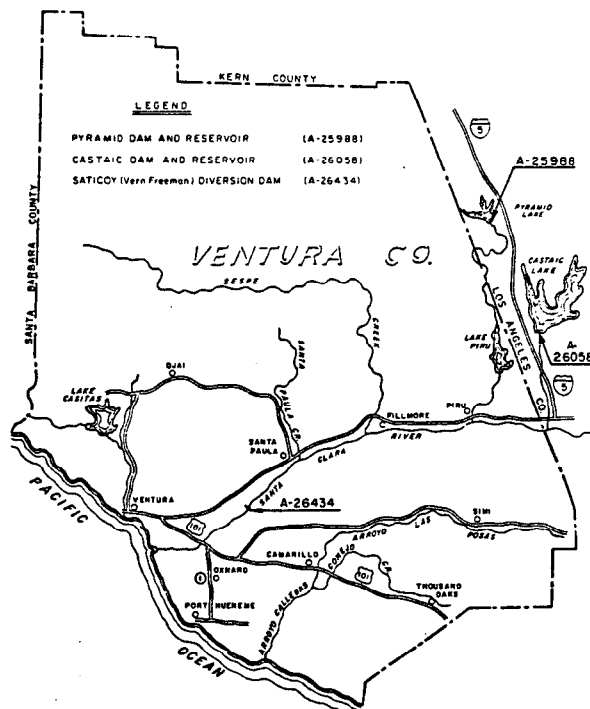


DEPARTMENT OF WATER RESOURCES AND
UNITED WATER CONSERVATION DISTRICT PROJECT

PERMITTED APPLICATIONS 25988 AND 26058
OF THE DEPARTMENT OF WATER RESOURCES AND
PERMITTED APPLICATION 26434 OF UNITED WATER
CONSERVATION DISTRICT; SANTA CLARA RIVER SYSTEM

ORDER WR 87-8

VENTURA COUNTY



SEPTEMBER 1987

STATE WATER RESOURCES CONTROL BOARD



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 18908,)
UNITED WATER CONSERVATION DISTRICT,)
and Permits 18709 and 18710,)
DEPARTMENT OF WATER RESOURCES,)
Permittees,)
DEPARTMENT OF FISH AND GAME,)
Protestant.)

