apply to assignment of state filings which were not involved.--D 1179, A-11792 etc., Calaveras Co. W.D. et al., Calaveras River, Calaveras and San Joaquin Cos.

Applications of the Department of Water Resources are subject to area and county of origin laws. All of the area within the Central Valley Basin is entitled to some specific protection before water is transferred to more distant areas of the state.--D 1275, A-5629 etc. California DWR, Feather River etc., Butte etc. Cos.

Application by municipality, although subsequent in time, should be considered first in right pursuant to Water Code § 1460.--D 1344, A-22061 Paradise, Little Butte Creek, Butte Co., 9/18/69.

Board denied requested condition of applicant which would have given equal priority to other applicants for the same source, when priority of rights is established by statute.--D 1344, A-22534 Patrick, Butte Creek etc., Butte etc. Cos., 9/18/69.

Although applicant's filing was prior to that of city, Water Code § 1460 provides that municipality is entitled to preference.--D 1350, A-23096 Mallory and A-23243 Trinidad, Luffenholtz Creek, Humboldt Co., 12/4/69.

Priority of state applications released where project of applicant found not to conflict with State Water Plan and counties of origin would not be harmed with regard to their future development, as other sources of water existed, all objections were withdrawn pursuant to agreement, and permit terms protecting the counties were included.--D 1356, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River etc., Placer etc. Cos., 2/5/70 as amended 12/17/70.

Priority of U.S. Bureau of Reclamation applications remains intact after Board order and finding (3/6/69) that good cause existed for extension of time to obtain Congressional approval of the Nashville Project of the Central Valley Project on the Cosumnes River. Order Amending Decision 1378 and in Other Respects Denying Petition for Reconsideration (D 1378, A-23416 etc. Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71) 9/16/71.



### 3.17 Access to Source

Where lack of right of access, while a bar to consummation, and therefore to issuance of a license, held not a bar to approval of an application, Board included term in permit saying it should not be construed as conferring upon permittee a right of access to the point of diversion.--D 766, A-14342 Cline.

A protestant's assertion that the applicant does not own the land at the proposed point of diversion and does not hold any right of access thereto presents a disputed matter over which the Board has no jurisdiction and will not bar approval of an application to appropriate water.--D 806, A-14616 Yates.

Ordered that action on application be deferred to give time for applicant to file suit in court to establish alleged right to headworks and conduit.--D 827, A-12864 Sanderson.

Where there was a question of right of access to the source to be appropriated, a permit term specifically stated that issuance of permit was in no way to be construed as conferring upon permittee a right of access to the point of diversion.--D 832, A-15186 Groves. See also D 1055, A-19310; D 1284, A-21751; D 1341, A-22680 etc; D 1388, A-23778 etc.

Board considered fact that application contemplated diverting the water at site of a federal project to which no access had been granted in denying the application.--D 893, A-12140 etc., City of Sacramento.

Should permittee be unable to proceed because of inability to secure right of access under permit, it will be subject to revocation in due course for failure to comply with its terms and conditions.--D 921, A-17554 Engler.

Board took official notice that under existing law there was no legal means by which applicant could obtain authority to enter Kings Canyon National Park to construct a reservoir.--D 958, A-10752 Droughy.

Applicant made sufficient showing of right of access to source on protestant's property to justify the issuance of permit, the Board refusing to pass on the question of the scope of an easement granted by deed from protestant to applicant as a matter not within the Board's jurisdiction.--D 1016, A-19003 Olson.

Where ownership of the dam sites and structures was disputed, applicant presented a prima facie case of ownership through status records of the U.S. Bureau of Land Management which was sufficient to justify the granting of the applications.--D 1051, A-18744 etc., Tahoe National Forest, Unnamed Stream etc., Sierra Co.

Term provided that issuance of permit was not to be construed as conveying right of access to point of diversion or right of way for a conveyance system.--D 1093, A-18199 and A-18200 Lamalfa, Robinson Creek, Mendocino Co.

Application denied in respect to a diversion at the protestant's dam where protestant refused access.--D 1176, A-20664 Bryson, Newberry Creek, Monterey Co.

Where no evidence presented regarding joint use of New Hogan Reservoir, and Bureau of Reclamation stated unequivocally that it was not interested, Board found no cause for allowing time to Stockton district for right of access under Board Rule 747.--D 1179, A-11792 etc., Calaveras Co. W.D. et al., Calaveras River, Calaveras and S.J. Cos.

Right of access not within jurisdiction of Board.--D 1192, A-20400 Early, Ruby Hill Spring, Tuolumne Co. See also D 1193, A-21426.

The final determination of a dispute as to whether a reservoir, the source under the applications, was entirely on one of the applicants' land held not to be within the Board's jurisdiction. Board relied on civil engineer's survey showing all applicants had land contiguous to reservoir for the purpose of the decision.--D 1225, A-21349 etc., Scott et al., Pacific-Placer Reservoir, Calaveras Co.

Applicant found to have abandoned his interest in application upon his failure to answer correspondence following Bureau of Land Management's refusal to grant access to the larger of the two springs covered by the application.--D 1244, A-21874 Sterling, Unnamed Springs tributary to Chimney Creek, Tulare Co.

Board has no jurisdiction to determine the question or right of access; however, through long use of the pipeline applicants have shown a sufficient apparent right to continue to convey the water from the spring across the protestants' lands to justify the approval of the application.--D 1261, A-22206 Story, Swamp Spring, Plumas Co.

### 3.18 Denial/Dismissal/Cancellation

Board ordered the cancellation after hearing at which the applicant failed to show good cause for further extension of time to complete application and had indicated an intention to abandon the same.--RD 22, A-16340 Richvale I.D.

Application found to have been abandoned.--RD 27, A-15958 Buchser.

Application canceled eight years after filing where there was a dispute over ownership of property at place of diversion, the applicant died, there was an indefinite request by the administrator for further deferment and loss of mail contact.--D 708, A-10632 Jones.

Upon applicant's failure to attend hearing and statement that he did not wish further discussions or expense, the application was considered abandoned and canceled.--D 729, A-12869 Sawyer.

Original application showed that the applicant's use would cause an overflow on adjacent property which called for a revision of plans. When applicant failed to amend plans and failed to answer correspondence from the Board requesting him to take action on commitments made at the field investigation, the application was considered abandoned, and Board ordered it rejected and canceled.--D 876, A-16848 Rank.

Possibility of interference with protestant upon his replacing diversion facilities and resumption of prior irrigation use held not proper grounds for denying an application.--D 1103, A-20340 Smith, French Corral Creek, Nevada Co.

Application denied where applicant did not operate his system, or have a right to divert water through it, except as the owner of a lot with rights in common with other lot owners to the same supply.--D 1118, A-15441 and A-16055 Noel, Tamarack Flat Creek and Unnamed Stream, El Dorado Co.

Application denied when applicant failed to appear in support of the application.--D 1191, A-15962 City of Needles, Piute Wash, San Bernardino Co.

The possible construction and operation of a reservoir is not a sufficient ground for denial of an application.--D 1252, A-21969 Knight, Unnamed tributaries of Pegleg Creek, Mariposa Co., 7/27/66.

Board denied request for postponement of hearing and canceled application since applicant did not show it was financially able to construct project and had expended no effort in its furtherance.--D 1309, A-18410 Yuba Co. W.D., Fall River and Rock Creek, Plumas Co., 7/18/68.

Applicant's failure to respond to alternative use/exchange of water proposal submitted by Board staff resulted in denial of application as originally filed.--D 1329, A-22577, Beers, Unnamed Spring and Stream, Butte Co., 2/7/69.

Application denial has no effect on any claimed riparian right to same source.--D 1339, A-22345 Barrett and Rabe, Lake Mary, Mono Co., 4/17/69. S.a. D-1168, A-20712.



Application denied where applicant failed to respond to Board inquiries.--D  
1382, A-23363 Brickwedel, Unnamed Stream tributary to Jordan Creek, Del Norte  
Co., 9/2/71.

## 3.2 Permits

### 3.21 Generally

Permit was granted to U.S. as a trustee for the benefit of the public agencies of the state, together with the owners of land and water users within such agencies, and upon completion of project and the application of water to beneficial use, license shall be issued to public agencies of state within which water has been applied to beneficial use.--D 855, A-13707 and A-13708 U.S. Bureau of Reclamation.

Board, in reference to Rule 778, stated: "Issuance of a permit requires not only a showing of the availability of unappropriated water and beneficial use, but applicant must have a definite project in mind and display not only the ability but also the intent to proceed with reasonable diligence with the construction work and application of the water to the proposed uses."--D 921, A-17554 Engler. See also D 893; D 907.

The right to the use of water by appropriation does not vest by virtue of application, permit or license, although these are necessary steps in the process of acquisition of the right, which vests upon application of the water to beneficial use.--D 935, A-234 U.S.A.

Permits issued to the Bureau in the Sacramento River and Delta as they related to irrigation use are to be held in trust by the U.S. for the users and the rights to be acquired thereunder are appurtenant to the land on which the water is to be applied.--D 990, A-5625 U.S. Bureau of Reclamation.

Rights under permits for the beneficial use of water for irrigation purposes, except for the water distributed to the general public by a private agency in charge of a public use, shall be appurtenant to the land on which the water is to be applied.--D 1020, A-15764 U.S. Bureau of Reclamation.

Permit contained terms flexible enough to accommodate changes in amounts of water applied for, in view of fact that flood control criteria subject to change once project underway.--D 1100, A-18115 and A-19451, U.S. Bureau of Reclamation, Stony Creek, Tehama Co.

Earlier unprotested permits issued on tributaries of Sacramento River without restriction as to season gave no legal advantage over later permits so restricted, as permits only authorize appropriation of unappropriated water, and if there is no such water at certain times of the year, there is no right to divert during such times.--D 1185, A-15572 etc., Natomas Central Mutual Water Co., et al., tributaries to Sacramento River, Colusa etc. Cos.

Permits cannot be conditioned at the request of an applicant so as to give equal priority to other applicants for the same source, when priority of rights is established by statute.--D 1344, A-22534 Patrick, Butte Creek, etc., Butte Co., 9/18/69.

A permit does not authorize interference with others' rights either in their diversions or by disturbance of their diversion works, or in any other manner.--D 1346, A-22913 Warm Springs, Unnamed Spring, Inyo Co., 10/16/69. See also D 1357, A-23108.

### 3.22 Extensions/Assignments/Amendments

Permittee abandoned project contemplated by the application in favor of water from Federal project and had assigned permit to a conservation district which claimed it was ready to proceed at time of revocation hearing. Board revoked upon finding no diligence under permit terms, assignment notwithstanding, denied extension of time to assignee, and revoked permit. Board advised the assignee to proceed with a new application.--RD 4, A-14169 Solano I.D.

Legal complications resulting from bankruptcy proceedings were not considered good cause to justify further extension of time to complete construction and apply water to beneficial use when testimony at hearings showed the primary causes for delay were financial in character. The requirements of due diligence in proceeding with construction was not met by undertaking vague studies and soil surveys.--RD 29, P-783, A-203 Tule I.D.

Permit granted for project that contemplated financing by Small Reclamation Projects Act contained a special provision requiring submission of semiannual progress reports to Board and that no extension of time would be granted except after notice to protestants and opportunity for hearing.--D 1064, A-17083 etc., Coastside Co. W. D., Frenchman Creek etc., San Mateo Co. S.a. D 985, A-18537.

Decision recognized expediency of developing the sources and permit issued to one of competing applicants stated that extensions of time for construction and placing the water to beneficial use would be granted only for "most extraordinary reasons not within the applicants' control". Permittee required to submit reports every six months until commencement of construction to show that it is proceeding with diligence to take all action necessary and preliminary to the construction of the project and to furnish copies of engineering, economic, and feasibility reports.--D 1129, A-12092 United Water Conservation District and A-13417 Calleguas Municipal Water District, Sespe Creek, Ventura Co.

Date for commencement of construction under permit postponed beyond usual period at the applicants' request in order to furnish time in which to determine the natural flow in the stream where water originated largely from springs that would be inundated upon construction of a proposed reservoir.--D 1152, A-19111 etc., Sierra Nevada Water Company et al., Lake Tahoe, Coyote Creek, El Dorado and Placer Cos.

If place of use were to be subdivided and the water under the permit used to supply the various parcels, the permit was required to be assigned to a mutual water company or some other organization satisfactory to the Board capable of supplying the place of use on a continuous, permanent basis.--D 1360, A-23060, Anderson, Little Salmon Creek and 2 Unnamed Creeks, Mendocino Co., 5/21/70. See also D 1378, A-23416 etc; D 1391, A-23443 etc.

The matter of diligence is not open to redetermination until any permit extension granted by the Board has expired.--Order Amending Decision D 1378 and in other Respects Denying Petition for Reconsideration (D 1378, A-23416 etc., Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71) 9/16/71.

Public access terms in permit will preserve the integrity of applicant's master plan in the event permits are assigned or transferred.--D 1378, A-23416 etc. Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Permits issued to Bureau subsequently amended to provide that pumping plant at Hood on Sacramento River is an authorized point of redirection of water stored pursuant to permit and released down the American River and an alternative point of direct diversion of American River water.--D 1400, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River, Placer Co., 4/11/72, as clarified 5/4/72.

### 3.23 Terms, Conditions and Special Considerations

#### 3.23.1 Generally

To protect prior rights, permit contained a condition that diversions were limited to such times as there was a continuous flow to the ocean from a stream to which the source was a tributary or at times when there was no flow passing a gaging station below applicant's point of diversion.--D 735, A-14252, Burton.

Permit approved subject to condition that construction should not commence until local interests have an opportunity to financially participate in the construction of project and reservoir for flood control purposes or to secure federal participation.--D 858, A-11792 etc., Calaveras Co. W. D., et al. S.a. D 1224, A-13681.

Permits issued for USBR project contained conditions in accordance with legislative resolution regarding federal reclamation projects providing that when the beneficial use of water was completed, licenses would be issued to participating state agencies.--D 869, A 11198, USBR.

Applicant's project varied from the California Water Plan but was susceptible of integration with the plan. At the request of the Department of Water Resources, the Board included a term in the permit providing for cooperation between the Department and applicant in project planning so as to fully develop the water resources of the river.--D 887, A-14804, South Sutter W.D.

Upon suggestion by applicant, permit was granted containing a provision that in the event flow in stream fell below 11.0 cfs, applicant would release water from its wells into stream to compensate protestant with prior rights.--D 904, A-17770, Mammoth Co. W. D.

Permits issued to municipal water district were conditioned on a memorandum of understanding between district and a county which had filed a protest.--D 923, A-16454 and 17291, Humboldt Bay M.W.D.

Permit issued to U.S. contained condition that water used thereunder for irrigation under long-term contracts with districts would be appurtenant to land on which used, subject to continued beneficial use and right to change place of use, point of diversion etc.--D 935, A-234 etc., USA, p. 99.

To the extent the United States, in operation of the Friant project, utilizes acquired vested rights under purchase and exchange contracts, the amount so utilized shall be deducted from the aggregate water quantities under the permits.--D 935, A-234, USA, p. 83.

Permit issued subject to the condition that water would not be diverted under same until an agreement was consummated between the permittee and the U. S. providing for an exchange of water from CVP for water diverted under permit to extent necessary to supply prior rights.--D 949, A-14803, Feather W.D.

Permit specifically made subject to a Superior Court Judgment.--D 951, A-18023, Wheeler.

Interim permit issued which would expire when project authorized by protestant's earlier permits is constructed.--D 980, A-18393, Yackey and Taylor.

It is not in the public interest to issue a permit for an excessive amount of water over the applicant's present needs unless the period of development of the applicant's project is relatively short. Therefore, a special term was included in a permit granting an excessive amount of water to the applicant which contained a provision that no extension of time for the completion of construction work and application of water to beneficial use was to be granted without prior notice to protestant in order to allow him an opportunity to object.--D 985, A-18537, Malibu Lakeside Mutual Water Company.

In the face of insufficient information as to the requirements of holders of vested rights, a special term was included in the permits requiring the USBR at Board's request to make measurements and furnish records to the Board, determine quantities that have been put to beneficial use under the permits, and take necessary measures to insure satisfaction of vested rights in view of insufficient information as to requirements of vested rights on the Sacramento River and Delta.--D 990, AS 5625, USBR.

Special term placed permittee on notice that as permit was junior to all California rights on Carson River, it could be subject to possible loss under allocation of water by California-Nevada interstate compact.--D 1014, A-18222 etc. Blakely et al.

Permit contained a special condition allowing permittee to divert only when water flowed past protestants' diversion dam in order to protect the protestant during period when surplus water fails to occur.--D 1044, A-18743, Juel L. Christensen.

Board refused to include a special term in a permit at the request of the protestant that certain spill and return water not being used belonged to it and could be reclaimed at a later time. Considered not necessary and the Board was without power to determine such rights as the protestant might have to such water.--D 1061, A-17482 etc., Ralph Moss, et al., Sweeney Creek etc., Solano County.

Permit granted for project that contemplated financing by Small Reclamation Projects Act contained a special provision requiring submission of semi-annual progress reports to Board and that no extension of time would be granted except after notice to protestants and an opportunity for them to be heard.--D 1064, A-17083, etc., Coastside County Water District, Frenchman Creek, etc., San Mateo County.

Permittee irrigation district required to file with the Board prior to commencement of construction a monthly operation study showing present use of water and use of water when project in full operation.--D 1095, A-5193 etc., Nevada I.D., Middle and South Yuba, Nevada County.

Permit term stating that water diverted was not to be in addition to water diverted under riparian or other right.--D 1108, A-20478, Hance, North Fork American River, Placer County.

A special term limited permittee's diversion from wells upon a showing that at times the proposed appropriation would cause an interference with protestants.--D 1127, A-20417, McCoye, Escondido Canyon (underflow), Los Angeles County. See also D 1088, A-19962.

Decision recognized expediency of developing the sources and permit issued to one of competing applicants stated that extensions of time for construction and placing the water to beneficial use would be granted only for "most extraordinary reasons not within the applicants' control." Permittee required to submit reports every six months until commencement of construction to show that it is proceeding with diligence to take all necessary action preliminary to the construction of the project, and to furnish copies of engineering, economic, and feasibility reports.--D 1129, A-12092, United Water Conservation District, A-13417, Calleguas Municipal Water District, Sespe Creek, Ventura County.

While the amount of water requested exceeds the amount available, the evidence will not support a finding as to the exact quantity of water available for the proposed use. Therefore a permit should be issued for the quantity requested subject to later reduction.--D 1269, A-21685, Burton, unnamed stream, Santa Cruz County (5/11/67).

Petitioners were not allowed to transfer appropriative right obtained for land adjacent to river to other parcel and then revive their "dormant riparian right" to the river parcel. The petitioners' share of the licensed appropriation is included in their riparian right and is not in addition thereto. Transfer of the license to new land would give petitioners the right to use their share on the new land in addition to whatever quantity is reasonably required on the present place of use and would therefore be illegal, at least against junior appropriators.--D 1282 (A882) Dixon et al, Sacramento River, Sutter County (8/31/67).

The Board has no power to impose additional burdens upon the owner of a water right permit by requiring him to accept money from a junior appropriator in lieu of water to which he is entitled. This is true even though the junior appropriator would put the water to a higher use.--D 1320, A-22980, p. 3 Western Lake Properties, Inc., Big Creek, Tuolumne County (12/5/68).

Standard permit term provided that maximum quantity allowed by permit subject to reduction in the license if investigation warrants.--D 1331, A-22703 Bugni, Snake River, Sutter Co., 2/20/69. See also D 1335, A-22630; D 1360, A-23060; D 1368, A-22918.

Standard permit term provided that water appropriated limited to quantity which can be beneficially used.--D 1331, A-22703 Bugni, Snake River, Sutter Co., 2/20/69. See also D 1364, A-22711 and A-22949; D 1377, A-23181.

Standard permit term provided that work on project be timely commenced and prosecuted with reasonable diligence.--D 1331, A-22703 Bugni, Snake River, Sutter Co., 2/20/69. See also D 1338, A-22454; D 1360, A-23060; D 1368 A-22918.

Standard permit term provided that progress reports be filed promptly by permittee on forms provided by Board annually until license issued.--D 1331, A-22703 Bugni, Snake River, Sutter Co., 2/20/69. See also D 1361, A-20350; D 1368, A-22918.

Standard permit term provided that all rights and privileges under permit, including method of diversion, method of use and quantity of water diverted, are subject to continuing authority of the Board in accordance with law and in the interest of the public welfare to prevent waste and unreasonable exercise of any of the foregoing, and to carry out legally established water quality objectives.--D 1331, A-22703 Bugni, Snake River, Sutter Co., 2/20/69. See also D 1344, A-22039, etc.; D 1360, A-23060; D-1378, A-23416 etc.

