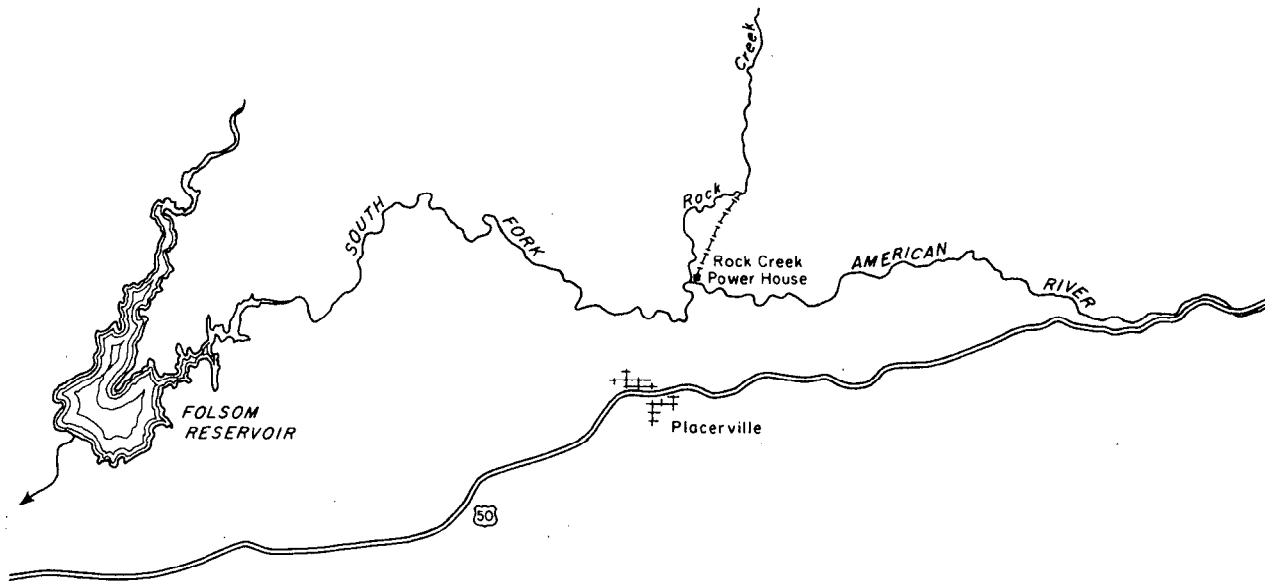


**ROCK CREEK HYDROELECTRIC PROJECT
APPLICATIONS 26380 AND 27353**

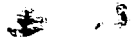
Order 84-6

**Amending and Affirming Decision 1596
and Denying Petitions for Reconsideration**



April 1984





STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 26380)
and 27353)
JOSEPH M. KEATING,)
Applicant,)
CALIFORNIA DEPARTMENT OF FISH AND)
GAME,)
Protestant.)

ORDER: WR 84- 6

SOURCE: Rock Creek

COUNTY: El Dorado

ORDER AMENDING AND AFFIRMING DECISION 1596
AND DENYING PETITIONS FOR RECONSIDERATION

1.0 BY BOARD VICE CHAIRMAN NOTEWARE:

The Board having adopted Decision 1596 on Applications 26380 and 27353 on February 16, 1984; the Board having received timely petitions for reconsideration from Joseph M. Keating and from Loren J. Hov; the Board having received a partial withdrawal of the Petition of Joseph M. Keating for reconsideration; the Board having duly considered the remainder of issues in the petitions for reconsideration, the Board finds as follows:

2.0 PETITION OF JOSEPH M. KEATING

Applicant Joseph M. Keating in his petition for reconsideration challenged several conditions set forth in the Order in Decision 1596. Subsequently he withdrew from his petition objections to conditions 4, 9, 12, 29 and 30. The remaining objections to conditions 11 and 19 are discussed in the following sections. Each is considered in the order in which Mr. Keating presented it.