ORDER: WR 87- 8

SOURCES: Piru Creek, Castaic
Creek and Santa Clara
River

COUNTIES: Ventura and
Los Angeles

ORDER AMENDING PERMITS 18908, 18709 AND 18710

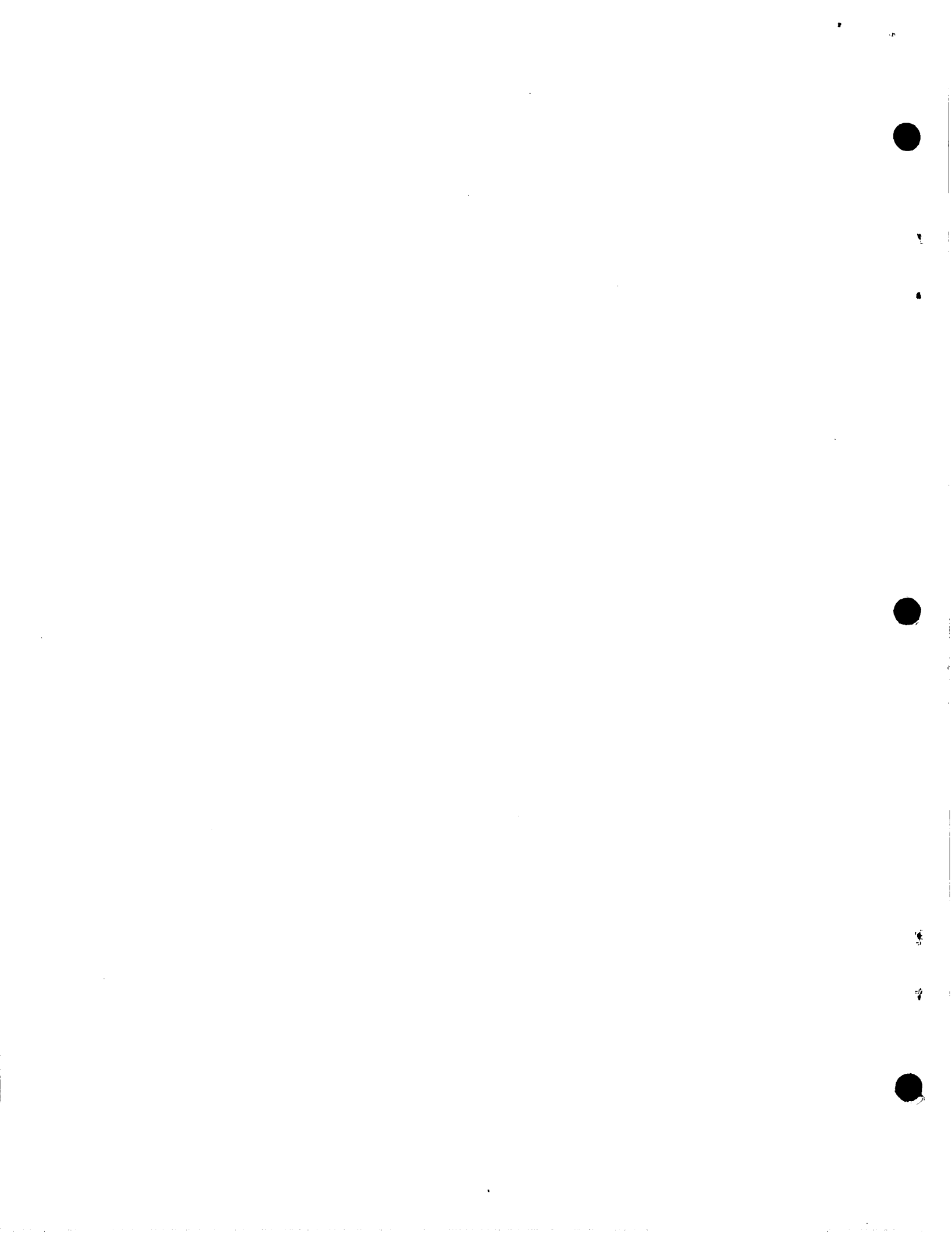


TABLE OF CONTENTS

		<u>PAGE</u>
1.0	BACKGROUND	1
2.0	THE PROJECTS	2
3.0	DECISION APPROVING PERMITS	4
4.0	SPECIAL PERMIT CONDITIONS	4
5.0	FISHERY STUDY CONCLUSIONS AND RECOMMENDATIONS	5
6.0	AGREEMENT BETWEEN UNITED AND THE DEPARTMENT	7
7.0	DWR CRITICISM OF AGREEMENT BETWEEN UNITED AND THE DEPARTMENT	8
8.0	CONDITIONS SHOULD BE INCLUDED IN PERMIT 18908 TO PROTECT THE SANTA CLARA RIVER STEELHEAD	10
9.0	RELATED ACTIONS OF THE BOARD	13
10.0	RELATED FEDERAL ACTIONS	14
11.0	CALIFORNIA ENVIRONMENTAL QUALITY ACT	15
12.0	CONCLUSIONS	16
13.0	ORDER	17



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DEPARTMENT OF WATER RESOURCES,)	SOURCES: Piru Creek, Castaic
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)	Los Angeles

ORDER AMENDING PERMITS 18908, 18709 AND 18710¹

BY THE BOARD:

1.0 BACKGROUND

On November 18, 1982 the State Water Resources Control Board (Board) adopted Decision 1586 approving the appropriation of water from the Santa Clara River and its tributaries by United Water Conservation District (United) and by the California Department of Water Resources (DWR). The applications were protested by the California Department of Fish and Game (Department). The decision required that a steelhead study be performed and reserved jurisdiction to adopt new permit conditions upon the completion of the study.

¹ Permits 18908, 18709 and 18710 were issued for Application 26434 by United Conservation Water District and for Applications 25988 and 26058 by Department of Water Resources, respectively.

On October 29, 1986 a hearing was held to consider, among other matters, the results of the study and whether new permit conditions should be adopted. United, DWR and the Department having appeared and presented evidence and the evidence having been duly considered, the Board finds as follows:

2.0 THE PROJECTS

DWR and United have rights to divert water by storage or direct diversion from the Santa Clara River or its tributaries (see Figure 1). Situated within the upper reaches of the river on Pyramid and Castaic Creeks, Pyramid and Castaic Reservoirs are primarily used for storing State Water Project water imported from northern California. Permits 18709 and 18710 authorize DWR to divert local runoff to storage in the reservoirs.

Under License 12098A, United may divert water by storage at Lake Piru on Piru Creek and by direct diversion at the Saticoy Diversion Dam on the lower reach of the Santa Clara River. Permit 18908 authorizes United to divert water from the lower reaches of the Santa Clara River at the proposed Vern Freeman Diversion. United's existing diversion dam on the Santa Clara River periodically washes out and has to be replaced following heavy flow in the river. The proposed Vern Freeman Diversion Dam would be a permanent, 1,200 foot long, overflow type diversion structure which would be a barrier to the upstream migration of steelhead, an anadromous fish ("9.0 RELATED ACTIONS OF THE BOARD", infra, provides additional information about the proposed project).