Permittees to cease diverting in inverse order of their priorities when source flow decreases to a rate sufficient only to satisfy prior rights. D-1344, A-22039 Newhall, etc., Butte Creek, etc., Butte Co., 9/18/69.

Board may require permittee to request appointment of a watermaster. D-1344, A-22061 Paradise, Little Butte Creek, Butte Co., 9/18/69; S.a. D 1240, A-21667, S.a. D 1391, A-23443, etc.

Permit condition based on agreement between parties is not to be construed as a finding by the Board that the terms of said agreement are adequate or required for the stated purposes of the agreement.--D 1347, A-22739, Usibelli, Maxwell Creek and Unnamed Stream, Napa Co., 10/16/69; S.a. 1357, A-23108.

Permit condition eliminated entirely when it was pointed out that on its face it could be construed in such a way as to violate the Water Code. Petitioner had merely requested to be included within the terms of the condition, not that it be eliminated.--D 1356, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River, etc., Placer etc. Cos., 2/5/70, as amended 12/17/70.

Permit term required that simultaneous diversions under permit, prior permit, riparian and pre-1914 appropriative right not to exceed stated amounts.--D 1359, A-23140 River Development Co., Sacramento River, Tehama Co., 5/21/70.

If place of use subdivided and water under permit used to supply the various parcels, permit condition required that it be assigned to a mutual water company or some other organization satisfactory to the Board capable of supplying the place of use on a continuous, permanent basis.--D 1360, A-23060 Andersen, Little Salmon Creek and 2 Unnamed Creeks, Mendocino Co., 5/21/70. S.a. D 1378, A-23416 etc; D 1391, A-23443 etc; D 1152, A-19111 etc.

Permittee required to submit reports of agreements reached with downstream holders of rights to the Board.--D 1365, A-18714 U.S. Bureau of Reclamation, Chowchilla River, Madera Co., 11/19/70.

Permit term limited diversions to times when surface flow was visible at specified point in creek.--D 1371, A-23400 Rinta, Bean Creek, Santa Cruz Co., 2/18/71. S.a. D 1378, A-23416.

Condition in permit that permittees cease diverting June 1 to October 1 when hydraulic continuity exists between source of permittee and that of protestant.--D 1374, A-23470 Garbero, Unnamed Stream, Nevada Co., 5/6/71.

Permit term regarding releases for protection of fish life not to be construed as finding by Board that amount of released water is either adequate or required for such purpose.--D 1375, A-23365 Howard, Indian Creek, Siskiyou Co., 5/20/71.



Permittee required to provide satisfactory evidence of continuing supplemental supply for times when no unappropriated water available under permit terms.--D 1376, A-23284 Calosso, Dry Creek, Sacramento Co., 7/1/71.

Permittee required to report status of negotiations for firm water supply on annual basis, provided that U.S. Bureau of Reclamation project received Congressional approval.--D 1378, A-23416 Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Permit term required actual period of operation to determine whether bypass system would be enough to satisfy downstream prior rights or whether outlet pipe may be required.--D 1394, A-23535 Shinn, Willow Valley Creek, Nevada Co., 3/2/72.

Permittee required to keep creek channel on his property, and his reservoir and its perimeter, free of phreatophytes.--D 1398, A-23570 Hazeltine, Ash Creek, Shasta Co., 4/6/72.

Permit conditioned on cut-off at beginning of irrigation season.--D 1397, A-23491 Mace, Inc., Pioneer Creek, Amador Co., 4/6/72; See also D 1398, A-23570.

Permit amendments conditioned so as to prevent direct diversion or rediversion of stored water at Hood on Sacramento River (below confluence of American and Sacramento Rivers) in excess of the concurrent flow of the American into the Sacramento.--D 1400, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River, Placer Co., 4/11/72, as clarified 5/4/72.



### 3.23.2 Storage/Reservoirs/Flow Regulation

Permit contained term requiring permittee to install measuring device to bypass water through outlet of proposed logging pond to insure protestant power project consistent flow during fluctuations of pond.--D 613, A-11818 Hodges.

Where applicant proposed to store water in federally owned flood control reservoir under contract, permit was conditioned upon such contract being maintained in full force.--D 645, A-9142 North Fork Ditch Co.

Permittee storing water was required to install, maintain and operate facilities to bypass the entire flow of the stream between certain dates.--D 711, A-13748 Larrimore.

Where there was no record of flow of stream on which there was an application for onstream storage, but the evidence showed the existence of unappropriated water, a special term was included in permit making it the applicant's responsibility to pass downstream all waters during the season not covered by the permit, as well as waters necessary to satisfy prior rights.--D 752, A-13916 Rogmaggi. See also D 775, A-13923.

In power applications Board's predecessor considered it against public interest to have unrestricted low-head large-flow power projects on lower reaches of large streams which might interfere with higher uses of water in the future, and term included subjected power uses to future appropriations for domestic or irrigation uses.--D 777, A-10872 Oakdale I.D.

In accordance with standard permit clauses, permittee required to install and maintain suitable measuring device to ensure that whatever waters are necessary to satisfy downstream rights are released through dam; also, permittee required to furnish Department with flow records and allow Department's representatives access to measuring devices for inspection purposes.--D 788, A-14721 Sturtevant.

Permit carried term that no diversion should take place until permittee and Department of Fish and Game reach agreement with respect to flows to be bypassed for fish life.--D 858, A-11792, etc., Calaveras Co. W.D. et al. See also D 907, A-13676 etc.

Board would not impose a restriction by permit term which would require permittee to employ methods to prevent evaporation of water stored.--D 870, A-12140 City of Sacramento

Bureau of Reclamation prohibited by terms of permit from exporting water required to maintain natural percolation by stream below proposed dam.--D 886, A-11331, etc. U.S.A.

Terms and conditions of permit regarding operation of reservoir to appropriate on an interstate stream made subject to any interstate compact to be entered into in the future.--D 913, A-15672, U. S. Bureau of Reclamation.

Permit to store water conditioned by requiring permittee to bypass sufficient water to fill a downstream reservoir constructed under prior applications.--D 920, A-17602 Dukes. S.a. D 1330, A-22853.

Requirement as a condition of permit that daily records of storage levels, flows, releases, etc., be kept by permittee in order to obtain supplemental information.--D 935, A-234 etc., U.S.A.

Permit for storage on stream tributary to Clear Lake conditioned on the maintenance of level of lake at a prescribed elevation, permittee being required to release from storage if necessary for same.--D 941, A-17347 Boone.

No specific provision in permit for bypassing of water for fish life was justified where applicant had been diverting water from stream for past 11 years and he did not intend to materially change his operation from that followed in the past.--D 948, A-17960 Pereira.

Where protestant's license for power project contained a provision that its direct diversion feature was not to interfere with future irrigation, a permit was granted to applicant upon a showing that there were flows in excess of that needed to satisfy protestant's storage features.--D 954, A-18366 Albasio.

Quantity of water applied for storage approved as to years of normal runoff, but during years of below normal runoff, permittee required to bypass sufficient water to assure protection of prior vested rights of lower protestants.--D 961, A-16983 Tallman.

Where studies showed only sporadic availability of unappropriated water, permit conditioned so as to authorize only the storage of water which would otherwise spill over a reservoir which was to be constructed by a protestant holding an earlier permit.--D 976, A-18180 Milligan Water Users Assn.

Term required permittee to make releases sufficient to maintain percolation of water from the stream channel as such would occur from unregulated flow under prior conditions so as to maintain natural recharge of ground water.--D 991, A-11389 etc., Yolo County; S. a. D 1338, A-22454;

Permit granted for recreational purposes for both direct diversion and storage, the direct diversion being allowed to maintain the reservoir levels by offsetting evaporation and seepage losses.--D 996, A-18858 Angermayer.

Finding of unappropriated water is necessary even where applicants have existing rights to divert and use water, and only desire permit addition for storage.--D 1018, A-15931 etc. Gill et al, Tule River, Tulare County.

Permit required the release of impounded water to extent necessary to satisfy protestant's prior rights whenever Department of Water Resources runoff forecast predicts insufficient water to satisfy those rights.--D 1049, A-19115 Jaenecke, Dutch Creek, Mariposa County.

Typical term in permits for storage to the effect that storage is not permitted outside of the authorized storage season to offset evaporation or seepage losses or for any other purpose.--D 1066, A-19436 Trosi et al, Unnamed Stream, Lassen County. S. a. D 1326, A-22915; D 1330, A-22853; D 1361, A-20350; D 1368, A-22918

Permit contained term requiring permittee to release impounded water for the benefit of protestant should protestant's reservoir fail to fill during the storage season.--D 1074, A-19439 Braren and Caletti, Unnamed Stream, Marin County.

Amount of water authorized by a permit for storage for fire protection purposes limited to the amount sufficient to replace evaporation and seepage losses.--D 1076, A-19532 Custer, Unnamed Stream, Placer County.

Term required permittee to release from storage when streamflow available to protestant district at their storage facilities was less than the total amount which district was authorized to store, but also provided that any water retained after providing for district's licensed uses, fishlife, and to satisfy downstream rights, would be considered surplus which permittee would be entitled to retain.--D 1091, A-20105 etc. Landau et al, Wolf Creek, Nevada County. See also D 1094, A-19448.

Permittee ordered to maintain certain flows from stream during dry years, which were defined to be when DWR forecast April 1 found 500,000 acre-feet or less runoff at Goodwin Dam.--D 1092, A-5648A etc., Oakdale and SSJID et al, tributaries to Stanislaus River, Calaveras and Tuolumne Counties.

A permit issued pursuant to an application for flood control increased the amount applied for to the capacity of the proposed reservoir, with the special provision that it be reduced as necessary upon licensing in view of the fact that flood control criteria were subject to change upon actual operation of the project.--D 1100, A-18115 and A-19451 U. S. Bureau of Reclamation, Stony Creek, Tehama County.

Application denied in part in order to preserve flows for fishlife and recreation in Russian River previously found to be in the public interest.--D 1110, A-17232 and A-17587 Willow C. and Millview Co. Water Districts, Russian River underflow, Mendocino County.

Permittee required to release water to supply vested rights substantially to the extent that water would have been available without its works and also sufficient to maintain natural percolation.--D 1129, A-12092 United W.C.D. and A-13417 Calleguas M. W. D., Sespe Creek, Ventura County.

Protection of previously reserved flows for maintenance of fish and recreation in the Russian River.--D 1142, A-17624 Nelson, Russian River underflow, Mendocino County. S. a. D 1266, A-22208.

Permit for Stockton East San Joaquin Water District for underground storage required it to file with the Board an operation plan including locations of measuring devices for determining the quantities of water extracted for beneficial use.--D 1179, A-11792 etc., Calaveras W. D. et al, Calaveras River, Calaveras and San Joaquin Counties.

Permit subject to prior permit of protestant allowed diversion for part of season only when protestant's reservoir spilled and required permittee to release any water on demand when it failed to spill by April 1 of any year.--D 1197, A-20794 Davidson, Unnamed Spring and Stream, Nevada County.

Held not to be in public interest to give unqualified approval to storage application on tributary to Lake Tahoe which was for exclusively recreational

use. Permit term provides that use thereunder will be subordinate to future requirements for domestic or municipal purposes, the clause becoming operative when California's allotment under California-Nevada Compact is exhausted.--D 1200, A-19965 Tahoe Paradise, Inc., Upper Truckee River, El Dorado County.

Permit terms provided for minimum flows below dams, established conservation pools, prevented fluctuations in streams through controlled reservoir releases, required construction of fish barriers approved by Department of Fish and Game to prevent intrusion of rough fish, and reserved jurisdiction to order adjustment in releases consistent with project requirements necessary to meet recreation and fishery requirements, including increase in streamflow releases to quantities deemed necessary by Fish and Game at end of project payout period.--D 1224, A-13681 etc. Richvale I.D. et al, Middle Fork Feather River, Plumas and Butte Counties.

Request for permit term requiring release of all water from reservoir in years in which protestant irrigation district had not impounded its full entitlement in a lower reservoir denied where this condition would occur only in one year out of ten at most, if at all, and the released water would probably be lost in the  $3\frac{1}{2}$  miles of dry streambed between the two reservoirs.--D 1229, A-21373 Benjamin, Unnamed Stream, Yuba County.

Board further defined "continuous uses prior to January 28, 1949" in the Russian River Valley, which were protected by its Decision D 1030.--D 1247, A-21516 Hansen, Russian River, Mendocino County.

Permittee required to construct and maintain a fish barrier approved by Department of Fish and Game at one location and Board reserved jurisdiction for five-year trial period to determine necessity of another barrier pursuant to Fish and Game recommendation.--D 1248, A-13681 etc. Richvale I.D. et al, Middle Fork Feather River, Plumas and Butte Counties.

Term in permit that permittee need not release stored water from his reservoir to the extent that spills and releases from the protestant's reservoir exceed the necessary release for fish life plus water released or diverted to underground storage at the maximum percolation capacity of the stream channel pursuant to its license.--D 1251, A-20439 Simoni, Hay Canyon, Santa Clara County.

To adequately protect protestant during dry years, applicants should be required to reimburse the protestant for water stored by applicants during such years.--D 1257, A-21805 Crawford, Unnamed Stream, Lake County, 8/31/66. See, however, D 1320, A-22980 (Board has no power to require a party to accept payment in lieu of water to which such party is entitled.)

Deemed waste of water to require applicants to release water from their reservoirs in each year the downstream lake of protestants does not fill since the major portion of the release would spill at the lake in following years.--D 1279, A-22073 Nichelini et al, Unnamed Streams, Napa County, 3/31/67.

Bureau permits for direct diversion of set amount do not authorize Bureau to divert more water than would be beneficially used in authorized manner. This means that diversion to storage, where not authorized, not allowed even though such diversion is within the authorized rate, quantity and season.--D 1308, A-22316 U. S. Bureau of Reclamation, Rock Slough, Contra Costa County. 7/18/68.

In accordance with standard permit clause, permittee required to install and maintain devices satisfactory to the Board for measuring the in and outflow quantities at his reservoir. D 1338, A-22454 Petan, Alisal Creek, Santa Barbara County, 5/1/69; S. a. D 1365, A-18714.

Permittee under Water Code Sec. 1393 required to clear proposed reservoir site of all structures, trees and other vegetation which would interfere with use for water storage and recreational purposes.--D 1338, A-22454 Petan, Alisal Creek, Santa Barbara County, 5/1/69. See also D 1026, A-19127; D 1344, A-22061; D 1353, A-19469; D 1360, A-23060; D 1367, A-23117

Standard permit term provided that dam construction not be commenced until Department of Water Resources has approved plans and specifications (provided that dam(s) will be of such size as to be within jurisdiction of DWR).--D 1341, A-22680 and A-22681 Coastside County W.D., San Vicente and Dennison Creeks, San Mateo County, 6/19/69. See also D 1360, A-23060; D 1378, A-23416 etc.

Water entering reservoir after/or collected during current storage season required to be released downstream to extent necessary to satisfy downstream prior rights.--D 1342, A-22822 and A-22823, Trimont Water Co., West Martis Creek, Sawmill Flat Springs and Unnamed Creek, Placer County, 6/19/69.

Permittee required to release sufficient water to maintain fish life.--D A-22061 Paradise, Little Butte Creek, Butte etc. Counties, 9/18/69.

Permittee required to release water to meet downstream reservations unless replacement water provided on an exchange basis.--D 1347, A-22739 Usibelli, Maxwell Creek and Unnamed Stream, Napa County, 10/16/69.

After initial filling of reservoir, permittee's right to appropriate extended only to amount of water necessary to keep reservoir full by replacing evaporation and seepage losses and to refill it if emptied for necessary maintenance or repair.--D 1359, A-23140 River Development Company, Sacramento River, Tehama County, 5/21/70. S.a. D 1377, A-23181 (plus fire fighting); D 139, A-23443, etc.

Permittee required to maintain minimum pool in reservoir to protect wildlife habitat, except that in emergencies or critical water shortages, the minimum pool may be reduced to not less than a set amount, to be restored as soon as operational conditions permit.--D 1361, A-20350 U. S. Bureau of Reclamation, American River and Deer Creek, Sacramento County, 7/16/70.

Permittee required to install and maintain an outlet pipe in its dam as near as practical to the bottom of natural stream channel--or provide other means satisfactory to the Board--in order that water may be released to extent necessary to satisfy downstream prior rights.--D 1361, A-20350 U. S. Bureau of Reclamation, American River/Deer Creek, Sacramento County 7/16/70; D 1330, A-22853; D 1367, A-23117.

Spillway/overflow structure required to be constructed so as to prevent spillway erosion and siltation of stream channel.--D 1362, A-22266 (Permit 15414) Perazzo, Perazzo Canyon, Sierra County 7/16/70.

Where no evidence is presented to the contrary, Board will not presume that a dam not within Department of Water Resources jurisdiction will be unsafe when completed.--D 1366, A-23306 Bayliss, West Canyon, El Dorado County 12/3/70.

Permit conditioned in accordance with water exchange agreement to replace water into San Jacinto River which is stored in permittee's reservoir.--D 1377, A-23181 Rancho Encino Company, Poppet Creek, Riverside County, 8/5/71/.

Project operators required to provide for proper salinity control and fish and wildlife protection by releasing a reasonable quantity of water stored under permit.--D 1379, A-5625 and 38 others U. S. Bureau of Reclamation & California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71 as clarified and corrected 9/16/71 and 10/13/71.

In accordance with standard permit term, permittee required to install specific type of outflow measuring device (rectangular sharp-crested weir) to assure bypass of set quantity of water, or other device satisfactory to Board.--D 1387, A-23441 Flack, Collins Creek, Siskiyou County 1/6/72.

Flows to be bypassed by permittee for fish and wildlife made subject to water deficiencies in dry years and are to be apportioned on a comparative basis with agricultural deficiencies in such years, and flows required to be bypassed for recreation may be totally eliminated at such times.--D 1400, A-18721, etc., U. S. Bureau of Reclamation, North Fork American River, Placer County, 4/11/72, as clarified 5/4/72.



### 3.23.3 Access Conditions in Permit

Permit contained condition providing for access to reservoir for stockwatering purposes.--D 1265, A-20766 Bodega Bay P.U.D. Finley Creek, Sonoma County 2/15/67; S.a.-D 950, A-15645.

Standard permit term provided that permittee shall allow representatives of the Board and/or other designated parties reasonable access to the project works to determine compliance with permit terms.--D 1331, A-22703, Bugni, Snake River, Sutter County 2/20/69; S.a. D 1361, A-20350 S.a. D 1366, A 23306; D 1396, A-23732.

Amended permit term required permittee to grant protestant reasonable access to flow measuring devices to ascertain compliance with permit terms.--D 1362, A-22266 (Permit 15414) Perazzo, Perazzo Canyon, Sierra County, 7/16/70.

Permit term, in addition to requiring standard condition that Board staff or other designated approved persons be granted access to project works to determine compliance with terms, also required that access be granted to employees of protestant water district.--D 1378, A-23416 etc., Bank of America, Cosumnes River and Unnamed Stream, Sacramento County, 8/5/71, as amended 9/16/71.

### 3.23.4 Fish and Game Protection

Department failed to show that the appropriation would have any appreciable effect on fish.--D 833, A-15570 etc., Davidson et al, S.a. D 1063, A-19071.

Held not in public interest to grant unconditioned permit for unappropriated water for private fish farm when it would serve to block projects to develop water for municipal use. Permit term limited diversions so as not to interfere with future appropriations for domestic or irrigation purposes.--D 841, A-15827 Gay.

Held in the public interest to have lake maintained at its natural level in order that the fish might thrive, permit to appropriate water from the lake being limited to times when inflow into lake exceeds natural losses.--D 857, A-15434 Garnet Dike Mine.

Permit carried term that no diversion should take place until the permittee and Department of Fish and Game reach agreement with respect to flows to be bypassed for fish life and upon failure to reach an agreement, until further order. Board recognized maintenance of fish life as beneficial use, but will not take precedence over higher uses such as municipal, domestic and irrigation purposes.--D 858, A-11792 etc. Calaveras County Water District, et al.

Protestant Department of Fish and Game requested that permit contain restriction requiring maintenance of a minimum stream flow for fish life. It was denied when Fish and Game representative testified that the water was presently sufficient and the applicant did not propose to draw below the existing minimum stream flow.--D 898, A-17618 Wilson.

Permits issued subject to stipulations between the applicants and Department of Fish and Game with regard to releases of water from proposed works for fish life.--D 907, A-13676 etc. O.W.I.D. and A-12532 etc., County of Yuba.