2.1 Condition 11, Obtaining Governmental Approvals

Condition 11 reads:

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

Applicant, at page 9, expresses concern that Condition 11 will require him to obtain government approvals of activities not related to construction, before construction may be commenced. Condition 11 means, simply, that the applicant must comply with all applicable laws in a timely fashion, as required by those laws. It appears that, given this meaning of Condition 11, the applicant has no objection to Condition 11. However, to make Condition 11 even clearer, we will amend it to read as follows:

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

2.2 Condition 19, Emergency Shut Off Gates

Condition 19 reads:

"Permittee shall provide automatic emergency shut off gates or valves at the beginning of the penstock capable of discontinuing the flow of water in the event of penstock failure or to dewater the penstock for maintenance purposes."

Applicant requests that instead of a shut off gate or valve for each penstock, a single shut off gate be required in the diversion structure capable of discontinuing the flow of water in the event of failure or to dewater the penstock for maintenance purposes. Condition 19 is an environmental mitigation measure included in Decision 1596 to satisfy the mitigated negative declaration for this project. However, no reason exists why the objective of this mitigation cannot be accomplished using one shut off gate or valve in the diversion structure instead of one at

the entrance of each penstock. Consequently, the Board will amend Condition 19 in accordance with the applicant's request, as follows:

"Permittee shall provide an automatic emergency shut off gate(s) or valve(s) capable of discontinuing the flow of water in the event of penstock failure or to dewater the penstock for maintenance purposes."

3.0 PETITION FOR RECONSIDERATION SUBMITTED BY LOREN J. HOV

Mr. Hov's petition was filed on March 16, 1984. It consists of technical analysis of a series of hypothetical answers to questions posed by Mr. Hov. Mr. Hov on the one hand asserts that Decision 1596 is not supported by substantial evidence, and on the other hand admits that he has never reviewed the evidence in the record leading to Decision 1596. We disagree with Mr. Hov's assertion that Decision 1596 is not supported by substantial evidence.

Mr. Hov's petition may be the result of a misconception concerning the effect of Decision 1596. It appears that Mr. Hov assumes that the applicant should not be granted water right permits if any doubt exists that the project will be economically feasible. It further appears that he assumes that Decision 1596 is an unqualified determination that the project will be economically feasible and can be constructed without assurance that the appropriated water will be placed to beneficial use. These assumptions are incorrect.

Instead of the apparently assumed situation, the Board has conditioned the water rights allocated under Decision 1596 so that the project will be constructed only if applicant has financing to completely construct the project. By requiring full financing before construction the Board has, to the extent possible, ensured that if the project is constructed, it will be economically feasible, and the appropriated water will be placed

to beneficial use. See Condition 4 of Decision 1596. The Board's finding, which is supported by substantial evidence, is that applicant's project may or may not be economically feasible, depending upon the price he will be paid for the project's power. Based on this finding, the Board has ordered that permits be issued on applicant's water right applications, subject to Condition 4.

In view of the finding the Board has made, and the qualified decision it has issued, Decision 1596 is supported by substantial evidence, within the meaning of the term "substantial evidence". See Gaehwiler v. Occupational Safety and Health Appeals Board, 141 Cal.App.3d 1041, 191 Cal.Rptr. 336 (1983). Consequently, we will not reconsider Decision 1596 based on Mr. Hov's petition.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 11 of Decision 1596 shall be amended to read as follows:

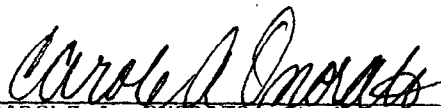
"No water shall be used under this permit until all necessary federal, state and local approvals have been obtained, including compliance with any applicable Federal Energy Regulatory Commission requirements."

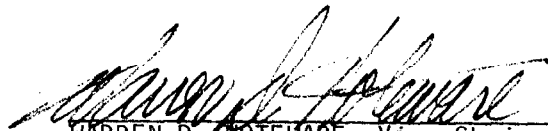
2. Condition 19 of Decision 1596 shall be amended to read as follows:


"Permittee shall provide an automatic emergency shut off gate(s) or valve(s) capable of discontinuing the flow of water in the event of penstock failure or to dewater the penstock for maintenance purposes."

3. The Petition for Reconsideration of Decision 1596 by Joseph M. Keating is denied.
4. The Petition for Reconsideration of Decision 1596 by Loren J. Hoy is denied.
5. Decision 1596, as amended, is affirmed.

Dated: **MAY 17 1984**


CAROLE A. ONORATO, Chairwoman


WARREN D. NOTEWARE, Vice-Chairman


KENNETH W. WILLIS, Member


DARLENE E. RUIZ, Member