3.0 DECISION APPROVING PERMITS

Issued on November 18, 1982, Decision 1586 approved three permits to appropriate water from the Santa Clara River.

United's Permit 18908 is for the direct diversion of 10,000 acre-feet annually (afa) for surface use and the direct diversion of 30,000 afa for under ground storage from January 1 through December 31. The water is for irrigation, domestic, municipal, industrial and salinity control beneficial uses within the Oxnard Plain in Ventura County.

DWR's Permit 18709 is for the diversion of 55,000 afa to storage in Pyramid Reservoir and Permit 18710 is for the diversion of 85,000 afa to storage in Castaic Reservoir from October 1 to September 30. The water is for irrigation, industrial, domestic, municipal, recreation, fish and wildlife, and salinity control beneficial uses within the State Water Project services area including Ventura County.

4.0 SPECIAL PERMIT CONDITIONS

Long before the applications were filed for Permits 18908, 18709 and 18710, the Santa Clara River steelhead run had virtually disappeared. Due to the potential effect of additional diversions on the steelhead population, all three applications to appropriate water were protested by the Department. During the hearing on the applications, United, DWR and the Department stipulated to the following conditions that were made a part of the permits:

DWR Permits 18709 and 18710:

"13(a) Permittee shall fund a study to be performed by the Department of Fish and Game of the steelhead resource potential and flow requirements necessary for

the transport of adult and juvenile steelhead to and from spawning and rearing areas of Sespe Creek and the lower Santa Clara River and the flow characteristics of Piru Creek below Pyramid Reservoir, Castaic Creek below Castaic Reservoir and the Santa Clara River below Castaic Creek. The purpose of the study will be to gather data and make recommendations as to feasible alternatives for the improvement and perpetuation of a steelhead resource in Sespe Creek and the lower Santa Clara River which may reasonably be undertaken using water appropriated pursuant to this permit...."

United Permit 18908:

"15(b) Permittee shall pass through and not divert from any of its facilities (Piru/Saticoy) during the period of the study any water released by the Department of Water Resources for purposes of the study which reaches Permittee's Saticoy or Vern Freeman Facility. During the period of the study, Permittee shall not obstruct the ability of fish to swim upstream, other than by Permittee's present mode of operation which is to construct a year structure which will not impede upstream fish migration when flows in the river channel exceed approximately 1,500 cfs.... If any facilities are constructed during the progress of the study, other than the above referenced temporary facility which washes out when flow exceeds approximately 1,500 cfs, said facilities shall include a permanent functional fishway to allow the passage of upstream migrating fish."

"13(d) At the conclusion of the steelhead resources and flow requirement study, if the results indicate that there is a steelhead resources, Permittee and the Department of Fish and Game will attempt to agree mutually upon permanent steelhead resource protection conditions to be added to this permit by the Board pursuant to its reserved jurisdiction. Such agreement or, if agreement cannot be reached, terms proposed separately by Permittee and the Department of Fish and Game shall be presented to the Board along with a report of the findings and recommendations of the study and any other relevant information. The Board reserves jurisdiction to consider the appropriate permanent conditions, if any, to be added to this permit."

5.0 FISHERY STUDY CONCLUSIONS AND RECOMMENDATIONS

During March of 1985, the Department completed its study entitled "Lower Santa Clara River Steelhead Study, Final Report". The report concludes, among other matters:

1. Adult steelhead enter the Santa Clara River and migrate upstream to Sespe Creek.
2. Without fish passage facilities, the proposed permanent Vern Freeman Dam would prevent steelhead from reaching spawning areas within the Santa Clara River system. Similarly, without fish passage facilities, the number of smolt migrating downstream to the ocean would be reduced.
3. The diversion of additional water from the river at the proposed Vern Freeman Dam would reduce the number of days steelhead would be able to migrate upstream and the number of smolt that could successfully migrate downstream.
4. Ample flow is available in the system for upstream and downstream migration of fish without the need to release water from Pyramid and Castaic Reservoirs. (DFG 57, 20.)

The study recommended that the steelhead should be protected from the impact of the proposed Vern Freeman Diversion Dam by the following measures:

1. Construction of a fish screen and a fish ladder with a 40 cfs capacity at the dam.
2. Operation of the fish screen whenever water is diverted at the dam.