Use of water for fish culture by an individual is a beneficial and lawful riparian use of water. Board could not subordinate such right to a subsequent appropriator for use by higher priority as defined by Water Code § 106.--D 928, A-16162 North Coast County Water District.

Unsubstantiated claim by protestant that appropriation would have adverse effect on fish life dismissed by Board, especially since Department of Fish and Game had made no protest.--D 928, A-16162 North Coast County Water District.

Use of water for maintenance of fish life from CVP (Friant Dam) held secondary to irrigation and municipal uses under federal and state law.--D 935, A-234 etc., U. S. A.

No specific provision in permit for bypassing of water for fish life was justified where applicant had been diverting water from the stream for past 11 years and he did not intend to materially change his operation from that followed in the past.--D 948, A-17960 Pereira.

Stipulation between applicant and Department of Fish and Game to establish certain flows at certain points and reservoir minimum pools.--D 979, A-16186 Merced I. D., S.a., D 1095, A-5193 etc.

Applicant required to limit his diversion to offstream storage to times when flow passing his intake exceeded the requirements for fish life when it appeared that, at the rate of diversion proposed by him, the full appropriation could be accomplished in one third of the requested season.--D 987, A-17055 Thompson.

Permits made subject to an agreement between the Department of Fish and Game and the Bureau providing for certain minimum flows released or bypassed at Keswick Dam for the preservation and enhancement of fish life in the Sacramento River.--D 990, A-5625 etc., U. S. Bureau of Reclamation.

Held to be within the public interest that flows stipulated to between applicant and protestant for protection of fish be provided for in permits.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Counties. S.a. D 1110, A-17232 etc.; D 1142, A-17624; D 1151, A-20540.

Applications to appropriate from Eagle Lake were denied when the evidence indicated that any lowering of lake levels would be detrimental to fish, wildlife and recreation which are beneficial uses of water.--D 1073, A-18686 etc., Eagle Lake, Lassen County.

Request by protestant that Board reserve jurisdiction to determine proper releases for protection of salmon denied in view of fact that stream flows would be controlled by an intervening project.--D 1114, A-11792 etc., Calaveras and Tuolumne County Water Districts, Stanislaus River, Calaveras, Tuolumne and Alpine Counties.

Where amount of water necessary to sustain fish life in stream was historically available only for short and intermittent periods of time, and as the quantity of water sought to be appropriated had small relation to what was considered essential to fish life, approval of the application held not to result in any substantial harm to the source of the fishery.--D 1144, A-20554 Rathbun, Corralitos Creek, Santa Cruz County.

On reconsideration, mandatory language in regard to specific releases for fish protection added to the original decision.--D 1248, A-13681 etc. Richvale I.D., Middle Fork Feather River, Plumas and Butte Counties. See also D 1224, A-13681 etc.

Since fish were not planted in the creek and adjacent landowners have denied the public access to the creek, applicants should not be required to bypass water for the benefit of fisheries.--D 1307, A-22042 California Leisure Lands, Inc., et al, Pope Creek, Napa County, 7/18/68.

Standard permit terms provided that applicant required to make certain releases of stored water for protection of fish and to set aside certain easements along watercourse within the development to provide pedestrian ways and fishing access.--D 1342, A-22822 and A-22823 Trimont Water Co., West Martis Creek, Sawmill Flat Springs and Unnamed Stream, Placer County, 6/19/69.

A period of actual operation of project deemed necessary to secure sufficient data for determination of terms and conditions of flow necessary to reasonably protect fish life without waste of water.--D 1344, A-22039 Newhall, A-22321 Gorrill, Butte Creek, etc., Butte County, 9/18/69.

Permittee required to maintain set minimum flow in creek channel to maintain fish life while diverting to storage as authorized.-- D 1344, A-22061 Paradise, Little Butte Creek, Butte etc., Counties, 9/18/69.

Permit conditioned on full compliance with Fish and Game Code § 5937.--D 1346, A-22913, Warm Springs, Unnamed Spring, Inyo County, 10/16/69.

Fish and Game protest inadequate when Board determined that fishery was small and the Department could restock the stream at a minimal cost in the event an unusual shortage of water should occur in the future.--D 1350, A-23096 etc., Mallory and City of Trinidad, Luffenholtz Creek, Humboldt County, 12/14/69.

Permittee required to maintain wildlife watering device constructed in accordance with specifications of the Department of Fish and Game.--D 1357, A-23108 Ballinger, Unnamed Stream, Sonoma County, 4/16/70.

Agreement between applicant and Fish and Game incorporated in permit for maintenance of minimum pool in reservoir to protect wildlife habitat, except that in emergencies or critical water shortages, the minimum pool may be reduced to not less than a set amount, to be restored as soon as operational conditions permit.--D 1361, A-20350 U. S. Bureau of Reclamation, American River and Deer Creek, Sacramento County, 7/16/70.

Permittee required to (a) build a fish ladder, (b) purchase stated amount of trout annually, or (c) finance the Department of Fish and Game's rearing of a set amount of trout.--D 1362, A-22266 (Permit 15414) Perazzo, Perazzo Canyon, Sierra County 7/16/70.

Jurisdiction reserved to modify minimum fisheries flow requirements.--D 1378, A-23416 Bank of American, Cosumnes River and Unnamed Stream, Sacramento County, 8/5/71, as amended 9/16/71.

Fish and Game guidelines relative to protection and enhancement of fish and wild life incorporated in Board order to the extent they contain sufficiently specific recommendations, and Board recognized that adjustments may be necessary as additional information is developed.--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Lower American River has an important anadromous fishery which should be protected and enhanced in the public interest.--D 1400, A-18721 etc., U. S. Bureau of Reclamation, North Fork American River, Placer County, 4/11/72, as clarified 5/4/72.



### 3.23.5 Water Quality

Board refused to retain jurisdiction for the purpose of requiring applicant proposing to construct a project on the Merced River to make releases ensuring water of proper quality to protestants holding prior rights where the quality of water was deteriorating due to a number of causes not chargeable to the applicant's project, and there was substantial evidence that the project would be operated so as not to worsen and perhaps to improve the overall water quality problem facing the protestants.--D 979, A-16186 Merced I. D.

Board found that the Bureau assumed an obligation to control encroachment of saline water into the Sacramento-San Joaquin Delta under laws authorizing the CVP and by the terms of assignments to it of state filings. Also, the state has an obligation to solve the salinity problem under § 12202 of the Water Code, and Delta users have a responsibility to share costs of federal and state projects commensurate with benefits received in the way of salinity repulsion.--D 990, A-5625 etc., U. S. Bureau of Reclamation.

Board reserved jurisdiction over permits issued to the Bureau in the Sacramento-San Joaquin Delta over the matter of salinity control for three years to allow state, federal and local interests time in which to work out this common problem, during which time ample water was found to be available to maintain a fresh-water hydraulic barrier for the purpose of repelling salt-water encroachment.--D 990, A-5625 etc., U. S. Bureau of Reclamation.

A contention that the construction of a master drainage system outlet and disposal channel contemplated by San Luis Project will reduce quantity of water available in the lower San Joaquin River and further degrade the quality was held to be outside the issues before the Board. No special terms or conditions were imposed to protect water quality on applications for the San Luis Unit of CVP. Upon finding that Public Law 488 authorizing the project covered the problem. Board did reserve continuing jurisdiction for the purpose of formulating terms and conditions relative to salinity control in the Delta.--D 1020, A-15764 U. S. Bureau of Reclamation.

Assertion by protestant that use of proposed reservoir by cattle would degrade the water supply was disregarded as speculative, particularly in view of present access by cattle to springs and an intervening stream.--D 1133, A-20408 Hawks, Unnamed Stream, Napa County.

A protest based upon possible pollution of a stream by a mining applicant was held not to be a sufficient basis to deny permit, as discharge from mill was under jurisdiction of applicable Regional Pollution Control Board. A requested condition that any violation of the Regional Board's requirements be a cause per se for revocation was refused on the ground that such violation may not necessarily result in interference with protestants' rights.--D 1160, A-20878 Rex Sierra Gold Corp., Oregon Creek, Sierra County.

Water district is entitled to protection from any use by a city which would corrupt the district's water supply for municipal purposes. However, some increase in the mineral content of water by reason of new appropriations is permissible so long as water of suitable quality continues to be available.--D 1259, A-21424, City of Blue Lake, North Fork Mad River, Humboldt County, 8/31/66.

Board set interim water quality requirements for Delta, based in part upon November 19, 1965 water quality criteria agreed to between applicant and some protestants.--D 1275, A-5629 etc., California Department of Water Resources, Feather River etc., Butte etc., Counties 5/31/67.

Expert evidence indicated that applicant's project would have no measurable effect upon water quality and therefore project complies with requirements of Water Code § 13000.2.--D 1322, A-20862 Lake County FC&WCD, Scotts Creek, Lake County, 1/9/69 (§ 13000.2 repealed by stats. 1969 c. 482, p. 1051; same subject matter now contained in § 13260 et seq.)

Water used by applicant in mining and milling operations shall be passed through settling pond or other method of clarification, and be free of cyanide and other substances used in such operations which are deleterious to living organisms, prior to discharge in a natural stream.--D 1330, A-22853, Moore, Panther Canyon, Lake County, 3/20/69.

A limitation on the amount of permitted diversion is to operate only if Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been, or may subsequently be, established pursuant to Division 7 of the Water Code, and (1) adequate waste discharge requirements have been prescribed and are in effect in the affected area with respect to such discharges that have substantial effect on water quality, and (2) the water quality objectives for the area cannot be achieved solely through control of waste discharges.--D 1343, A-22966 Sharp, Lone Tree Creek, San Joaquin County, 9/18/69. See also D 1360, A-23060; D 1375, A-23365.

Board urged applicant to make sufficient studies regarding releases of water from proposed East Side Project into natural stream channels in order to determine merits of such releases as affecting water quality and fish life enhancement so that Congress may have benefit of such study in its authorization proceedings, and jurisdiction reserved to that end.--D 1356, A-18721 etc., U. S. Bureau of Reclamation, North Fork American River, etc., Placer etc. Counties, 2/5/70, as amended 12/17/70.

Board reserved continuing jurisdiction for the purpose of formulating or revising terms and conditions relative to salinity control in the Sacramento-San Joaquin Delta.--D 1361, A-20350 U. S. Bureau of Reclamation, American River, and Deer Creek, Sacramento County, 7/16/70.

Standard permit term provided that report of intended waste discharge - including the dam construction plans - be submitted to California Regional Water Quality Control Board (Lahontan Region) for the purpose of establishing waste discharge requirements prior to construction period.--D 1362, A-22266 (Permit 15414), Perazzo, Perazzo Canyon, Sierra County, 7/16/70.

Standard permit term provided that in order to prevent degradation of the quality of water during and after construction of project, permittee required to file a report pursuant to Water Code § 13260 and to comply with any waste discharge requirements imposed by the responsible Water Quality Control Board, or the Water Resources Control Board.--D 1366, A-23306 Bayliss, West Canyon, El Dorado County, 12/3/70. See also D 1368, A-22918; D 1378, A-23416 etc.; D 1399, A-23729.

Permittee prohibited from conducting mining operations until waste discharge requirements established by Regional or State Board unless waived pursuant to Water Code § 13269.--D 1368, A-22918 Norvell and Mann, Unnamed Stream, Sierra County, 12/17/70. See also D 1384, A-23329.

Permittees required to conduct or cause to be conducted a comprehensive monitoring program including 32 monitoring stations throughout the Delta to provide water of suitable quality for Delta users or by substitute facilities when the Board determined that outflows necessary to supply the quality required by vested rights and fish and wild life constituted a prior demand on the supply and were not available for federal and state projects.--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71 as clarified and corrected 9/16/71 and 10/13/71.

Permittee required to maintain water quality equal to or better than enumerated Delta Standards by discontinuation of direct diversion at project pumps and/or by release of natural flow or water in storage.--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board found Delta Water Quality Standards necessary and proper to provide reasonable protection for all beneficial uses of water, and found further that they were in the public interest.--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board found Bureau's positions regarding salinity control untenable in light of the national policy expressed in the Environmental Quality Improvement Act of 1970, the National Environmental Policy Act of 1969, the Federal Water Pollution Control Act (Section 21(a) and Executive Order 11514 (3/5/70)).--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

In compliance with legislative directives and in exercising its reserved jurisdiction, Board has the duty and authority to control any necessary Delta Water Quality parameters for protection of fish and wild life.--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.





### 3.23.6 The Public Interest

#### 3.23.61 Generally

A contention that, as an irrigation district's bonds have been certified as a legal investment by the bond commissioner, and that the revocation of a district's permits would impair the credit standing of all municipal and public corporations of the State was disregarded in the face of the Board's duties as set forth by the Legislature.--RD 29, A 203, Tule I. D.

In power applications Board's predecessor considered it against public interest to have unrestricted low-head, large-flow power projects on lower reaches of large streams which might interfere with higher uses of water in the future; permit contained term providing that use of water for power purposes acquired under permit should not interfere with future appropriations of the water for domestic or irrigation use.--D 777, A-10872 etc., Oakdale I. D.

Action was deferred on applications for a period of six months to allow both entities to enter into an agreement. It was stated that a failure to cooperate or submit necessary petitions for changes necessary for the development would result in the Division denying that party's applications in the public interest.--D 838, A-13676, OWID et al.

Held not in the public interest to grant unconditioned permit for unappropriated water for private fish farm when it would serve to block projects to develop water for municipal use. Permit term limited diversions so as not to interfere with future appropriations for domestic or irrigation purposes.--D 841, A-15827, Gay.

Held to be in the public interest to have lake maintained at its natural level in order that the fish might thrive; permit to appropriate water from the lake being limited to times when inflow into lake exceeds natural losses.--D 857, A-15434, Garnet Dike Mine.

"Public interest" is involved in the consideration of every application to appropriate water before the Board.--D 935 (see discussion), A-234, U. S. A., p. 60.

Public interest obviously included the concern of the inhabitants of the State in the acquisition of rights to the use of water and how, where, and for what purposes they are used.--D 935, A-234, U. S. A., p. 58.

The rule that conflicting applications shall be determined on the sole basis of statutory priorities has been modified and in a large part superseded by an entirely different concept, that of the public interest.--D 935, A-234, U. S. A., p. 56.

Public interest discussed as being affected by application placing in cold storage waters of a river when applicant presented no evidence concerning the extent to which the potential development of the stream would be accomplished or tending to prove the soundness of his project and his ability to proceed with it.--D 958, A-10752, Dloughy.

It is not in the public interest to issue a permit for an excessive amount of water over the applicant's present needs unless the period of development of the applicant's project is relatively short. Therefore, a special term was included in a permit granting an excessive amount of water to the applicant which contained a provision that no extension of time for the completion of construction work and application of water to beneficial use was to be granted without prior notice to protestant in order to allow him an opportunity to object.--D 985, A-18537, Malibu Lakeside Mutual Water Company.

It was held to be in the public interest that permits for power purposes contain a condition reserving water for future uses on the watershed above the project which have a higher priority specified in the Water Code, i.e., municipal, domestic, and irrigation.--D 989, A-14785 etc., PG&E.

Discussion of the public interest in use of water for existing hydroelectric plants as against use for fish maintenance.--D 1003, A-3850, City of Los Angeles.

Held to be within the public interest that the flows stipulated to by the applicant and Department of Fish and Game as being necessary for fish be provided for in permits.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Counties.

Held to be in the public interest that a permit for irrigation should also include domestic and municipal uses when applicant appeared ready to proceed on the irrigation aspect of the project.--D 1064, A-17083 etc., Coastside County Water District, Frenchman Creek etc., San Mateo County.

Earlier applications of district not approved where approval of later applications for a competing project would be in the greater public interest in more fully developing the stream system.--D 1114, A-11792 etc., Calaveras and Tuolumne and Alpine Counties.

Factors considered in determining public interest in the approval of one of two competing projects where both had unfavorable aspects were: yield of projects, financial feasibility, cost of water, and maximum development of source.--D 1129, A-12092, United Water Conservation District, A-13417, Calleguas Municipal Water District, Sespe Creek, Ventura County.

It was found to be in the public interest and permit term so required that no water be appropriated under a permit issued to individuals contemplating service to a subdivision until the permittees establish a mutual water company or some other organization capable, to the satisfaction of the Board, of supplying place of use on a continuous, permanent basis.--D 1152, A-19111 etc., Sierra Nevada Water Company and other, Lake Tahoe, Coyote Creek, El Dorado and Placer Counties.

The public interest was involved in assuring the maximum use of available storage space in Bureau's New Hogan Project which was constructed with the approval and cooperation of the State of California.--D 1179, A-11792 etc., Calaveras County Water District, et al, Calaveras River, Calaveras and San Joaquin Counties.

New Hogan Project found consistent with California Water Plan except for enlarged service area, and it was held not to be in the public interest to restrict place of use under the application.--D 1179, A-11792, etc., Calaveras County Water District, et al, Calaveras River, Calaveras and San Joaquin Counties.

Board found it in the public interest to subject Bureau's permit covering New Hogan Reservoir to appropriations above the reservoir issued or to be issued pursuant to applications filed prior to December 1, 1963 as they were unprotested, the projects constructed, and constituted no substantial interference with the Bureau's project. Board refused a request of the Department of Water Resources to have the permit subject to all uses in the county of origin as too broad but subjected the permit to future applications for reasonable quantities for stockwatering within the Calaveras River watershed.--D 1179, A-11792 etc., Calaveras County Water District et al, Calaveras River, Calaveras and San Joaquin Counties.

The application of a member of an irrigation district to appropriate water which was principally return flows and seepage from lands served by the District denied, as not in the public interest.--D 1223, A-21446, DeGregori, Wilson Ranch Ditch, Merced County.

Application denied to cover water for a use served by public utility. Applicant claimed that there was water in the utility system during the winter months surplus to the utility's needs.--D 1230, A-21726, Paxton, Eagle Creek, Shasta County.

The applications of a member of an irrigation district to appropriate water which public interest would best be served by approval of competing applications of the U. S. A. The financial feasibility of district's project was not established and appeared doubtful.--D 1235, A-20621, De Luz Heights MWD, A-21471, Navy, De Luz Creek and Santa Margarita River, San Diego County.

Board able to impose appropriate permit terms where shown by Department of Fish and Game that mandatory water releases for fish protection (in Eel River) would be in the public interest. Order Rescinding D 1345 (A-18785 and A-18786 Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River FC&WCID, South Fork Eel River, Lake and Mendocino Counties, 1/8/70).

Board's authority to condition permits in public interest is the same as to historically lengthy diversions as it would be had the water not been previously diverted. Order Rescinding D 1345 (A-18785 and A-18786 Sonoma County FC&WCD and Mendocino County Russian River FC&WCID, South Fork Eel River, Lake and Mendocino Counties, 1/8/70.)

Permit terms regarding flow measurements and quality measurements are in the public interest and should be included in permit.--D 1355, A-22992 Valley Center MWD Moosa Creek, San Diego County, 1/23/70.

Board found it to be in the public interest to subject permit for Buchanan Reservoir to prior permits for consumptive use purposes.--D 1365, A-18714 U. S. Bureau of Reclamation, Chowchilla River, Madera County, 11/19/70.

Board may condition permits in the public interest to reserve water for future development within the watershed above permittee, but unless there is excess water below permittee, a reservation will be made for only limited uses.--D 1365, A-18714 U. S. Bureau of Reclamation, Chowchilla River, Madera County, 11/19/70.

Approval of the Bureau's application to appropriate water from the Chowchilla River to store behind Buchanan Dam was determined as within the public interest since it might facilitate possible future integration of the Buchanan Project with the proposed federal Eastside Project.--D 1365, A-18714 U. S. Bureau of Reclamation, Chowchilla River, Madera County, 11/19/70.

Board found Delta Water Quality Standards necessary and proper to provide reasonable protection for all beneficial uses of water, and these standards are in the public interest.--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board stated that its authority to condition permits in the public interest pursuant to the Water Code is supported by court decisions /citing Temescal Water Company v. Department of Public Works, 44 Cal. 2d 90 (1955) and Johnson Rancho v. State Water Rights Board, 235 Cal. App. 2d 863 (1965)/ and is quite broad (citing and quoting from decision D 935).--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

The public interest required all beneficial uses of water in the Delta to be protected by appropriate terms in the permits for the State Water Project and the federal Central Valley Project, whether or not the water is beneficially used pursuant to vested rights. Board gave consideration to general plans for control, protection, development, utilization and conservation of water and its uses as proposed by the Department of Water Resources relating to these projects in determining the public interest in accordance with Water Code § 1256.--D 1379, A-5625 and 38 others, U. S. Bureau of Reclamation and California Department of Water Resources, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Lower American River has an important anadromous fishery which is protected by permit requirements that minimum flows be bypassed by permittee's project therefore, and this is in the public interest.--D 1400, A-18721 etc., U. S. Bureau of Reclamation, North Fork American River, Placer County, 4/11/72, as clarified 5/4/72.



### 3.23.62 Recreation/Public Access

Utilization of the flow of a creek to maintain the surface of a lagoon at a level satisfactory to home built along shore and to support wildlife and general public's recreation deemed a beneficial use that should be preserved in the public interest as against appropriation for irrigation use.--D 719, A-11852 Thibodo.

Applications to appropriate from Eagle Lake were denied when the evidence indicated that any lowering of lake levels would be detrimental to fish, wildlife and recreation, which are beneficial uses of water.--D 1073, A-18686 etc., Eagle Lake, Lassen Co.

Application denied in part in order to preserve flows for fishlife and recreation in Russian River previously found to be in the public interest.--D 1110, A-17232 and A-17587 Willow Co. and Millview Co. Water Districts, Russian River (underflow), Mendocino Co.

Board approved applications for multipurpose project after making substantial modifications in public interest which provided greater recreational benefits and less damage to fishing resources than proposed by the original project where applicants had agreed the modified plan would actually provide additional yield of water for irrigation purposes.--D 1224, A-13681 etc. Richvale I.D. et al., Middle Fork Feather River, Plumas and Butte Cos.

Special terms included in permit, which were acceptable to the applicants, requiring them, upon the request of the County of Plumas and/or an authorized agency of the federal government, to apply for grants of Davis-Grunsky funds for development of recreational facilities and to fully cooperate in the preparation of necessary recreation plans and implement them.--D 1224, A-13681 etc. Richvale I.D. et al., Middle Fork Feather River, Plumas and Butte Cos.

Application denied as not in public interest which covered a reservoir to be used for recreation and fish culture at a proposed subdivision when a county water district had a right to draw down the entire capacity of the reservoir whenever it deemed necessary and the water was the sole source of supply for most of the district during the summer months.--D 1242, A-21552 French Corral Land Co., Shady Creek, Nevada Co.

On reconsideration, Board refused to impose a permit term requiring permittee to furnish Board assurance that recreation facilities would be constructed, operated and maintained, or requiring him to accommodate the visitor days and generate recreational expenditures referred to as an objective in the decision, the Department of Water Resources having a statutory duty to pass on the adequacy of recreational facilities under the Davis-Grunsky Act.--D 1248, A-13681 etc. Richvale I.D., Middle Fork Feather River, Plumas and Butte Cos.

Maintenance of fish flow and water for recreation found to be in public interest.--D 1266, A-22208 Golden, Russian River, Mendocino Co., 2/15/67.

Under modified standard permit term, permittee required to set aside certain easements along watercourse within the development to provide pedestrian ways and fishing access.--D 1342, A-22822 and A22823, Trimont Water Co., West Martis Creek, Sawmill Flat Springs and Unnamed Creek, Placer Co., 6/19/69. S.a. D 950, A-15645.

Public access terms in permit will preserve integrity of applicant's master plan in the event permits are assigned or transferred. Additionally, such terms will be in the public interest as they will serve to compensate the public for diminished recreational value of the Cosumnes River due to lower flows.--D 1378, A-23416 etc. Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Permit conditioned on permittee providing by grant of easement or dedication, or other means satisfactory to the County of Sacramento, for public access to the Cosumnes River throughout the proposed place of use, such access to be a minimum of fifty feet wide on each bank, or such width as may be in conformity with the Sacramento County Parkway Plan, provided reasonable public access is maintained. --Order Amending Decision 1378 and in Other Respects Denying Petition for Reconsideration (D 1378, A-23416 etc. Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71) 9/16/71.

Modified standard permit term provided that reservoir(s) under permit be required to be kept open to public for recreation use, subject to reasonable charge for facilities and/or services provided, except that reservoirs solely for domestic/municipal supplies are exempt.--D 1378, A-23416 etc., Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Standard permit term provided that permittee be required to accord access to impounded waters to the public for fishing purposes.--D 1391, A-23443, A-23444 and A-23445 Occidental Petroleum, Smithneck and Bear Valley Creeks, Sierra Co., 2/3/72. S.a. D 1398, A-23570.





### 3.23.7 County of Origin/Watershed Protection

Where evidence showed that Bureau applications for a project would cover substantially all the waters of a creek, the Board found it to be in the public interest that the amounts under the permits should be subject to depletion of a certain quantity annually by future appropriations for beneficial use in the watershed above applicant's proposed dam.--D 869, A-11198 U.S. Bureau of Reclamation. S.a. D 1131, A-19934; D 1183, A-20060.

Bureau prohibited by terms of permit from exporting water required to maintain natural percolation of stream below dam.--D 886, A-11331 U.S. Bureau of Reclamation.

Users in the area of origin were given a reasonable period in which to negotiate with the U.S. before water permanently committed to a remote area.--D 893, A-12140 etc. City of Sacramento.

Board considered county of origin and watershed protection as stating an expression of policy by the Legislature and should be considered by them in determining where in the public interest lies.--D 935, A-234 etc. U.S.A.

Board ordered a special term in permit issued on Mojave River requiring that all water diverted under the permit be used within the watershed in order that the return flow would reach the river.--D 972, A-17593 So. Cal. Water Co.

A petition to intervene in a hearing on an application filed for the purpose of securing a reservation of water for future development in the county of origin was denied when, by resolution, the board of supervisors disclaimed any interest.--D 979, A-16186 Merced I.D.

Permit contained a special condition that rights acquired or to be acquired thereunder are to be subject to depletion for useful and beneficial purposes to the extent of certain specific quantities within the county of origin provided that appropriations be made as required by law.--D 979, A-16186 Merced I.D.

Board rejected contention that the Bureau was only obligated to satisfy watershed and area of origin needs before exporting water from the Sacramento-San Joaquin Delta when the same was compatible with project functions.--D 990, A-5625 etc. U.S. Bureau of Reclamation.

Sacramento-San Joaquin Valley held not to be one watershed under the watershed protection statute, and users along the Sacramento River and Delta were entitled to be supplied first before any export of water into the San Joaquin Valley.--D 990, A-5625 etc. U.S. Bureau of Reclamation.

Users along the Sacramento River and Delta coming under watershed protection were given a period of three years during which any request by them for water service contracts from the Bureau would be given preference over users from outside the watershed. Users within the watershed not presently diverting were given ten years in which to consummate contracts for project water with the Bureau. Users not holding appropriative rights, upon receiving permits, would be granted a preference over other permits for use outside the watershed.--D 990, A-5625 etc. U.S. Bureau of Reclamation.

Permits issued to the Bureau for San Luis Project made subject to rights initiated by applications for use within the Sacramento-San Joaquin Delta and the watershed of the Sacramento River Basin regardless of the date of filing.--D 1020, A-15764 U.S. Bureau of Reclamation, Old River, San Joaquin Co.

When it appeared that the water to be developed in the main stream was sufficient to supply the applicants' needs for many years, the permits issued on applications to appropriate from tributary streams were made subject to prior or subsequent applications for water for beneficial use within the tributary watershed.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Cos.

Ten years was allowed users in local county to contract for water before its export outside of watershed in order to carry out original intent behind the project.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Cos.

The Board refused to include a watershed protection provision as a term in Black Butte project permits as requested by the Sacramento River and Delta Water Users Association where no evidence was presented to show that the Bureau intended to take water from the Sacramento River or Delta for distribution to other areas.--D 1100, A-18115 and A19451 U.S. Bureau of Reclamation, Stony Creek, Tehama Co.

The usual condition contained in the assignment of a state filing providing for protection of the county of origin held to be sufficient to protect local stock-watering uses and a special term deemed unnecessary.--D 1100, A-18115 and A-19451 U.S. Bureau of Reclamation, Stony Creek, Tehama Co.

The objective of permit term proposed by El Dorado County that permittee's right to store water for power purposes be made subject to domestic and irrigation uses within the county without regard to priority was considered to be satisfied by a restatement in the decision of the county of origin term contained in the Water Commission's release of priority to the applicant of state filings.--D 1104, A-18084 etc. Placer County Water Agency, North Fork American River etc., El Dorado and Placer Cos.

A specific quantity of water (not to exceed 90,000 afa in a 3-year period) was reserved to county of origin for future development.--D 1114, A-11792 etc. Calaveras and Tuolumne Co. Water Districts, Stanislaus River, Calaveras, Tuolumne and Alpine Cos.

Protestant Alpine County appearing as the county of origin made no presentation as to future need of water entitled to protection, and Board acted accordingly on applications.--D 1114, A-11792 etc. Calaveras and Tuolumne Co. Water Districts, Stanislaus River, Calaveras, Tuolumne, and Alpine Cos.

Calaveras Co. W.D. contended that its applications on Calaveras River should have precedence over those of Bureau of Reclamation on basis of county of origin and watershed protection statutes. County of origin statutes apply to assignment of state filings, which were not involved, and the operation of New Hogan project by the Bureau would use water entirely within the watershed of Calaveras River or an area immediately adjacent thereto.--D 1179, A-11792 etc. Calaveras Co. Water District et al., Calaveras River, Calaveras and San Joaquin Cos.

Board denied request of Department of Water Resources to have the permit subject to all uses in the county of origin as too broad, but subjected the permit to future applications for reasonable quantities for stockwatering within the Calaveras River watershed.--D 1179, A-11792 etc. Calaveras Co. Water District et al, Calaveras River, Calaveras and San Joaquin Cos.

Water in upper Putah Creek watershed deemed unappropriated to the extent 33,000 afa reservation provided by Decision D 869 is not depleted. Board established tentative criteria to determine depletion pending further information as to upper uses.--D 1218, A-20772 etc. Stinson et al., various tributaries to Putah Creek, Lake and Napa Cos. S.a. D 1131, A-19934; D 1183, A-20060.

Applications of the Department of Water Resources are subject to area and county of origin laws. All of the area within the Central Valley Basin is entitled to some specific protection before water is transferred to more distant areas of the state.--D 1275, A-5629 etc. California DWR, Feather River etc., Butte etc. Cos., 5/31/67.

U.S. Bureau of Reclamation's authorized diversions concomitant with Cachuma Dam project on the Santa Ynez River (D-886) did not foreclose future new or increased appropriations from ground water for municipal use within the watershed, even though increased discharges from the reservoir may be required to maintain percolation rates.--D 1338, A-22516 Buellton, A-22423 Solvang, A-22454 Petan Co., Santa Ynez River, Id., and Alisal Creek, respectively, Santa Barbara Co., 5/1/69.

Quantities of water to be diverted or rediverted under permits, to the extent such quantities are to be applied to beneficial use without the watershed tributary to Folsom and Auburn Reservoirs, subjected to reduction by future appropriation for reasonable beneficial use within the watershed.--D 1356, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River etc., Placer Co., 2/5/70, as amended 12/17/70.

Although watershed protection considerations may not be applicable in a particular case, the Board may nevertheless condition permits in the public interest to reserve water for future development within the watershed above permittee. However, where the downstream supply would be impaired and the reservation of little or no value, it will not do so.--D 1365, A-18714 U.S. Bureau of Reclamation, Chowchilla River, Madera Co., 11/19/70.

Effect of Water Code §§ 12201 to 12204 is to give first priority to satisfying all needs for water in the Delta and relegate to second priority all exports for any purpose. Questions regarding the applicability of Watershed Protection Laws to portions of the Delta were not considered proper issues, as the Board found that any area illegally deprived of watershed protection benefits has a legal remedy in court.--D 1379, A-5625 and 38 others, U.S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.



### 3.3 Protests and Protestants

#### 3.31 Filing and Appearance

The existence of a prior application on file held not to constitute a bar to granting a permit on a subsequent application when the prior applicant did not protest.--D 868, A-16222 Ohlson.

The protest filed after the protest period has expired will not be considered, in the absence of showing cause for late filing as required by Water Code § 1330.--D 870, A-12140 City of Sacramento.

Certain protestants having failed to appear at hearing and offer proof in support of their protests, and it further appearing that the issues raised were dismissed under Board's Rule 731.--D 923, A-16454 and A-17291 Humboldt Bay MUD. See also D 919, A-16917.

Protests dismissed when protestants failed to appear and after proof at hearing that protest raised issues not before the Board.--D 935, A-234, etc., U. S. A.

Application approved where protestants, claiming alleged injury to established rights to store water in Lake Tahoe and other lakes and reservoirs and thereby supplement the flow of the Truckee River, failed to appear at the hearing and produce evidence as to extent of their individual rights.--D 1085, A-17415 Waddle, Unnamed Stream tributary to Martis Creek, Nevada County.

Protest dismissed when protestant did not appear at hearing and did not show cause for failure to appear within 15 days thereof.--D 1294, A-22552 Gateway, Inc., et al, West Branch Soquel Creek, Santa Cruz County, 2/1/68.

### 3.32 Showing of Harm

Protestant's point of diversion upstream, no showing of harm.--D 621, A 12074, Woodland Farms, Inc.

Apprehension that applicant's dam under proposed project will cause siltation in upper streambed and thereby interfere with the protestant's recovery of ground water held not to be a valid grounds of protest.--D 644, A 11751, Santa Clara Valley W.C.D.

Where it was claimed that applicant's releases of water to its point of re-diversion would be so commingled with releases to which protestant was entitled that protestant would not receive its entitlement, protest was dismissed as invalid, since faulty operation of the federal reservoir could not be presumed.--D 645, A 9142, North Fork Ditch Company.

Power company showed no significant interference with its rights where flows applied for would result in a loss of only 0.18 theoretical h.p. coupled with the fact that the waters from applicant's proposed point of diversion during the dry months would have to flow approximately 1/2 mile underground to enter into any living stream tributary to the protestant's source.--D 701, A 13056, Hauser.

Apprehension by a protestant that applicant's dam (not within the jurisdiction of Dam Act) might fail was not considered a bar to approval of an application to appropriate water to be stored in same.--D 713, A 13543, Agnew.

Licensee's allegation that there was no unappropriated water due to illegal diversions not considered sufficient to bar approval of an application on same stream but rather tends to show the existence of unappropriated water, it being the responsibility of protestant to defend his rights under license.--D 715, A 13845, Myers.

Fact that appropriation from ground water basin may result in increased pumping costs to protestant not sufficient basis for protest.--D 730, A 13997, City of Suisun.

Protestant had no basis of protest where evidence showed that the yield of a spring would probably be lost by evapo-transpiration before it could benefit downstream users.--D 772, A 14656, Pine Grove Mutual Water Company.

Mere apprehension on part of protestant that new wells adjacent to a lake would lower his own water table held insufficient reason to deny application.--D 780, A 14915, Kantel.

Possibility that lake level used for recreation may be reduced was not sufficient reason to deny application where protestant failed to present definite evidence that it would have such effect to his material injury.--D 780, A 14915, Kantel.

Field investigation showed that the amount of water sought under application and available from the sources would probably be lost by evapo-transpiration before reaching the protestant's point of diversion, so permit granted.--D 792, A 13868, Grizzle.

Grant of permit unsuccessfully protested on grounds that diversions would raise the ground water. Found as a fact that it would have no such effect.--D 840, A 16401, Tudor Mutual Water Company.

Permit granted for appropriation for mining purposes as being nonconsumptive, as protestant would be affected only by difference between evapo-transpiration losses from project other than state of nature, which were considered negligible.--D 848, A 15438, Martin.

Protest based on a possible riparian right and rights through use where the water was not presently used but the protestant desired to preserve the status quo was held to be insufficient. The anticipated future use by the holder of a right that is currently unexercised cannot bar approval of an application to appropriate such water as may be available meanwhile.--D 861, A 16151, Drobish.

It was held applicant's amount of use (0.0018 cfs for domestic purposes) was too small a diversion to materially affect the protestant irrigator of extensive pasture and hay-growing areas. An apprehension that applications of this type may accumulate so as to seriously affect protestants' earlier rights is an insufficient basis for the denial of an application.--D 867, A 15681, Sorenson.

Application to divert drainage waters in excess of protestant's historical use and amount authorized under prior permit was approved when applicant's point of diversion was below the protestant's.--D 872, A 15627, 15628, Harney.

A protest on the basis of an earlier historical use during certain months of the year would not prevent the granting of a permit when the applicant was to release the natural flow during those months.--D 899, A 17530, Ferber.

The fact that the applicants had already used the water in the amounts applied for without adverse effects on the protestants evidenced that the stream contributed only a minor portion of the flow depended upon by the protestants.--D 902, A 16326, etc., Crossley.

Under proceedings in lieu of hearing, water supply was such that runoff in tributaries whose water was applied for was insignificant to protestant some 26 miles below on main stream. Also, during month protestant would have been affected, he was enjoined from diverting by order of superior court under previous stipulated judgment.--D 922, A 17681, etc., Murphy, et al.

A claim by a protestant unsubstantiated by any evidence that an appropriation of water would cause an adverse effect on fish life was given no weight by the Board, particularly in view of the fact that there was no protest made by the State Department of Fish and Game.--D 928, A 16162, North Coast County W. D.

Permit granted for full season of the application and the facts showed that during only one month of the year was there an insufficiency of water and during that month the effect upon the supply of the protestant, 15 to 20 miles away, was considered insignificant.--D 930, A 17892, Rodden.

Anticipated or possible injury by future applications of a similar character is not sufficient to bar approval of the subject application which would not normally result in injury to the protestant.--D 941, A 17347, Boone.



Location of protestant's point of diversion prevented any harm to protestant by diversion under the application.--D 949, A 14803, Feather W. D. See also D 735, A 14100, Best.

No evidence was presented by the protestants to support their contention that the proposed appropriation by applicant would imperil its ground water supply, and evidence showed that the water applied for would not normally reach the lands of protestants, therefore application approved.--D 966, A 17208, Davis. See also D 962, A 18305, Kissick.

Protestant located 40 miles from applicant's project held not to be harmed by granting of the application, as under natural conditions water from the source would not reach it.--D 967, A 17239, Baker.

A proposed appropriation (600 gpd) held to have a negligible effect, if any, on a protestant located 20 miles away from applicant's point of diversion.--D 997, A 19077, Evans.

The fact that protestant's lands may be flooded by a proposed reservoir held not to be sufficient grounds for denying the application.--D 1011, A 17123 and 17962, San Luis Obispo F.C.&W.C.D.

Board granted a petition to change point of diversion from one tributary to another upon a showing that protestant on the main stream could not be harmed, as less water would be available to the applicant at the new point of diversion.--D 1013, A 5644A, Georgetown Divide P.U.D.

Protest was disregarded when evidence showed that protestant's land was located on a stream which entered the source named in the application downstream from the applicant's point of diversion.--D 1015, A 18826, Polley.

A possible reduction of the quantity of water available to the protesting lower San Joaquin Valley users through contemplated operation of a drainage system held to be outside the issues before the Board.--D 1020, A 15764, USBR.

Upon failure of certain protestants to present evidence at the hearing to show alleged prejudice to vested rights, the protests were disregarded.--D 1025, A 19022, First Cong. Church of L.A., San Bernardino County.

Protestant failed to make a sufficient showing to justify the Board's denial of an application where it merely relied upon a court decision recognizing that the protestant had certain rights in stream system without presenting evidence or showing any prejudice to it that would result from the granting of the application.--D 1032, A 18989, Victorville Lime Rock, Unnamed Springs, San Bernardino County.

Application approved upon a finding that there was no hydraulic connection between the two springs, the source and the Santa Ana River where the protestants claiming interference with established rights were located.--D 1033, A 19144, two unnamed springs, Wilcox, San Bernardino County.

The fact that the applicants' proposed dam would be constructed within the boundaries of protestants' proposed reservoir under a previous permit, and subject to condemnation, held to be not a proper ground for denial of application as there may be several years before the protestants' project is constructed and in the interim water would be available.--D 1043, A 18905, Wildberger, Coon Creek in Placer County.

Held to be no showing of harm to the protestant where the evidence showed that the creek nearly always ceased to flow at a point above the protestant's point of diversion during the applicant's proposed diversion season.--D 1052, A 19488, DeRocher, Sloss Creek, Lassen County.

Protestant Department of Fish and Game failed to show any detrimental effect by the proposed diversion on fish life or that its recommended flows were necessary to protect existing fish.--D 1063, A 19071, Ardis Phillips, East Fork Russian River, Mendocino County.