3. When the diversion capacity of 375 cfs is reached, 40 cfs should be bypassed through the fish ladder.² The 40 cfs flow should be maintained for 48 hours after the Santa Clara River flow recedes to less than 375 cfs. Fish ladder bypass flow should be scheduled to coincide with storm events.
4. A low flow channel should be constructed from the exist of the fish ladder to the natural river channel.
5. A five-year study should be funded to evaluate the effectiveness of recommended facilities and operations. (DFG 57, 21.)

6.0 AGREEMENT BETWEEN UNITED AND THE DEPARTMENT

Prior to the hearing, the Department sought the following conditions for the diversion of water at the proposed Vern Freeman diversion under Permit 18908:

1. The construction of a fish ladder and screen at the proposed Vern Freeman Diversion Dam by United.
2. Between February 15 and May 15 of each year, the bypass of 40 cfs through the fish ladder for 48 hours after the flow immediately above the diversion dam has reached 415 cfs. The volume of water used per year for the latter purpose shall not exceed 500 acre-feet per year as averaged over a 10-year period.
3. The construction of four wildlife crossings by United over the canal which will carry water from the diversion dam to the pipeline intake.

² United's present diversion at Saticoy is 375 cfs.

4. The construction of a fence by United that will keep deer from falling into the intake canal.
5. Maintenance of the full underflow of the river by United to assure that downstream riparian vegetation is well watered.
6. The funding of a monitoring program by United to determine the effectiveness of the proposed mitigation measures for a period not to exceed five years. The program will be implemented by a qualified biological consultant or student. (United 154; T,155:3-160:22.)

Except for condition 5, United has agreed to the conditions sought by the Department. (United 154; T,236:8-26.)

It should be noted, however, that United is seeking federal funding for the proposed project; that the funding is predicated upon obtaining a Corp of Engineers Section 404 permit (T,239:16-240:1); and that the Corp is required to evaluate and to mitigate the effects of a proposed activity upon fish, wildlife and riparian vegetation when issuing a permit. (40 CFR § 230; also see "10.0 RELATED FEDERAL ACTIONS", infra, for additional background on this point.)

7.0 DWR CRITICISM OF AGREEMENT BETWEEN UNITED AND THE DEPARTMENT

The Department does not currently seek to impose bypass or storage releases upon the operations of Pyramid or Castaic reservoirs because the steelhead study concluded that ample flow is available

in the system for upstream and downstream migration of fish without the need for water from the reservoirs. The Department did request, however, that jurisdiction be continued to impose additional conditions upon the reservoirs. (T,170:5-173:5.)

Notwithstanding the absence of any disagreement over Pyramid and Castaic Reservoirs, DWR objects to the conditions negotiated between United and the Department. The crux of the objection is whether there is a steelhead population in the river warranting the imposition of conditions for their protection.

In support of its view, DWR contends that the Department study failed to demonstrate the existence of a viable steelhead population in the Santa Clara River. Given the foregoing view, DWR makes the following argument:

1. A serious overdraft and seawater intrusion problem exists within the Oxnard Plain. The seriousness of this problem is recognized by the Board (T,264:6-16);
2. The water available within the Santa Clara River Basin is insufficient to offset the current demands on the groundwater basin (letter dated April 30, 1986 from David N. Kennedy, Director of DWR to Darlene Ruiz, Vice Chairwoman of the Board, p. 4; Decision 1586, p. 7, paragraphs 14 and 15);
3. The proposed 40 cfs for 48 hours bypass flow will require United to forego the use of about 220 acre-feet per year (T,186:25-187:8; 189:18-21); and

4. Given the need for water to offset seawater intrusion, the use of water for a marginal or nonexistent steelhead population is an unreasonable use of water (T,264:17-24).

8.0 CONDITIONS SHOULD BE INCLUDED IN PERMIT 18908 TO PROTECT THE SANTA CLARA RIVER STEELHEAD

As previously indicated, the Board reserved jurisdiction to determine whether additional conditions should be included in Permit 18909 following completion of a steelhead study for the Santa Clara River. At issue during the hearing was the question of whether the study indicated the presence of sufficient numbers of steelhead to warrant the conditions requested by the Department. As indicated in subsequent discussion, the Board has already required the construction of a fish ladder and fish screen as a condition of an \$8 million grant to United and Ventura County for Phase I of the Pumping Trough Pipeline and Deep Aquifer Wall System (9.0 RELATED ACTIONS OF THE BOARD):

The Department's study and testimony in support of the study support the following findings:

1. The steelhead resources has been adversely affected by the operation of the seasonal diversion dam operated by United on the Santa Clara River under permit 12098A. (T,65:11-13, 111:23-113:1.)
2. Although the study found only three adult steelhead in the river, witnesses called by the Department testified that:
 - (a) initial efforts were misdirected because the personnel utilized for the study were unfamiliar with the river;
 - (b) traps

were lost due to heavy flow; (c) only a fraction of the fish in a river are trapped; and (d) a low number of steelhead were present in the river, perhaps 10 to 100 (DFG 58, pp. 11 and 15; T,10:18-26, 17:10-19, 19:12-20:16, 106:22-111:3). Based upon this testimony, we conclude that a small but unknown number of steelhead are present in the Santa Clara River. (DFG 58; T,60:21-7.)