Application approved to appropriate from a tributary of the Truckee River where the protestants, claiming alleged injury to established rights to store water in Lake Tahoe and other lakes and reservoirs and thereby supplement the flow of the Truckee River, failed to appear at the hearing and produce evidence as to extent of their individual rights and staff records showed an average of 130,000 afa wasting into Pyramid Lake and the Carson Sink.--D 1085, A 17415, Waddle, Unnamed Stream tributary to Martis Creek, Nevada County.

The possibility of interference with the protestant upon his replacing diversion facilities and resumption of prior irrigation use held not proper grounds for denying an application.--D 1103, Smith, A 20340, French Corral Creek, Nevada County.

Protestant Alpine County appearing as the county of origin made no presentation as to future need of water entitled to protection, and Board acted accordingly on applications.--D 1114, A 11792, etc., Calaveras and Tuolumne Co. Water Districts, Stanislaus River, Calaveras, Tuolumne and Alpine Cos. See also D 979, A 16186.

Where the protestant alleges that the applicant's dam is unsafe but the dam is not sufficient in size or capacity to be within the jurisdiction of the State, the usual term requiring the permittee to obtain approval of the dam from the Department of Water Resources was not applicable, and protestants' contention not grounds for denying the application.--D 1123, A 20279, Hirsch, Unnamed Stream tributary to Sullivan Creek, Tuolumne County.

A special term limited permittee's diversion from wells upon a showing that at times the proposed appropriation would cause an interference with protestants.--D 1127, A 20417, McCoye, Escondido Canyon (underflow), Los Angeles County. See also D 1088, A 19962.

An assertion by the protestant that use of the proposed reservoir by cattle would degrade the water supply was disregarded as speculative, particularly in view of present access by cattle to springs and an intervening stream.--D 1133, A 20408, Hawks, Unnamed Stream, Napa County.

Return flow from applicants' use considered to offset whatever contribution made by spring to flow of stream from which protestant diverted.--D 1134, A 20418, 20467, Boone, Knass Stream, Tehama County.

Where the amount of water of the protestant Department of Fish and Game deemed necessary to support fish had been historically available in the stream during only a very small percentage of the time, and as the quantity of water sought to be appropriated had small relation to what was considered essential to fish-life, approval of the application held not to result in any substantial harm to the source of the fishery.--D 1144, A 20554, Rathbun, Corralitos Creek, Santa Cruz County.

Where protestant irrigation district pumping from wells failed to show that there was an overdraft in the ground water basin or what contribution, if any, was made by the source named in the application to its supply, the application was approved.--D 1155, A 20460, Perez, McClure Creek, Tehama County.

A reservation in a deed in favor of the protestant covering "all water rights in land" held not to create a bar to the approval of an application to appropriate water not in existence or in contemplation at the time of the reservation.--D 1155, A 20460, Perez, McClure Creek, Tehama County.

A protest based on possible pollution of a stream by mining applicant held not a sufficient basis to deny permit, as discharge from the mill was under jurisdiction of Central Valley Regional Pollution Control Board. A requested permit condition that a violation of any of the requirements of the Water Pollution Control Board be a cause per se for revocation of permit was refused as a violation may not result in interference with the rights of the protestants.--D 1160, A 20878, Rex Sierra Gold Corp., Oregon Creek, Sierra County.

Protest disregarded where protestant's documents in support of claim to rights to water from springs made no reference to springs but only referred to two ditches and "all water rights belong to or in anywise appertaining to said ditch" and no evidence identified or specified what water rights were intended to appertain to said ditches.--D 1174, A 20868, Mitchell, Grizzly Creek, Yuba County.

Board found that there was no known geologic structural connection between applicant's proposed point of diversion and certain of the protestant's springs and the proposed diversion would have no effect upon them.--D 1175, A 20901, Puccinelli, Unnamed Springs, Sonoma County.

Lack of hydraulic continuity resulted in no harm to protestants during the critical summer months.--D 1178, A 20626, Smith, Unnamed Spring, Calaveras County.

A district, by collecting water beyond the authorized diversion season under its permit, obtained no enlarged right, and its protest was considered only in respect to the effect of the applicant's project on its authorized season.--D 1204, A 20904, Dorris, tributary to Rattlesnake Creek, Modoc County.

Application approved where the proposed project controlled the winter runoff from only approximately seven percent of the watershed available to the protestants. When water is available at the applicant's proposed point of diversion, there is sufficient water from the remaining watershed to supply the needs of the protestants.--D 1212, A 20906, Barboni, Unnamed Stream, Marin County.

Application approved where effect of project on proposed project of U. S. would be negligible.--D 1213, A 20507, etc., Garnsey, et al, tributary Deluz Creek, etc., San Diego County.

A request for inclusion of a permit term requiring permittee to release all water from its reservoir (three acre-feet) in years in which protestant irrigation district had not impounded its full entitlement in a lower reservoir denied where this condition would occur only in one year out of ten at most, if at all, and the released water would probably be lost in the  $3\frac{1}{2}$  miles of dry streambed between the two reservoirs.--D 1229, A 21373, Benjamin, Unnamed Stream, Yuba County.

Protest by owner of property lying upstream from applicant's point of diversion dismissed as he had a right to recapture the return water covered by the application before it reached the applicant.--D 1234, A-21686, Hanlon, unnamed creek, Tehama County.

Beneficial use under prior permit not sufficient to bar application for diversion to storage since flood waters are often available and protestant does not always divert the full entitlement when it is available.--D 1252 (Application 21969), Knight, unnamed tribs. of Pegleg Creek, Mariposa County (7/27/66).

Protestants' long nonuse of water, except in summer, gives them no basis to object to applicant appropriators of water from November 1 - May 21.--D 1254 (A 21867), p. 6. Irvine, Little Bear Creek, etc. Placer County (7/27/66).

Upstream dam will not affect protestant since stream was a "gaining stream" with flow passing all points of diversion of protestant, even in dry years.--D 1256 (A 21857), Bear Creek Ranch, Bear Creek and Pegleg Creek, El Dorado County (8/31/66). See also D 1268 (A 21532), Johnson Stock Company, unnamed streams, Modoc County (3/29/67).

No harm to protestant since whenever the water is used on the land in question the return flow will be substantially the same.--D 1258 (A 22005), p. 5. Laukkari, Russian River (inflow), Mendocino County (8/31/66). See also D 1266 (A 22208), Golden, Russian River, Mendocino County (2/15/67). p. 4.

Downstream diversion will not harm upstream protestant.--D 1260 (A 22164), p. 3. USB of Land Management, Ninemile Canyon, Inyo County (10/26/66).

No damage to protestants since waters of springs are consumed by phreatophytes or lost by seepage before reaching protestants' point of diversion.--D 1267 (A 22160, etc.), U.S.B. of Land Management, unnamed springs, Kern County (2/15/67).

Storage in reservoirs will have no effect on protestants since the streams lose their identity a short distance below the reservoirs.--D 1268 (A 21532), p. 2. Johnson Stock Co., unnamed streams, Modoc County (3/29/67).

Protestant cannot be prejudiced by diversion of water that would otherwise flow unused past diversion works.--D 1268 (A 21532), Johnson Stock Co., unnamed streams, Modoc County (3/29/67).

Appropriation of water from spring will not injure downstream protestants since there is a lack of hydraulic continuity between the spring and the river.--D 1272 (A 22475), Margis, unnamed stream, Riverside County (5/11/67).

Protestant was not prejudiced by applicant's use of water not diverted and used by protestant.--D 1276 (A 21980), Temp, Dog Creek, Sierra County (7/6/67).

Approval of application will not harm downstream protestant since the creek goes dry at applicant's point of diversion by July and protestants have water available throughout the irrigation season. Application approved for entire diversion season to cover the infrequent years in which water is available to applicant after the months of June or July.--D 1278 (A 22526), McGuire, San Antonio Creek, Marin County (7/6/67).

The possibility that injury may result to the property of others from failure of an applicant to properly maintain his diversion works is not a sufficient reason to deny application to appropriate water.--D 1280 (A 22362), Markert, Beaver Creek, Siskiyou County (8/31/67).

In determining if any injury would result by allowing a change of place of use, the Board is required by the Water Code to test the possible injury by looking to the present and future, and not to the past.--D 1282 (A 882), p. 9. Dixon et al, Sacramento River, Sutter County (8/31/67).

Protestant not injured by upstream diversion since if water was allowed to flow downstream much of it would be lost through transpiration or percolation.--D 1283 (A 22539), Canebrake County Water District, Canebrake Wash, San Diego County (9/27/67).

Protestants' ground water supply is increased rather than decreased by construction of dam.--D 1290 (A 353, etc.), p. 30, Fresno Irrigation District, et al., Kings River, etc., Fresno etc. Counties (11/30/67).

Appropriation by applicant of water that would not reach protestant's reservoir could not possibly prejudice protestant.--D 1299 (A 22505), p. 3, Keele, spring tributary to Littlefield Creek, Trinity County (4/4/68). S.a. D 1305 (A 22241).

Protestants not injured since waters to be used by applicant would not reach protestants' point of diversion.--D 1306 (A 22485), p.3, Preciado, unnamed stream, Sierra County (7/3/68).

Applicant was not required to release water if protestant's reservoir did not fill since protestant's reservoir was designed so the safe yield was based on a series of dry years and failure to fill in one year would not necessarily reduce the safe yield.--D 1311 (A 22861), p. 3, Young, unnamed stream, Amador County (8/1/68).

Analysis and determination of rights of protestant not necessary where evidence shows that none of the protested proposed diversions will interfere with the rights claimed.--D 1344, A-22039 Newhall, A-22534 Patrick, A-22564 Camenzid, A-22653 Skinner, Butte Creek, etc., Butte Co., 9/18/69.

Protest dismissed where there was no showing of hydraulic continuity between applicant's proposed source and that of protestant at time of inspection and it was determined that even during periods of rainfall such continuity would be unlikely.--D 1351, A-23153 Davis, Unnamed Stream, Placer Co., 12/4/69. See also D-1352, A-23078 Rusher.

Protest disregarded where protestant claimed he would be injured by proposed diversion which would prevent water from backing up into channel of his source, but no showing or finding was made that he was entitled to have water backing up in the channel at all.--D 1356, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River etc., Placer etc. Cos., 2/5/70, as amended 12/17/70 (protest of Holthouse).

All permits are issued subject to vested rights, and if a protestant has valid riparian rights and develops uses, a permit issued to applicant will authorize diversion only at such times and in such amounts as will not interfere with protestant's rights.--D 1360, A-23060 Andersen, Little Salmon Creek and 2 Unnamed Creeks, Mendocino Co., 5/21/70.

Where the possibility of harm to protestant existed only during part of the requested diversion season, applicant's request for watermaster service during that time should serve to assure protestant of his rights, and thus remove any objection to approval of application.--D 1367, A-23117 Belcher, Little Shasta River, Unnamed Stream, Siskiyou Co., 12/3/70.

Protestant's point of diversion approximately 100 feet above applicant's and thus no harm could result from the latter's diversion.--D 1371, A-23400 Rinta, Bean Creek, Santa Cruz Co., 2/18/71.

Protest that reservoir overflow would pollute protestants' source of domestic water dismissed when it was shown that in fact no domestic water was taken from that source.--D 1372, A-23331 Hanna et al., South Fork Gazos Creek, San Mateo Co., 2/18/71.

Protest withdrawn upon condition that permittees cease diverting when hydraulic continuity exists between source of protestant and that of permittee.--D 1374, A-23470 Garbero, Unnamed Stream, Nevada Co., 5/6/71.

### 3.33 Dismissal

Protest dismissed when protestants had sold property since filing of protest and prior to in lieu hearing.--D 612, A-11942 Campbell.

Protest based on certain licenses since revoked was dismissed as invalid.--D 629, A-11434 Buchanan. See also D-1395, A-23184.

Protest based on an appropriative right alleged to have been initiated in 1915 dismissed as evidence showed no filing under provisions of the Water Commission Act.--D 754, A-13050 Rubins.

Protest dismissed where protestants had not themselves used any water from applicant's proposed source, had no permit or license to appropriate therefrom, and had no land riparian to any stream fed by the source.--D 1363, A-23085 Tegel, Mine Tunnel, Napa Co., 9/3/70.

### 3.4 Stipulations and Agreements Between Parties

Where applicant proposed to store water in federally owned flood control reservoir under contract, permit was conditioned upon such contract being maintained in full force and effect.--D 645, A-9142 North Fork Ditch Co.

Stipulation for withdrawal of protest contingent on withdrawal of direct diversion feature of application.--D 728, A-13722 Estate of Mattei.

Board deferred decision for a period of 6 months to allow the parties to enter into an agreement for development of a joint project for all areas and to submit necessary petitions for changes in applications to conform with such a project and failure to reach agreement would result in cancellation of either or both applications.--D 907, A-13676 etc. Oroville-Wyandotte I.D. and A-12532 etc. County of Yuba.

Board incorporated terms of stipulation for withdrawal of protest when subject matter thereof was to maintain preproject conditions, installation of measuring devices to be approved by Board, and inspection of same by Board and protestant, and assurance of safe design and construction (to be approved by registered civil engineer or responsible government agency).--D 921, A-17554 Engler.

A stipulation was made at the time of the hearing by protestant and applicant that the application be amended to show that the source in the application was not located on the protestant's property, protest being considered withdrawn.--D 929, A-16590 Riffe.

Applicant irrigation district stipulated with PG&E to modify its project to prevent inundation of latter's Merced Falls project or, as an alternative, to pay the company damages.--D 979, A-16186 Merced I.D.

Stipulation between applicant and Department of Fish and Game to establish certain flows at certain points and reservoir minimum pools under separate criteria for dry and wet years as determined by DWR annual forecast.--D 979, A-16186 Merced I.D.

Permits made subject to an agreement between the Department of Fish and Game and the Bureau providing for certain minimum flows released or bypassed at Keswick Dam for the preservation and enhancement of fish life in the Sacramento River.--D 990, A-5625 etc. U.S. Bureau of Reclamation.

Agreement between Bureau and State of California apportioning to each a share of the water in the Delta incorporated in Board's decision.--D 990, A-5625 etc. U.S. Bureau of Reclamation. See "State Interest in New Hogan Project", p. 14 et seq. of Decision D 1179.

Permits issued subject to agreement between U.S.A. and the Department of Water Resources for the coordinated operation of CVP and State Feather River and Delta Diversion Projects--D 1020, A-15764 U.S. Bureau of Reclamation.

Protestant and applicant stipulated that protest be withdrawn if direct diversion be eliminated and the flow below the lowermost reservoir be maintained to at least that of the natural flow of the stream above the uppermost reservoir.--D 1023, A-18601 Baunhauser, Tuolumne Co.



Pursuant to an agreement between the applicant and protestants, a permit term was included that provided for releases of water from the project to satisfy users diverting at the time of the filing regardless of their legal rights. This was allowed as being within the public interest and was more extensive than protection afforded by the terms of the assignment of the state applications.--D 1030, A-12919A etc., Russian River, Mendocino and Sonoma Cos.

Though protest was later withdrawn upon consummation of agreement between applicant and protestant, Board still had before it questions of availability of unappropriated water and beneficial uses, as agreements between parties are not sole criteria for Board decision.--D 1065, A 16175, Lavaggi, etc., Calaveras River, Calaveras County.

Permit made subject to an agreement entered into by applicant and Department of Fish and Game relating to releases of water, minimum pool elevations, and minimum pool capacities.--D 1095, A-5193 etc. Nevada I.D., Middle and South Yuba, Nevada Co.

The matter of respective rights and obligations of applicant and protestant under an agreement was not within the jurisdiction of Board.--D 1132, A-20362 Capitola Berry Farms, Ano Nuevo Creek, San Mateo Co.

Permit made subject to an agreement between the applicants and protestants but Board specifically refused to assume jurisdiction to enforce the agreement.--D 1194, A-11036 etc., Santa Ana Valley Irrigation Co., et al., Santa Ana River, Orange Co. etc.

Board will not assume jurisdiction to enforce agreement between applicant and protestant.--D 1288, A-21901 etc., Moores et al., Moores Creek and Irish Gulch, Mendocino Co., 11/30/67.

Applicant's recognition of prior appropriative and riparian rights of named parties, its stipulation as to their validity, and its agreement not to interfere therewith, as well as its consent to have these considerations included in any order, permit or license issued to applicant and to withdraw its protest accepted by Board.--D 1338, A-22516 Buellton, Santa Ynez River (underflow), Santa Barbara Co., 10/16/69.

Permit issued expressly subject to stipulation between parties to the extent the provisions thereof relate to matters within the jurisdiction of the Board.--D 1344, A-22653 Skinner, Clear Creek, Butte Co., 9/18/69.

Flow bypass provisions in permit based upon bilateral agreement between applicant and protestant.--D 1364, A-22949 Carpenter, Napa River, Napa Co., 11/19/70.

Permittee required to submit reports of agreements reached with downstream holders of rights to the Board, for which purpose jurisdiction was reserved.--D 1365, A-18714 U.S. Bureau of Reclamation, Chowchilla River, Madera Co., 11/19/70.

Diversion allowed under permit conditioned in accordance with water exchange agreement for replacement of river water stored in permittee's reservoir.--D 1377, A-23181 Rancho Encino Co., Poppet Creek, Riverside Co., 8/5/71.

Contract for water deliveries between permittee and utility district criticized by Board for failure to take into account possible multiple beneficial uses of water.

Board called it unsound water management where the point of delivery could have easily been placed further downstream and thus provided streamflow augmentation for a sizeable stretch of the river.--D 1400, A-18721 etc., U.S. Bureau of Reclamation, North Fork American River, Placer Co., 4/11/72, as clarified 5/4/72.

3.5 Changes/Additions in Applications, Permits, Licenses: Purpose, Place of Use, Point of Diversion or Rediversion, and Redistribution of Storage

Petition for change of point of diversion granted when protestants failed to show that the change would interfere with their receiving amounts of water to which they were entitled.--D 759, A-6609 Walton.

Board found that no intervening user would be legally harmed in granting U.S. permission to change point of diversion and enlarge place of use from points downstream from Friant Dam to the dam's diversion works.--D 935, A-234 etc. U.S.A.

Protestant's alleged prior 1914 right to appropriate water by direct diversion could not give protestant the right to store, as a direct diversion right can be converted to a storage right only to the extent that there is no change in rate of diversion from stream or in the period of the year during which the water is diverted.--D 940, A-16849 Baker.

Board refused to act upon Bureau's petition to change points of diversion and places of use under assigned state filings while the previous action of California Water Commission approving the same was being challenged in court.--D 990, A-5625 etc. U.S. Bureau of Reclamation.

Board granted a petition to change point of diversion from one tributary to another upon showing that protestant on the main stream could not be harmed, as less water would be available to applicant at the new point of diversion.--D 1013, A-5644A Georgetown Divide P.U.D.

Petitions to amend application to change character of use to include municipal, industrial, and recreational uses and change place of use by adding lands and new points of rediversion granted where the quantity and season remain unchanged and existing rights could not be adversely affected.--D 1020, A-15764 U.S. Bureau of Reclamation. See also D 1051, A-18744 etc.; D 1056, A-17139 etc.

Petition to change points of diversion and places of use to correct map error approved.--D 1093, A-18199 and A-18200 Lamalfa, Robinson Creek, Mendocino Co.

New Hogan Project found consistent with California Water Plan except for enlarged service area, and it was held not to be in the public interest to restrict place of use under the application.--D 1179, A-11792, etc., Calaveras Co. W.D. et al., Calaveras River, Calaveras and San Joaquin Cos.

Application approved for use of water on land already covered by license where reclaiming of land required more use of water.--D 1199, A-17966 McMullin Reclamation District No. 2075, Stanislaus River, San Joaquin Co.

Board on reconsideration approved changes in applications which had a release from priority of state applications and had not previously been acted upon for lack of Water Commission approval.--D 1248, A-13681 etc., Richvale I.D., Middle Fork Feather River, Plumas and Butte Cos.

Petition for change in place of use denied when it was determined that injury would result to holders of other vested water rights. Petitioners were not allowed to transfer appropriative right obtained for land adjacent to river to other parcel

and then revive their "dormant" riparian right to the river parcel. Such transfer of the license to new land would give petitioners the right to use their share on the new land in addition to whatever quantity is reasonably required on the present place of use and would therefore be illegal, at least against junior appropriators.--D 1282, A-882 Dixon et al., Sacramento River, Sutter Co., 8/31/67.

In determining if an injury would result by allowing a change of place of use, the Board is required by the Water Code to test the possible injury by looking to the present and future, and not to the past.--D 1282, A-882 Dixon et al., Sacramento River, Sutter Co., 8/31/67.

Under right to change place of use the Board could approve an enlargement of the total place of use but require the total irrigated acreage to remain the same.--D 1282, A-882 Dixon et al., Sacramento River, Sutter Co., 8/31/67.

Change of place of use and point of diversion granted since spill and seepage from one of applicants' dams together with downstream tributary inflow provide enough water to satisfy downstream requirements.--D 1287, A-21153 Blythe, San Marcos Creek and Unnamed Streams, San Luis Obispo Co., 11/30/67.

Petitioners are required to make a showing that any change in place of use or point of diversion or both will not be injurious to any legal user of the water involved before Board grants permission for the change.--D 1333, A-21516 Hansen, Russian River, Mendocino Co., 3/6/69.

So long as petitioners do not exceed the equivalent amount allowed for any 30-day period in a shorter span of time, diversion at two points instead of one is allowed.--D 1333, A-21516 Hansen, Russian River, Mendocino County, 3/6/69.

Change in purpose of use allowed where concurrent application covering the subject matter was canceled and its substance included in the instant application, and there would be no injury to any legal user of water.--D 1356, A-18721 etc. U.S. Bureau of Reclamation, North Fork American River etc., Placer etc. Cos., 2/5/70, as amended 12/17/70.

Change in point of diversion granted upon condition inter alia, that petitioner make provision for protecting fish life, give due regard to water quality, make provision to prevent siltation of stream channel and install in- and outflow measuring devices.--D 1362, A-22266 (Permit 15414) Perazzo, Perazzo Canyon, Sierra Co., 7/16/70.

Proposed inclusion of points of rediversion approved in amended application when Board found no injury to any other appropriator thereby, and the change would not initiate any new right.--D 1378, A-23416 Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Applicant's proposed change of point of diversion to location further downstream approved where Board found that no other lawful user of water would be injured thereby.--D 1396, A-23732 Pierce, Miller Creek tributary to Zayante Creek, Santa Cruz Co., 3/2/72.

Board amended permits to include a pumping plant at Hood on the Sacramento River as an authorized point of rediversion of water stored on American River pursuant

to permit, and as an authorized point of direct diversion of American River water.  
--D 1400, A-18721 etc., U.S. Bureau of Reclamation, North Fork American River,  
Placer Co., 4/11/72, as clarified 5/4/72.

### 3.6 Revocation of Permits and Licenses

#### 3.61 Generally

Issuance of permit creates no water right but merely signifies consent of state to the appropriation to extent and under conditions specified in permit, which is subject to revocation in due course for failure to comply with its terms and conditions.--D 921, A-17554 Engler.

### 3.62 Changed Circumstances

License was revoked for the reason that the area at the authorized point of diversion and much of the area of the place of authorized use had been sold to the Division of Highways and was occupied by a freeway.--RD 1, L-2769 Mann.

License revoked where evidence at hearing showed permittee had ceased to use the water from the authorized point of diversion for over three years as it contained too much salt and had used water during that period under other licenses and rights.--RD 19, L-1191 Muzzi.

License revoked when place of use had been subdivided for more than three years and water supplied by a public utility.--RD 26, L-2454 Schabigüe.

License revoked when only water being used was from wells not authorized by or under the terms of the license.--RD (X), A-381 Belli.

Decision D 884 set aside by Superior Court and remanded to Board for reconsideration in light of new and additional evidence presented to the court. Permits previously granted were revoked and competing applications granted in view of changed circumstances.--D 1129, A-12092 United Water Conservation District and A-13417 Calleguas Municipal Water District, Sespe Creek, Ventura Co.

### 3.63 Failure to Proceed/Abandonment of Project

Permit revoked and uncontested hearing where evidence showed that water from a foreign source had been cut off for a number of years and permittee's diversion dam was in disrepair.--RD 2, P-8853 Sutro.

Permit revoked at uncontested hearing upon showing that required construction had not commenced and water had not been applied to beneficial use under terms of permit.--RD 3, P-4603 Estate of Hansen. See also RD 24, P-8688.

Permittee abandoned project contemplated by the application in favor of water from federal project and had assigned permit to a conservation district which claimed it was ready to proceed at time of revocation hearing. Board found there had been no diligence under terms of permit, denied an extension of time to assignee, and revoked the permit.--RD 4, A-14169 Solano I.D.

Permit for domestic use revoked when necessary pumps and pipes were not installed and contemplated homes not built.--RD 9, P-8204 Pelletier.

Permit revoked following hearing where permittee failed to appear and explain the fact that no work had commenced on the pipelines and storage dam contemplated by the permit.--RD 16, A-14529 Goularte.

Permit ordered revoked where no water had been diverted from the authorized point of diversion for over 3 years and no water had been used within the area of authorized use.--RD 18, P-3809 Pritchard. See also RD 12, P-7532; RD 28, P-5694.

License revoked on evidence showing that licensee abandoned the authorized point of diversion when the salt content of the water became too high and then took water covered by other licenses and permits. Board found no authorized use for more than 3 years.--RD 19, A-4848 Muzzi.

The fact that there are no other lawful appropriators from the source does not relieve the permittee from the requirement of due diligence, as outstanding permits deter others from initiating rights and the failure to proceed diligently constitutes an attempt to reserve waters for future use, and is cause for revocation.--RD 29, P-783, A-203 Tule I.D.



3.64 Duplication.

Permittee had a valid license covering 85 percent of area of authorized use under permit in question. Permit revoked as water was being used under previous license.  
--RD 11, P-8935 Lewis.

D.....CONCERNING BOARD JURISDICTION AND PROCEDURE

TOPIC NUMBER	PAGE NUMBER
4.1 <u>Evidentiary Matters and Procedure</u>	124
4.2 <u>Jurisdiction/Duties/Authority of Board</u>	
4.21 Generally	127
4.22 Consideration of Issues as Presented	132
4.23 Jurisdiction over Particular Waters	134
4.24 Retention/Reservation of Jurisdiction	137
4.25 Limitations: Federal, Statutory, Interstate Compact	142
4.3 <u>Reconsideration of Decision</u>	145

\*\*\*\*\*

INDEX	147
-------	-----

#### 4.1 Evidentiary Matters and Procedure

Record deemed insufficient to support a prior 1914 right claimed by the protestants.--D 747, A 13919, Maxwell I. D.

The precise nature of the water was a matter to be developed by the evidence and the motion to dismiss made prior to introduction of evidence was properly overruled by the examiner.--D 856, A 16122, Krupt.

An irrigation district claiming ownership of return flow waters by virtue of W. C. 22078 must establish that the water was originally the property of the district and an unsworn statement by way of letter declaring that as a fact, with no opportunity afforded for cross-examination of the writer, is not admissible evidence.--D 889, A 17223, Ferreira.

An offer by a protestant to withdraw its protest if applicant joins in a joint application considered a tacit admission of the existence of unappropriated waters.--D 892, A 16776, etc., Nunes, et al.

As no evidence was before the Board or available as to reasonable water requirements for land being served by the protestants, the Board considered studies of duty of water in similar mountain valleys.--D 917, A 17814, U. S. Inyo National Forest.

Though evidence at time of the hearing on applications by a municipal utility district for municipal use showed that the proposed use was overwhelmingly industrial as defined by Board's rule 666, as no issue was raised by any party, permits were issued in accordance with the applications.--D 923, A 16454, 17291, Humboldt Bay M.U.D.

Where the Federal Government applies for water right for irrigation having no intention to itself use the water, and when such use is made by others, direct proof of use must be made by the water users. The right by use is vested in those by whom the use has been made.--D 935, A 234, USA, p. 98.

Where applicant presented no evidence on the question of unappropriated water and indicated an intention to rely on its riparian right, the application was denied.--D 945, A 18130, County of L.A.

Board took official notice that under existing law there was no legal means by which the applicant could obtain authority to enter Kings Canyon National Park to construct a reservoir.--D 958, A 10752, Dlouhy.

While applicant is not required to establish with certainty that his undertaking will be successful, he must at least offer a reasonable basis of solution of problems confronting him. He must also show either that his project would, to a substantial extent, fully develop the water resources of the river or that it would not prevent such development by others.--D 958, A 10752, Dlouhy.

Upon failure of certain protestants to present evidence at the hearing to show alleged prejudice to vested rights, the protests were disregarded.--D 1025, A 19022, First Cong. Church of L. A., San Bernardino County.

Reliance upon the evidence submitted during a previous separate hearing on USBR's applications to appropriate from the Sacramento River and Delta, in the absence of objection from the parties, was considered proper as it avoided unnecessary repetition of extensive testimony and voluminous exhibits.--D 1045, A 16185, etc., Whitmire, et al. See also D 1129, A 12092.

In acting on application to appropriate from the Mokelumne River, the Board took official notice of its Decision D 990 relating to the Sacramento River, which is in hydraulic continuity with the Mokelumne, to show no unappropriated water during the months of July through September and also took official notice of Decision D 858 of its predecessor to show lack of unappropriated water in the Mokelumne between July 1 and December 1.--D 1109, A 19725, Simmons, Mokelumne River, San Joaquin County.

Board took judicial notice of D 1056 and considered quantitative limitations on diversions in the area that were expected to be imposed by the California-Nevada Compact in allocating water of the Lake Tahoe Basin. Direct diversion permit for domestic and recreational purposes imposed monthly and yearly limitations in acre-feet.--D 1152, A 19111, etc., Sierra Nevada Water Company and others, Lake Tahoe, Coyote Creek, El Dorado and Placer Counties.

Applicants who had no rights to the source under a court decree claimed that by clearing brush and vegetation they would develop sufficient water to cover their application. No expert testimony was presented upon that issue and the applicants failed to meet their burden of proving that water surplus to the rights of the protestant would be developed by the project.--D 1157, A 20581, Wight, et al, unnamed stream, Tuolumne County.

Procedure for submitting a matter of reconsideration on exhibits and statements in lieu of further hearing agreed to by the parties and the Board on a rehearing.--D 1226, As 11792, etc., Calaveras County W. D. and Tuolumne County W. D. No. 2, Stanislaus River, Calaveras and Tuolumne Counties.

Evidence relating to negotiations between PG&E and DWR concerning purchase of power from Oroville project led to no definite conclusions as to the present value of hydroelectric power and the feasibility of the applicant's project because of various differences in the quantity of power, characteristic of the two projects and also due to the effect of W. C. 11670 on the DWR as a seller of power.--D 1248, As 13681, etc., Richvale I. D., M. F. Feather River, Plumas and Butte Cos.

A water district has the right to use a natural channel for the conveyance of water covered by its appropriative right. However, one who uses a natural channel in such a manner and causes the water to commingle with other water in the channel has the burden of proving what water is his. Once water has been identified as the district's, applicants would be obligated by law not to divert it from the stream channel.--D 1286, A 22041, p. 6, Fruetel, Coon Creek, Sutter County (11/30/67).

Protestants were laymen without the technical background that would justify unqualified reliance in estimating the flow of the creek.--D 1295, A 22111, p. 3, Love Creek Heights Mutual Water Assn., Inc., Love Creek, Santa Cruz County (3/20/68).

Board will not presume that a dam not within jurisdiction of the Department of Water Resources will be unsafe when constructed, in the absence of any cogent evidence to the contrary.--D 1366, A 23306, Bayliss, West Canyon, El Dorado Co., 12/3/70.

## 4.2 Jurisdiction/Duties/Authority of Board

### 4.21 Generally

A contention that, as an irrigation district's bonds have been certified as a legal investment by the bond commissioner, and that the revocation of a district's permits would impair the credit standing of all municipal and public corporations of the State was disregarded in the face of the Board's duties as set forth by the Legislature.--RD 29, A 203, Tule I. D.

Protest alleging that water district's proposed storage dam would inundate their property and destroy attaching riparian rights held to raise a question not before the Board, as issuance of a permit does not purport to authorize the taking of private property (though district could go ahead through the exercise of power of eminent domain).--D 777, A 10872, etc., Oakdale I. D., et al.

Decision on application as it related to onstream storage deferred for one year in order to afford parties an opportunity to settle the matter. Applicant was bound by argument involving a storage reservoir which was subject to different interpretations and Board's predecessor had no jurisdiction over such problem.--D 783, A 13617, Barron.

A protestant's assertion that the applicant does not own the land at the proposed point of diversion and does not hold any right of access thereto presents a disputed matter over which the Board has no jurisdiction and will not bar approval of an application to appropriate water.--D 806, A 14616, Yates.

Board refused to impose conditions in a permit to protect protestant's "property rights" in stream channels and to prevent any future trespasses by applicant on protestant's real property as not being within Board's authority.--D 921, A 17554, Engler.

Right of applicant to recapture his own irrigation waste and seepage water before it passed beyond his land and his right to recapture such waste and seepage from the land of his neighbor by reason of an agreement were considered private matters not within the jurisdiction of the Board.--D 925, A 17752, Busi.

A determination of surplus water in relation to a court decree and the extent of riparian interest was made necessary for the Board's own guidance in determining surplus water and would not constitute a further adjudication of the water rights which could be attainable only by court action.--D 928, A 16162, North Coast Co. W.D.

Board refused to pass upon the nature and extent of rights acquired by U. S. as a result of certain purchase and exchange contracts, as they concluded that unappropriated water existed in amounts sufficient to warrant issuance of permits.--D 935, A 234, etc., USA, p. 83.

Duty of Board in performing its functions is to protect prior rights to the use of water and the fact that reservoirs were approved by Soil Conservation Service and were constructed and put into operation without objection did not relieve the applicant of the responsibility of showing to the Board that the reservoirs could be operated without injury to lawful users of water.--D 936, A 17979, Moskowite; see, however, D 1366, A 23306.

A protest based on objections to the methods and means by which the applicant disposed of drainage water and surplus flows was disregarded as being outside the jurisdiction of the Board.--D 937, A 17639, Drummond.

Board held that it had no jurisdiction to determine whether or not changed conditions made a physical solution under the terms of an arbitration award no longer effective, the proper remedy to determine the question lying in a court of equity.--D 988, Application 18475, City and County of San Francisco.

Board refused to act upon USBR's petition to change points of diversion and places of use under assigned state filings while the previous action of California Water Commission approving the same was being challenged in court.--D 990, A 5625, etc., USBR.

Applicant made a sufficient showing of right of access to the source on protestant's property to justify the issuance of permit, the Board refusing to pass on the question of the scope of an easement granted by deed from protestant to applicant as a matter not within the Board's jurisdiction.--D 1016, A 19003, Olson.

Question of claimed rights of protestants arising through prescription and/or implied grant from former owner held not to be within jurisdiction of the Board and, as permit would be subject to the same, the application was approved.--D 1102, A 19967, Durrer, unnamed spring, Humboldt County.

Protestant Alpine County appearing as the county of origin made no presentation as to future need of water entitled to protection. Also its claim that the acquisition of PG&E facilities by public districts would result in loss of tax revenue and would require it to provide additional public service raised no question within the jurisdiction of the Board.--D 1114, A 11792, etc., Calaveras, Tuolumne and Alpine Counties.

The matter of respective rights and obligations of applicant and protestant under an agreement was not within the jurisdiction of the Board.--D 1132, A 20362, Capitola Berry Farms, Ano Nuevo Creek, San Mateo County.

Contention by protestant that applicant's point of diversion may be located on his property presents a question not within the Board's jurisdiction.--D 1175, A 20901, Puccinelli, unnamed spring, Sonoma County.

Right of access not within jurisdiction of Board.--D 1192, A 20400, Early, Ruby Hill Spring, Tuolumne County. Also D 1193, A 21426.

Permit made subject to an agreement between the applicants and protestants but the Board specifically refused to assume jurisdiction to enforce the agreement.--D 1194, A 11036, etc., Santa Ana Valley Irrigation Co., et al, Santa Ana River, Orange County, etc.

Protests concerned with inundation of certain property by a proposed reservoir held to be a matter not within the Board's jurisdiction.--D 1210, A 12493, Tuolumne County Water District No. 2, Lilly Creek, etc., Tuolumne County.

The final determination of a dispute as to whether a reservoir, the source under the applications, was entirely on one of the applicant's land held not to be within the Board's jurisdiction. The Board relied on civil engineer's survey showing all the applicants had land contiguous to the reservoir for the purpose of the decision.--D 1225, A 21349, etc., of Scott, et al, Pacific-Placer Reservoir, Calaveras County.

Board has no jurisdiction to determine the question of right of access; however, through long use of the pipeline applicants have shown a sufficient apparent right to continue to convey the water from the spring across the protestants' lands to justify the approval of the application.--D 1261, A 22206, Story, Swamp Spring, Plumas County.

Board declined to insert condition requested by protestants that would have provided that protestants would have a right of action against applicants if they invaded protestants' vested rights.--D 1263, A 22254, Donaldson, Tunnel No. 4, Keysville Mine, Kern County.

Controversy between possible future Forest Service permittee and the Forest Service is not within the Board's jurisdiction.--D 1268, A 21532, Johnson Stock Co., unnamed streams, Modoc County.

The Board has no power to adjudicate riparian rights.--D 1282, A 882, Dixon, et al, Sacramento River, Sutter County.

Permit to appropriate water is not intended in any way to indicate that the Board finds the applicants have a legal right of access to the point of diversion.--D 1284, A 21751, Johnson, Glennen Gulch, Mendocino County.

Board will not assume jurisdiction to enforce agreement between applicant and protestant.--D 1288, A 21901, etc., Moores, et al, Moores Creek and Irish Gulch, Mendocino County.

It is for the courts to determine whether an injury takes place when the holder of a pre-1914 appropriative right changes his point of diversion or place of use. No such jurisdiction over pre-1914 appropriative rights is given to the Board.--D 1290, A 353, etc., Fresno Irrigation District, et al, Kings River, etc., Fresno, etc., Counties.

Protestant requested that a condition be included in the permit that would require applicant to pay protestant, at its tariff rates, for all water diverted for commercial purposes outside the periods of time authorized by permit. Such a clause relates to matters outside the jurisdiction of the Board and therefore is not appropriate as a permit condition.--D 1298, A 22632, Christensen, unnamed creek, Santa Clara County.

The Board has no power to impose additional burdens upon the owner of a water right permit by requiring him to accept money from a junior appropriator in lieu of water to which he is entitled. This is true even though the junior appropriator would put the water to a higher use.--D 1320, A 22980, Western Lake Properties, Inc., Big Creek, Tuolumne County.



In proceedings to determine whether application of one party should be approved, the Board has jurisdiction only to grant or deny the application; it does not have jurisdiction to try the validity of the rights of a protestant licensee.--D 1323, A 22601, Gold Crown Mine, Buckeye Ravine, Sierra County.

The Board has no jurisdiction to validate riparian rights, pre-1914 appropriative rights or rights obtained by grant, prescription or by issuing a permit covering past use under any such claimed rights.--D 1324, A 22782, Cuesta La Honda Guild, Woodhams Creek, San Mateo County.

Board may require permittee to request appointment of a watermaster, but the Department of Water Resources has exclusive jurisdiction over establishment of watermaster service areas, appointment of watermasters and the apportionment of watermaster expenses.--D 1344, A 22039, Newhall, etc., Butte Creek, etc., Butte, etc., Cos., 9/18/69.

Board's authority to condition permits in public interest is the same as to historically lengthy diversions as it would be had the water not been previously diverted. Order Rescinding D 1345 (A 18785 and A 18786, Sonoma County FC&WCD and Mendocino County Russian River FC&WCD, South Fork Eel River, Lake and Mendocino Cos.) 1/8/70.

Where protestant proposed condition that permittee not oppose inclusion in watermaster service area, the Board stated that enlarging the watermaster service area in question so as to include permittee's project was matter within exclusive jurisdiction of the Department of Water Resources, not the Board.--D 1362, A 22266 (Permit 15414) Perazzo, Perazzo Canyon, Sierra Co., 7/16/70.

Board is required by law to afford affirmative protection to prior vested rights whenever reasonable/feasible conditions can be formulated. To this end, the Bureau was required to submit reports of agreements reached with downstream holders of rights to the Board, and jurisdiction was reserved for the purpose.--D 1365, A 18714, U. S. Bureau of Reclamation, Chowchilla River, Madera Co., 11/19/70.

Objective of the Board in the Delta decision is to require both the Department of Water Resources and the Bureau to provide water of suitable quality for specified beneficial uses. Where some users sought compensation by way of contracts with the Department for lower quality water and requested the Board to require the Department to do so, the Board stated it has no authority to adjudicate damage amounts which water users may suffer. Board also refused to pass upon the amounts to be paid by users for project water, leaving such determinations to the Legislature or to the users themselves when negotiating with the Department.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Beneficiaries of upstream depletions cannot, under present law, be required to share in cost of maintaining adequate water environment in Delta channels, and any apportionment of costs as to such users must be made by the Legislature, as the Board has no jurisdiction over those beneficiaries for that purpose.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board has no jurisdiction to adjudicate or determine validity of individual vested water rights and condition permits accordingly. Such adjudication is a judicial function.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board has no authority to determine merits of a dispute regarding obligations of parties toward each other as to water deliveries.--D 1381, A 23025, Butte Valley I. D., Butte Creek, Siskiyou Co., 8/5/71.

#### 4.22 Consideration of Issues as Presented

A contention that the construction of a master drainage system outlet and disposal channel contemplated by San Luis Project will reduce the quantity of water available in the lower San Joaquin River and further degrade the quality was held to be outside the issues before Board at hearing on applications of the Bureau for San Luis Project.--D 1020, A 15764, USBR, Old River, San Joaquin County.

Question as to whether or not the applicant's dam was constructed on a spring held not to be within the issues before the Board raised by the application and protest.--D 1023, A 18601, Tuolumne County.

By distinguishing matter under consideration from that considered in earlier decision, Board does not necessarily reaffirm said decision (D 858).--D 1344, A 22039, Newhall, etc., Butte Creek, etc., Butte Co., 9/18/69.

Board terminated the reserved jurisdiction in decisions D 990, D 1291 and D 1356, and stated that the only issues before it were those relating to such reserved jurisdiction to establish or revise conditions for salinity control, for protection of fish and wildlife and to coordinate terms of the various permits for the two projects (State Water Project and Central Valley Project), and being subject to such limitations, it has no authority to redetermine issues and matters which were finally determined in previous hearings.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71.

D 1379 made only interim determinations on the issues then before the Board. Parties not prevented from raising, without prejudice and without necessity of judicial appeal, any question of right pertaining to those determinations in any appropriate board or related judicial proceeding.--Supplement to Order Denying Reconsideration of, and Clarifying and Correcting D 1379 (D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71) 10/13/71.



#### 4.23 Jurisdiction over Particular Waters

Neither the information furnished by the applicant or resulting from a field inspection supported a conclusion that the source filed upon was a subterranean stream flowing through a known and definite channel rather than natural ground water not subject to appropriation under the Water Code. The application was denied.--D 724, A 12328, Alexis.

Evidence showed that the underground source filed upon was a subterranean stream flowing in a known and definite channel.--D 729, A 12869, Shawyer.

Motion made to dismiss an application to appropriate water from "three unnamed springs" as being on its face not within the jurisdiction of the Division as set forth in Section 1200 et sep. of Water Code, denied. Only percolating water is excluded from jurisdiction of Division. To the extent water of a spring rises to the surface of the ground within the channel of a natural water course, it is obviously "surface water" within the meaning of Section 1200.--D 856, A 16122, Krupt.

Jurisdiction of Board to issue a permit to appropriate water from source, an artificial watercourse, as opposed to a natural watercourse.--D 878, A 16329, Harney.

Board denied application and found that evidence showed water covered by the application though appearing as a series of springs was percolating water flowing laterally in a horizontal zone and hence not within jurisdiction of Board as constituting percolating water.--D 915, A 16413, Giles.

Wells held to be supplied from percolating waters rather than by underground stream, and hence the matter not within the jurisdiction of the Board.--D 968, A 17666, Mojave P.U.D.

Applicant's source of water, a well, found to be located within a ground water basin and that it was percolating ground water rather than a subterranean stream flowing through a known and definite channel as required to be within the jurisdiction of the Board.--D 983, A 19161, Richardson.

Percolating water developed in a tunnel taken and used by the persons who developed it and which has not been abandoned is not subject to appropriation by another party, the water being characterized as percolating water over which the Board has no jurisdiction.--D 986, A 17900, 17970, Santa Barbara County Water Agency.

Board refused to include a special term in a permit at the request of the protestant that certain spill and return water not being used belonged to it and could be reclaimed at a later time. Considered not necessary and the Board was without power to determine such rights as the protestant might have to such water.--D 1061, A 17482, etc., Ralph Moss, et al, Sweeney Creek, etc., Solano County.

Applications approved to the extent that wells named as a source tapped and added to the flow of the Russian River and denied to the extent that the source of water was a ground water basin not within the Board's jurisdiction.--D 1110, A 17232 and 17587, Willow County and Millview County Water Districts, Russian River (underflow), Mendocino County.

A reservoir formed by old mine dredging operations considered to have assumed the characteristics of a natural body of water through existence and use over a long period of time.--D 1225, A 21349, etc., Scott, et al, Pacific-Placer Reservoir, Calaveras County.

Application approved that covered water occurring in a reclamation district's drain where no prior water rights in the water claimed by the protestant district and applicant had access to the drain through agreement with the district. Contention by the District that the Board was without jurisdiction over water within its drains was rejected.--D 1241, A 21332, Frolli, Reclamation District 2054 Drainage Canal, Sutter County.

Board has jurisdiction to issue permits to appropriate unappropriated water which flows from an artificial as well as from a natural source. Order Denying Petition for Reconsideration of D 1325 (A 22956, Bradley, Mine Tunnel, Nevada Co.) s.a. D 1263, A 22254; D 1363, A 23085.

Application denied since no permit from Board required to pump percolating ground water.--D 1327, A 21541, Twin Lakes Park Co., Devil Canyon, Los Angeles Co., 1/23/69.

Application denied where applicant's well did not draw upon the underflow of either the Russian River or Mill Creek, the Board having no jurisdiction over the source of the well's water.--D 1337, A 23162, Holliday, Russian River and Mill Creek, Mendocino Co., 3/20/69.

Board found that protestant's well was supplied by percolating waters, which are not within Board's jurisdiction.--D 1357, A 23108, Ballinger, unnamed stream, Sonoma Co., 4/16/70.

An appropriator of water who collects water to storage does not acquire ownership of the water but only the right to use it. Water appropriated under the Board's jurisdiction, once used for the purpose for which appropriated and returned to a stream, is again subject to the Board's jurisdiction and cannot be sold or contracted for use at a place not approved by the Board and made part of the water right concerned.--Order Denying Reconsideration of D 1400 (D 1400, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, Placer Co., 4/11/72, as clarified 5/4/72) 6/1/72.



#### 4.24 Retention/Reservation of Jurisdiction

Where releases from applicant's proposed dam threatened to waterlog lower lands if diverted down the natural channel on one hand, and if bypassed around the natural channel the ground water supplies dependent on the river would be depleted, continuing jurisdiction was ordered, permittee being required to furnish future well records, diversion records, etc., as required to determine the effect of the operation of the project on the natural increment of the stream to ground water supply of lower protestants.--D 702, A 13016, Santa Clara Valley, W.C.D.

Request for special term in permit to retain jurisdiction over fish releases pending the further determination of the subject by Federal Power Commission held unnecessary in view of standard clause in permits stating continuing authority of state engineer to prevent waste, unreasonable use, etc., of water.--D 777, A 10872, etc., Oakdale I. D.

Jurisdiction over the applications was retained when the data was presented at the hearing incomplete, the Board reserving the right to make further orders based on results of studies to be conducted by permittee.--D 869, A 11198, etc., USA.

Permit subject to a prospective agreement between the U. S. and certain water users with respect to releases for consumptive use. If the agreement was not reached within one year, the matter would be returned to the Board for further hearing.--D 893, A 12140, etc., City of Sacramento.

Board retained jurisdiction for trial period of several years in order to accomplish more detailed study of hydrology.--D 894, A 17002, Pleasanton Township W. D.

Permits conditioned to provide for continuing jurisdiction of the Board in order that the permits might be brought into accord with any interstate compact that might later govern.--D 913, A 15672, USBR.

Board imposed a condition that permittee and certain districts and city must submit a later report on negotiations on water service contracts and upon failure to execute contracts, a further hearing would be held to show cause. Further, that unreasonable failure to execute said contracts would result in revocation of permittees' permits.--D 935, A 234, etc., USA.

Board refused to retain jurisdiction for the purpose of requiring applicant proposing to construct a project on the Merced River to make releases insuring water of proper quality to protestants on the San Joaquin River holding prior rights where the quality of water was deteriorating due to a number of causes not chargeable to the applicant's project, and there was substantial evidence that the project would be operated so as not to worsen and perhaps to improve the overall water quality problem facing the protestants.--D 979, A 16186, Merced I. D.



Board retained jurisdiction to conform permits to final Federal court action instituted to determine rights on Santa Margarita River.--D 980, A 18393, Yackey and Taylor.

Board reserved jurisdiction over permits issued to the USBR in the Sacramento-San Joaquin Delta over the matter of salinity control for three years to allow state, federal and local interests time in which to work out this common problem, during which time ample water was found to be available to maintain a fresh water hydraulic barrier for the purpose of repelling salt water encroachment.--D 990, A 5625, etc., USBR.

Lacking sufficient information to finally determine what conditions were necessary to protect downstream vested rights, the Board ordered a trial period of 15 years to determine the effect of the project on such rights, during which time the Board reserved jurisdiction over the matter.--D 1011, A 17123, 17962, San Luis Obispo FC&WCD.

Board reserved continuing jurisdiction for the purpose of formulating terms and conditions relative to salinity control in the Sacramento-San Joaquin Delta and required permittee to make semi-annual reports as to results of negotiations in this field between permittee, users and the State of California.--D 1020, A 15764, USBR, Old River, San Joaquin Co.

Jurisdiction reserved over a permit to allow inclusion of a term providing minimum flows for fishlife below an enlarged reservoir upon approval of plans and specifications of the enlarged dam by the DWR. In interim, permittee required to furnish the Board with operation and feasibility studies.--D 1222, A 20625, City of St. Helena, Bell Creek, Napa County.

Board reserved jurisdiction over a permit for the purpose of conforming the season of diversion to later findings of the Board on prior applications involving water in the Sacramento and San Joaquin River basins and the Delta with action by the Board to be taken only after notice to interested parties and an opportunity for hearing.--D 1243, A 21815, Roy, Beegum Creek, Tehama County.

Board reserved jurisdiction to require permittee to construct, operate and maintain: a) recreational facilities at project reservoirs in accordance with order of the FPC; b) any consistent but supplementary Davis-Grunsky recreation facilities found to be necessary and approved by DWR.--D 1248, A 13681, etc., Richvale I. D., M. F. Feather River, Plumas and Butte Counties.

Board retained jurisdiction for three years for the purpose of formulating terms and conditions relative to water quality in Sacramento Delta.--D 1275, A 5629, etc., Calif. DWR, Feather River, etc., Butte, etc., Counties.

Jurisdiction retained to conform diversion season for permit to later Board findings on prior applications involving water in the Sacramento River Basin and the Delta.--D 1328, A 22946, SMM Farms, Inc., and Kalfsbeek, Colusa Trough, Colusa Co., 2/6/69. See also D 1331, D 1344.

Jurisdiction was retained by the Board in D 886 until 2/73 in order to determine amounts, times and release rates of water past U. S. Bureau of Reclamation's Cachuma Dam on the Santa Ynez River, as would be required to satisfy downstream rights and maintain percolation.--D 1338, A 22516, Buellton, A 22423, Solvang, A 22454, Petan Co., Santa Ynez River underflow, Id., and Alisal Creek, respectively, Santa Barbara Co., 5/1/69.

Jurisdiction reserved to add terms and conditions to the permit relating to the amount of flow required to maintain fish life.--D 1344, A 22039, Newhall, A 22321, Gorrill, Butte Creek, etc., Butte Co., 9/18/69.

Board reserved jurisdiction to formulate terms and conditions relative to flows to be maintained from Auburn Dam to the mouth of the American River for recreational purposes and fish and wildlife protection and enhancement, as well as to impose additional terms and conditions, including a further reservation of jurisdiction, relative to water quality, flows, protected uses and coordination of prior and subsequent terms in permits, as these factors affect the Sacramento-San Joaquin Delta Water Supply.--D 1356, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, etc., Placer Co., 2/5/70, as amended 12/17/70.

Jurisdiction reserved for changes or revocation in conformance with findings on "Application 5625 and 38 other applications to appropriate from the Sacramento-San Joaquin Delta..." or any other prior application.--D 1359, A 23140, River Development Co., Sacramento River, Tehama Co., 5/21/70.

Board reserved continuing jurisdiction for purpose of coordinating terms and conditions of permit with those of other permits issued pursuant to applications by U. S. in furtherance of federal CVP and applications of state in furtherance of the State Water Project.--D 1361, A 20350, U. S. Bureau of Reclamation, American River and Deer Creek, Sacramento Co., 7/16/70.

Board reserved continuing jurisdiction for the purpose of formulating or revising terms and conditions relative to salinity control in the Sacramento-San Joaquin Delta.--D 1361, A 20350, U. S. Bureau of Reclamation, American River and Deer Creek, Sacramento Co., 7/16/70.

Jurisdiction reserved to modify minimum fisheries flow requirements on Cosumnes River.--D 1378, A 23416, Bank of America, Cosumnes River and Unnamed Stream, Sacramento Co., 8/5/71, as amended 9/16/71.

Bureau's contention that jurisdiction reserved in previous decisions had expired because of "undue delay" in holding further hearings held without merit since the decision contained no time limit and none could exist, at least until the issuance of licenses on the permits.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board's reservations of jurisdiction regarding beneficial uses to be protected encompass uses which state and federal governments have designated for protection pursuant to the Federal Water Pollution Control Act, and in compliance therewith, in addition to statutory authority, the Board has the duty and authority to control any necessary Delta Water Quality parameters.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board continued the reservation of jurisdiction over permits issued pursuant to Bureau applications for the purpose of formulating terms and conditions relative to flows to be maintained from Nimbus Dam downstream to the mouth of the American River for recreational purposes and for protection and enhancement of fish and wildlife, which jurisdiction was initially reserved in D 1356.-- D 1400, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, Placer Co., 4/11/72, as clarified 5/4/72.



#### 4.25 Limitations: Federal, Statutory, Interstate Compact

Water Commission Act interpreted so as to leave Division without jurisdiction to impose conditions relative to flood control.--D 858, A 11792, etc., Calaveras W.D., et al.

Permits conditioned to provide for continuing jurisdiction of the Board in order that the permits might be brought into accord with any interstate compact that might later govern.--D 913, A 15672, USBR.

Applications by U. S. as related to storage of water for flood control purposes were denied as a matter exclusively under federal authority.--D 935, A 234, etc., USA.

Application by USBR to appropriate water for purpose of navigation and flood control denied for lack of jurisdiction in view of the paramount power of U. S. over the subject under the commerce clause of the U. S. Constitution.--D 990, A 5625, etc., USBR.

Contention by the USBR that it was entitled to permits on Sacramento River and Delta free of any restrictive terms and conditions by authority of Ivanhoe decision was rejected by the Board.--D 990, A 5625, etc., USBR.

Board's power to authorize appropriation of unappropriated water from the Truckee River, an interstate stream, is limited to California's equitable share of such water.--D 1056, A 17139, etc., Oakwood Investment Co., Placer and El Dorado Counties.

A permit for flood control purposes deemed unnecessary for USBR project, as regulation for flood control purposes is a continuous paramount power of the U. S. under the commerce clause of the U. S. Constitution.--D 1100, A 18115 and 19451, USBR, Stony Creek, Tehama County. See also D 1365, A 18714.

Board took judicial notice of D 1056 and considered quantitative limitations on diversions in the area that were expected to be imposed by the California-Nevada Compact in allocating water of the Lake Tahoe Basin. Direct diversion permit for domestic and recreational purposes imposed monthly and yearly limitations in acre-feet.--D 1152, A 19111, etc., Sierra Nevada Water Company and others, Lake Tahoe, Coyote Creek, El Dorado and Placer Counties.

Board had previously found that, due to possible limitations of water supply from Lake Tahoe to California through interstate compact for allocation of water in Tahoe Basin, the reservation of large quantities for long-range future development was against the public interest, and prospective uses were considered only through 1970. The Board accordingly limited estimated project uses from the year 2000 to the year 1970 and revised claimed requirements.--D 1173, A 18934, Lake Tahoe Gold Mining Co., Madden Creek, Placer County.

Decision approving application on West Fork of Carson River placed applicant on notice that he would be first among holders of California water rights to be subject to possible loss or modification by anticipated California-Nevada Compact.--D 1184, A 19207, etc., Heise Land and Livestock Co., West Fork Carson, Alpine County.

Held not to be in public interest to give unqualified approval to storage application on tributary to Lake Tahoe which was for exclusively recreational use. Permit term provides that use thereunder will be subordinate to future requirements for domestic or municipal purposes, the clause becoming operative when California's allotment under California-Nevada Compact is exhausted.-- D 1200, A 19965, Tahoe Paradise, Inc., Upper Truckee River, El Dorado County.

Board rescinded decision granting permits which were based on accommodation with diversions for power generation by utility company, where it was shown that the Federal Power Commission could recapture the power license, causing alterations in utility's project and the status of uses to which permittees were subject. Order Rescinding D 1345 (Applications 18785 and 18786) 1/8/70.

The Board's authority to condition permits applies to federal agencies which request and receive them.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Board found the Bureau's positions regarding salinity control untenable in light of national policy expressed in the Environmental Quality Improvement Act of 1970, the National Environmental Policy Act of 1969, Section 21 (a) of the Federal Water Pollution Control Act, and Executive Order 11514 of March 5, 1970.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.



#### 4.3 Reconsideration of Decision

Decision D 884 set aside by Superior Court and remanded to the Board for reconsideration in the light of new and additional evidence presented to the court following the decision. Permits previously granted were revoked and competing applications granted in view of changed circumstances.--D 1129, A 12092, United W.C.D. and A 13417, Calleguas M.W.D., Sespe Creek, Ventura Co.

Decision on reconsideration took into consideration a proposed project presented by one of the applicants though unsupported by an application after court decision that Board's original decision was deficient in failing to consider the project.--D 1226, A 11792, etc., Calaveras Co. W.D. and Tuolumne Co. W. D. No. 2, Stanislaus River, Calaveras and Tuolumne Cos.

On reconsideration Board refused to impose a permit term requiring permittee to furnish the Board assurance that recreation facilities will be constructed, operated and maintained to accommodate the visitor days and to generate recreational expenditures referred to as an objective in the previous decision, the Department of Water Resources having a statutory duty to pass on the adequacy of recreational facilities under the Davis-Grunsky Act. Mandatory language in regard to specific releases for fish protection was, however, added to the original decision.--D 1248, A 13681, etc., Richvale I.D., Middle Fork Feather River, Plumas and Butte Cos.

Reconsideration denied where Board affirmed its jurisdiction over the subject matter upon which the decision had been based. Order Denying Petition for Reconsideration of D 1325 (A 22956 Bradley, Mine Tunnel, Nevada Co.), 3/20/69.

Decision set aside so that protestant may have time and opportunity to present further evidence and argument concerning the validity of an appropriative storage right held by it. Order for Reconsideration of D 1332 (A 22314, Dye Creek Cattle Co. and Tuscan Co., Unnamed Stream, Lassen Co.), 4/17/69.

Portion of decision reconsidered and amended where applicant requested more specific amounts and conditions regarding releases from his proposed reservoir, in absence of any protests by affected parties. Order Amending D 1338 (A 22454, Petan, Alisal Creek, Santa Barbara Co.), 10/16/69.

Board ordered reconsideration of decision upon showing by protestant that under permit as approved in that decision the possibility of diversion existed without necessity of making provisions to maintain fish life. Order Rescinding D 1345 (A 18785 and A 18786, Sonoma County FC&WCD and Mendocino County Russian River FC&WCD, South Fork Eel River, Lake and Mendocino Cos.), 1/8/70.

Deletion of a permit condition upon reconsideration is within the scope of the Board's reconsideration power provided that such action is directly responsive to the issue which is being reconsidered. The Board is not limited to the precise action that a petition for reconsideration requests.--D 1356, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, etc., Placer, etc., Cos., 2/5/70, as amended 12/17/70.



Petition for Reconsideration granted where issue raised was substantial and had not been considered by the Board in making its initial decision.--Order for Reconsideration of D 1356 (D 1356, A 18721, etc., U. S. Bureau of Reclamation, North Fork American River, etc., Placer, etc., Cos., 2/5/70), 4/2/70.

In denying reconsideration of its decision, the Board refused to modify water quality standards or alter monitoring criteria as such matters were fully considered in the decision and no cause was shown to justify any different conclusions, although it did make some relatively minor amendments, corrections and clarifications in its denial order.--Order Denying Reconsideration of, and Clarifying and Correcting Decision D 1379 (D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71) 9/16/71, and Supplement thereto, 10/13/71.

Delta Water Rights hearing subject to reopening if conditions warrant or if the parties are not negotiating water service contracts in good faith, but not later than July 1, 1978 in any event, to receive further evidence relating to salinity control, protection of fish and wildlife and coordination of terms and conditions of permits with those arising in subsequent Delta decisions.--D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71 and 10/13/71.

Decision D 1379 made only interim determinations on the issues then before the Board. Parties not prevented from raising, without prejudice and without necessity of judicial appeal, any question of right pertaining to those determinations in any appropriate Board or related judicial proceeding.--Supplement to Order Denying Reconsideration of, and Clarifying and Correcting D 1379 (D 1379, A 5625 and 38 others, U. S. Bureau of Reclamation and California DWR, Sacramento-San Joaquin Delta Water Supply, 7/28/71, as clarified and corrected 9/16/71), 10/13/71.

NOTE

THIS INDEX DOES NOT PURPORT TO LEAD ITS USER TO A COMPREHENSIVE EXPLANATION OR DEFINITION OF ANY OF THE LISTED ENTRIES. ITS PURPOSE IS MERELY TO DIRECT ONE TO THAT PART OF THE DIGEST WHEREIN IS TO BE FOUND AN ABSTRACT OF A BOARD DECISION IN WHICH THE BOARD HAS MENTIONED, DEFINED, EXPLAINED, DISCLAIMED, CONSIDERED, CONDITIONED OR OTHERWISE TREATED THE SUBJECT MATTER LISTED UNDER THE PARTICULAR ENTRY.

=====INDEX=====

ABANDONMENT	
...of project as affecting permit/license-----	121
ABILITY TO PROCEED	
...under application to appropriate-----	54,58
ACCESS	
...grant of, as permit term-----	82
...to project works for inspection purposes, Board's requirement of-----	49,82
...to source	
as affecting application to appropriate-----	63,64
as affecting permit/license-----	63,64
or to place of use for the general public-----	See PUBLIC ACCESS
power of Board to grant-----	63,64,129
ADJUDICATION	
...of water rights--See COURT DECREES	
<u>See also</u> generally WATER RESOURCES CONTROL BOARD	
ADMINISTRATION	
...of water rights generally-----	124-144
AGREEMENTS AND STIPULATIONS	
<u>See</u> headings under STIPULATIONS AND AGREEMENTS	
ALLOCATION OF WATER	
...by court decree-----	11,12
<u>See also</u> AVAILABILITY, prior interests as affecting: adjudications and decrees	
...by interstate compact-----	3,4,5,71,125,142-144
<u>See also</u> AVAILABILITY, prior interests as affecting: allocations	
<u>See also</u> WATER RESOURCES CONTROL BOARD, limi- tations upon powers or jurisdiction of	
...by Water Resources Control Board pursuant to findings-- <u>See</u> generally headings under AVAILABILITY	
ALTERNATE SUPPLY	
...of water	
as affecting availability for appropriation-----	35,36
consideration given to, in permits/licenses-----	70,71,74,79,80
AMENDMENTS	
...to applications-----	55,116-118
...to permits/licenses-----	68,69,116-118
APPEARANCE OF PARTIES	
...as affecting applications to appropriate-----	65,66
...as affecting disposition of protest-----	103

## APPLICATIONS TO APPROPRIATE WATER

...ability to proceed under-----	54,58
...access to source as affecting-----	63,64
...amendments to and deletions from-----	55,116-118
...appearance/response of applicant as affecting-----	65,66
...assignment of-----	60-62
...deferral of-----	55
...dismissal/cancellation of-----	65,66
...duplication of-----	59
...extensions of-----	55
...filings under Section 12 of Water Commission Act--	7
...priority of-----	60,62
...procedural requirements for, generally-----	54,65,66
...showing of plan, purpose and intent to proceed under-----	56,57

## APPROPRIATION

...effect of prior interests on-- <u>See</u> generally AVAILABILITY, prior interests as affecting	
--	--

## ARTIFICIAL WATERS

...as affecting availability of unappropriated water-	24
---	----

## ASSIGNMENT

...of applications-- <u>See</u> APPLICATIONS, assignment of	
...of permits and licenses-- <u>See</u> PERMITS AND LICENSES, extensions and assignments of	
...of state filings-- <u>See</u> APPLICATIONS, assignment of	

## AVAILABILITY OF WATER FOR APPROPRIATION

...generally-----	2,17-19
...particular waters as affecting	
foreign, artificial and mine-tunnel waters-----	24
ground water and underflow-----	25-27
lakes and littoral waters-----	29
return flows-----	30
salvaged and developed waters-----	33,34
spring waters-----	28
surplus waters-----	32
waste, drainage and seepage waters-----	31
...physical determinations as affecting	
duty of water/waste-----	20-22
hydraulic continuity-----	23
supply measurements and observations-----	17-19
...prior interests as affecting	
adjudications and decrees-----	11,12
allocations-----	3,4,5,71,125,142-144
changed circumstances-----	11,13-15
generally-----	2-5
pre-1914 rights-----	6,7
previous decisions/determinations of Board-----	13-16
reservations for watershed or subsequent uses---	3-5
riparian rights-----	8-10
seasonal adjustments-----	13-16

AVAILABILITY OF WATER FOR APPROPRIATION, Cont'd	
...rotation as affecting-----	37
...stored water/reservoirs as affecting-----	38,39
...supplemental/alternate supplies as affecting-----	35,36
BENEFICIAL USE	
<u>See</u> USES, reasonable and beneficial	
CANCELLATION	
...of applications-----	65,66
...of permits and licenses-- <u>See</u> REVOCATION	
CHANGED CIRCUMSTANCES	
...as affecting availability of unappropriated water--	11,13-15
...as affecting permits and licenses-----	120
CHANGES/ALTERATIONS	
...in applications-----	55,116-118
...in permits and licenses-----	68,69,116-118
CONDITIONS	
...of water appropriation-- <u>See</u> generally PERMITS AND LICENSES, terms, conditions and special consider- ations in	
CORRELATIVE RIGHT	
...as related to ground water-----	27
COUNTY OF ORIGIN	
<u>See</u> WATERSHED PROTECTION	
COURT DECREES	
...as affecting availability of water for appropriation-----	11,12
...as affecting powers or jurisdiction of Board-----	11,12,142-144
...as affecting disposition of protest-----	11,105,106
DAMS	
...construction of, protest based upon-----	80,104,107
...terms and conditions relating to-----	76-81
DEFERRAL	
...of applications-----	55
DEFINITE CHANNELS/UNDERFLOW	
<u>See</u> GROUND WATER	
DENIAL	
...of applications-----	65,66
DEVELOPED WATER	
...as affecting availability of unappropriated water--	33,34

DILIGENCE	
...requirement of, as affecting permits-----	68-70,73,119,121
DISMISSAL	
...of application to appropriate-----	65,66
...of protest	
generally-----	112
upon showing of lack of harm-----	104-111
DIVERSION	
...reasonableness of method of-----	41-44,73
...to storage, consideration affecting-----	76-81
DOMESTIC USE	
...of water generally-----	41-44,50-52
DRAINAGE WATER	
...as affecting availability of unappropriated water-	31
DUPLICATION	
...of quantities, uses, project, etc.	
in applications-----	59
in permits and licenses-----	59,70-74,122
DUTIES OF BOARD	
<u>See</u> WATER RESOURCES CONTROL BOARD, duties and powers of	
DUTY OF WATER	
...determinations of, as affecting availability of	
unappropriated water-----	20-22
EASEMENT	
...grant of, as permit/license term-----	97
<u>See also</u> headings under ACCESS	
ENHANCEMENT	
...of fish and wildlife-----	83-86
EXCHANGE OF WATER	
...as affecting availability of unappropriated water-	35,36
...permit/license terms conditioned on-----	70,71,74,79,80
EXTENSIONS	
...of applications-----	55
...of permits-----	68
EVIDENCE	
<u>See</u> WATER RESOURCES CONTROL BOARD, evidentiary and procedural	
workings of	
FAILURE TO PROCEED	
...as affecting applications-----	65,66
...as affecting permits-----	121
FEASIBILITY	
...of project and project finances-----	58

FEDERAL-STATE MATTERS	
...as affecting duties, powers, jurisdiction of Board-----	127-131,142-144
FILING	
...of applications, procedural requirements for-----	54,65,66
...of protests, procedural requirements for-----	103,112
FISH AND GAME	
...protests concerned with, showing of harm as affecting-----	105,107
...terms and conditions protecting-----	83-86
FISH CULTURE	
...as beneficial use-----	41-43
FISHING	
...as condition of permit/license-- <u>See</u> generally headings under RECREATION	
FLOOD CONTROL	
...as paramount federal power-----	142-144
...regulation of flows for-----	70,142-144
FLOW PRESERVATION	
...for fish and game protection-----	83-86
...for prior uses generally-----	2,67,70-81
...for recreation purposes-----	96,97
...for water quality maintenance-----	87-90
FLOW REGULATION	
...for flood control-----	70,142-144
...from reservoirs generally-----	76-81
...through watermaster service-----	73,130
FOREIGN WATER	
...as affecting availability of unappropriated water-	24
FUTURE USE AND DEVELOPMENT OF WATER	
...appropriation for-----	45,46
...reservations for-----	3-5,45,46,99-102
GROUND WATER	
...as affecting availability of unappropriated water-	25-27
HARM	
...showing of, by protestant-----	104-111
HISTORIC FLOWS AND USES	
...as affecting disposition of protest, generally----	104,105,107,109
HYDRAULIC CONTINUITY	
...showing of, as affecting availability of unappropriated water-----	23
...showing of, as affecting disposition of protest---	106-111

INSPECTION	
...of project works, conditions regarding-----	49,82
INTENT TO PROCEED	
...under application-----	56,57
INTERIM USE	
...of water-----	47,48
INTERSTATE COMPACT	
...allocation of water under, as affecting availability	
of unappropriated water-----	3-5
...as affecting powers or jurisdiction of Board-----	142-144
...permit/license condition based on-----	71
IRRIGATION USE	
...of water generally-----	41-44,50-52
ISSUES	
...consideration of, by Board-----	124-126,132
...redetermination of-----	69,132
JURISDICTION	
...of Board, generally-----	127-144
...of Board, limitations upon-----	116,119,127-131,142-144
...of Board over particular waters-----	134-136
...of Board, retention/reservation of-----	137-141
LAKES	
...as affecting availability of unappropriated water-	29
LICENSES	
<u>See</u> PERMITS AND LICENSES	
LIMITATIONS	
...on availability of unappropriated water-- <u>See</u> generally	
headings under AVAILABILITY	
...on combination of different water rights in	
permits or licenses-----	59,70-74,122
...on jurisdiction or powers of Board-----	127-131,142-144
LITTORAL WATERS	
...as affecting availability of unappropriated water-	29
MEASUREMENT OF FLOWS	
...to determine availability of unappropriated water-	17-19
MEASURING DEVICES	
...installation, maintenance and use of, as permit or	
license term-----	76-81
MINE TUNNELS	
...water flowing through, in or from, as affecting	
availability of unappropriated water-----	24



MUNICIPAL USE	
...of water-----	42,43,50-52
MUNICIPALITY	
...priority of applications of-----	60-62
...priority of water use by-----	50-52
OUTFLOW	
...maintenance of-- <u>See</u> generally headings under FLOW PRESERVATION	
...pipe from reservoirs, conditions relating to-----	75,76-81
PAST USE	
...of water-- <u>See</u> PROTESTS, historical use as affecting	
PAYMENT FOR WATER	
...Board's power to determine-----	130,131
PERMITS AND LICENSES	
...amendments and changes in-----	68,69,116-118
...extensions and assignments of-----	68,69
...general considerations regarding-----	67
...revocation of	
due to changed circumstances-----	120
due to duplication-----	122
due to failure to proceed or abandonment of project-----	119,121
...terms, conditions and special considerations in	
access terms for inspection of works-----	82
fish and game protection-----	83-86
generally-----	70-75
public interest-----	91-95
recreation and public access-----	96-98
storage and reservoir considerations-----	76-81
water quality-----	87-90
watershed protection-----	99-102
PHYSICAL CRITERIA	
...as affecting availability of unappropriated water-----	17-23
PHYSICAL SOLUTION	
...as affecting availability of unappropriated water-----	35,36
...consideration given to, in permit or license-----	70,71,74
PLACE OF USE	
...changes in-----	68,74,116-118
PLAN FOR PROJECT	
...showing of, as application requirement-----	56,57
POINT OF DIVERSION/REDIVERSION	
...changes in-----	69,116-118

PRE-1914 RIGHTS	
...as affecting availability of unappropriated water-	6,7
PRESERVATION	
...of flows-- <u>See</u> FLOW PRESERVATION	
PRIOR APPROPRIATION	
...of water-- <u>See</u> generally headings under AVAILABILITY, prior interests as affecting	
PRIOR INTERESTS	
...in, and claims to, desired water-- <u>See</u> generally headings under AVAILABILITY, prior interests as affecting	
PRIORITY	
...of applications to appropriate-----	60-62,68
...of uses of water-----	50-52
PROCEDURES	
...for appropriation of water-----	54,65,66
...of Board, generally-----	124-126
PROJECT	
...abandonment of, as affecting permit-----	121
...changes in, at application stage-----	55,116-118
...changes in, at permit or license stage-----	68,69,116-118
...duplication of-----	59,122
...exchange/sale/purchase of water from, permit or license terms conditioned upon-----	70,71,74,79,80
...failure to proceed with-- <u>See</u> abandonment of	
...feasibility of-----	58
...intent to proceed with-----	56,57
...purpose of-- <u>See</u> headings under PURPOSE OF PROJECT	
...works, access to for inspection purposes-----	82
PROOF OF USE	
...of water-----	49
PROSPECTIVE USE	
...of water-- <u>See</u> FUTURE USE AND DEVELOPMENT OF WATER	
PROTESTS	
...appearance/response of protestant as affecting disposition of-----	103
...dismissal of-----	112
...historical use as affecting disposition of-----	104,105,107,109
...probability of harm as affecting disposition of---	104-106,108,109
...procedural requirements for, generally-----	103,112
...showing of harm by protestant as affecting disposition of generally-----	104-111
hydraulic continuity between protestant's and applicant's respective sources-----	106-111
PUBLIC ACCESS	
...to source or to place of use-----	96-98

PUBLIC INTEREST	
...as affecting Board decisions in conditioning permits and licenses-----	91-95
PUEBLO RIGHT	
...as affecting availability of unappropriated water-	2
PURCHASE OF WATER	
...as affecting availability of unappropriated water-	35,36
...payment for, Board's authority to decide on-----	131
...permit terms conditioned on-----	70,71,74,79,80
PURPOSE OF PROJECT	
...as related to beneficial use of water-----	41-44
...as related to priority of use-----	50-52
...changes in, at application stage-----	55,116-118
...changes in, at permit stage-----	116-118
...showing of, when applying to appropriate-----	56,57
REASONABLE DIVERSION	
...of water-----	41-44,73
REASONABLE USE	
...of water-----	41-44
RECONSIDERATION	
...of decision by Board-----	145,146
RECORDS AND REPORTS	
...permit/license terms requiring furnishing of-----	49,71-74,76,78
RECREATION	
...as being in the public interest and/or of public benefit, generally-----	91-98
...as reasonable and beneficial use of water-----	41-44
...provision for, as permit/license term-----	96-98
REDETERMINATION OF ISSUES	
...in subsequent proceedings, restrictions on-----	69,132
REDUCTION	
...of outflows from reservoir-- <u>See</u> headings under FLOW REGULATION	
...of quantity of water appropriated under permit----	71-73,78
REGULATION OF FLOWS	
<u>See</u> FLOW REGULATION	
REQUIREMENTS	
...of water for particular uses-----	20-22
...of water to satisfy vested prior rights-- <u>See</u> generally headings under AVAILABILITY, prior interests as affecting; and under PERMITS AND LICENSES, terms, conditions and special considerations in	

RESERVATION

- ...of jurisdiction by Board--See RETENTION OF JURISDICTION
- ...of water for future use in watershed-----3-5,45,46,99-102

RESERVOIRS

- ...and stored water as affecting availability of unappropriated water-----38,39
- ...terms and conditions relating to-----76-81

RESTRICTIONS

- ...in permits and licenses--See generally headings under PERMITS AND LICENSES, terms, conditions and special considerations in
- ...on availability of unappropriated water--See generally headings under AVAILABILITY
- ...on jurisdiction or powers of Board--See generally headings under WATER RESOURCES CONTROL BOARD

RETENTION OF JURISDICTION

- ...as Board procedure-----137-141
- ...as permit term-----137-141
- ...to coordinate present terms and conditions with those in past and/or future permits/licenses----137-141

RETURN FLOWS

- ...as affecting availability of unappropriated water-30

REVOCAATION

- ...of permits/licenses, generally-----119-122
- ...of protestant's permit or license as affecting disposition of protest-----112

RIGHT OF ACCESS

- See ACCESS; See also EASEMENT

RIGHT OF WAY

- See ACCESS; See also EASEMENT

RIGHTS TO USE WATER

- ...determination of, generally-----127-144

RIPARIAN RIGHTS

- ...as affecting availability of unappropriated water-8-10
- ...power of Board to adjudicate-----127-131

ROTATION

- ...as affecting availability of unappropriated water-37
- ...as permit/license term-----37

SALE OF WATER

- See PURCHASE OF WATER

SALINITY CONTROL

- ...as permit/license term-----80,87-90

SALVAGED WATER	
...as affecting availability of unappropriated water-	33,34
SEEPAGE AND EVAPORATION LOSS	
...replacement of, as permit/license term-----	76,77,80
SEEPAGE WATER	
...as affecting availability of unappropriated water-	31
SOURCE OF WATER	
...access to, as affecting application-----	63,64
...determination of rights to, generally-----	127-144
...hydraulic continuity of lower source with	
as affecting availability of unappropriated	
water-----	23
as affecting disposition of protest-----	106-110
SPRING WATER	
...as affecting availability of unappropriated water-	28
STATE FILINGS	
...assignment of-----	60-62
...priority of-----	60-62
...provisions for watershed protection in-----	3-5,60-62,99-102
STIPULATIONS AND AGREEMENTS	
...between/among parties	
adequacy or necessity of, Board's disclaimers	
as to-----	74
inclusion of in, or made basis of, permit/	
license terms-----	70-72,74,76,79
STORAGE OF WATER	
...and reservoirs, conditions applicable to-----	76-81
...as affecting availability of unappropriated	
water-----	38,39
SUBSEQUENT USE	
...reservation of water for-----	3-5,45,46,99-102
SUPPLEMENTS	
...to water supply, as affecting availability of	
unappropriated water-----	35,36
...to water supply, considerations given to, in	
permits and licenses-----	70,71,74,79,80
SURPLUS WATER	
...as affecting availability of unappropriated water-	32
TERMS	
...coordination of, with past and/or future permits	
and licenses-----	137-141
...in permits and licenses generally-- <u>See</u> headings	
under PERMITS AND LICENSES, terms, conditions	
and special considerations in	

UNDERFLOW

See GROUND WATER

UNITED STATES

...as appropriator of water, Board's relations with,  
generally-----128,130,131,137-144

USES

...of water  
historic, as affecting protest-----104,105,107,109  
interim-----47,48  
priority of-----50-52  
proof of-----49  
prospective-----3-5,45,46,99-102  
reasonable and beneficial-----41-44  
recreational-----41-44  
wasteful-----20-22,41-44

VEGETATION

...removal of, as permit term-----75-79

WASTE

...of water-----20-22,41-44,73  
...water as affecting availability of unappropriated  
water-----31  
...water as affecting water quality-----87-90

WATER COMMISSION ACT

...Section 12 filings under-----7

WATER COMPANIES

...permit term requiring establishment of, under  
certain conditions-----68,74

WATERMASTER SERVICE

...authority of Board to require permittee/licensee  
to request-----73,130

WATER SUPPLY

...degradation of-----87-90  
...measurements of, and other physical determinations  
relative to-----17-23

See also headings under SOURCE OF WATER

WATER QUALITY

...terms, conditions and other considerations relative  
to-----80,87-90

WATER RESOURCES CONTROL BOARD

...duties, powers and jurisdiction of, generally-----73,127-144  
...evidentiary and procedural proceedings of-----124-126  
...limitations upon powers or jurisdiction of-----116,119,127-131,142-144  
...particular waters affecting jurisdiction of-----134-136  
...reconsideration of decision by-----145,146

WATER RESOURCES CONTROL BOARD, Cont'd

...redetermination of issues by-----69,132  
...retention of jurisdiction by-----137-141

WATERSHED PROTECTION

...as related to future use and development-----45,46  
...consideration of, as affecting availability of  
unappropriated water-----3-5  
...consideration of, as affecting permit and license  
conditions-----99-102