3. To survive, the steelhead must move upstream past United's existing and proposed diversion dam, spawn and as smolt migrate downstream past United's existing and proposed diversion dam. Without a fish ladder and fish screen, the proposed permanent diversion dam would virtually assure elimination of the steelhead resource. (DFG 58, p. 20; T,58:12-59:19, 116:1-7, 221:16-20.) The increased diversion of water approved by Permit 18908 will also adversely affect the steelhead resource. The bypass flow proposed by the Department would minimize the effect on the steelhead of the increased diversion. (T,116:21-117:8.)
4. Sespe Creek, upstream from the proposed diversion dam, is good steelhead spawning habitat. (DFG 58, p. 4; T,62:8-68:9, 65:26-66:8; 111:23-112:8.) Restoration of steelhead resources has been successful on other streams in California where good habitat was available. (T,115:3-22.) There is some possibility that the Santa Clara River steelhead resource could be restored if the measures sought by the Department were implemented. (T,65:26-66:8, 91:22-92:3, 220:24-221:20.) We recognize, however, that given the low number of steelhead it is also

possible that the construction and operation of a permanent Vern Freeman Diversion could eliminate the remaining steelhead in the river.

DWR estimated that the bypass flow requested by the Department would require, on average, only about 220 acre-feet per year (afa).

(T,189:10-21.) This amount is about 2 percent of the estimated yield of the new project, 12,500 afa. (T,233:26-234:2.) The overdraft in the Oxnard Basin may be as high as 30,000 to 40,000 afa. (T,242:24-26.)

The Board reserved jurisdiction to adopt conditions to protect the steelhead. Further, we are of the opinion that the Santa Clara River steelhead, as an anadromous fish, is protected by the public trust doctrine. The Board has continuing authority to adopt conditions to avoid or minimize effects on resources protected by the public trust doctrine (National Audubon Society v. Superior Court of Alpine County (1983) 658 P.2d 709, 33 Cal.3d 419). The measures proposed by the Department may minimize the effects of the proposed project on the Santa Clara River steelhead.

On one hand, the quantity of water sought for bypass by the Department would have no measurable effect on reducing the extent of ground water overdraft in the Oxnard Basin and a de minimis effect on the yield of the proposed project. On the other hand, the water sought for bypass could make a significant difference to the protection of the Santa Clara River steelhead. We conclude, accordingly, that the conditions sought by the Department for the protection of the steelhead should be included in Permit 18908.

Nevertheless, given the few number of steelhead in the river, it would not be prudent to require a permanent bypass flow until such time as it is demonstrated that a viable population of steelhead is present in the river following construction and operation of the project. In addition, given the potential effect of project construction and periodic drought years on the steelhead population we believe the time by which this demonstration may be made should be extended to seven years, as opposed to the five years in the agreement between United and Department.

9.0 RELATED ACTIONS OF THE BOARD

In 1978, this Board initiated proceedings against the overlying users of the Oxnard groundwater basin pursuant to Water Code Section 2100. In general terms, Section 2100 authorizes the Board to initiate proceedings to restrict pumping and/or to impose a physical solution to prevent the destruction or irreparable injury to ground water. On November 19, 1981 the Board found that the rights to the use of the ground water in the Oxnard Plain should be adjudicated in order to require the restriction of pumping or a physical solution to preserve the Oxnard and Mugu Aquifers from destruction or irreparable injury. (Resolution 81-100.)

The proceeding was halted when Ventura County (County) and United developed a plan for a physical solution to stop seawater intrusion into the ground water basin. Under Section 208 of the Federal Clean Water Act, the county and United developed the Ventura County Water Quality Management Plan. This plan, approved by the Board, included the Seawater Intrusion Abatement Program, a two-phase project.

Phase I included the Pumping Trough Pipeline and the Deep Aquifer Well System. The completion of this phase would provide a firm supply of irrigation water to approximately 4,000 acres on the Oxnard Plain. Phase II includes an improved diversion structure, i.e., the proposed Vern Freeman Diversion Dam, to divert additional water from the Santa Clara River and a canal to deliver water to the Oxnard Plain. The water extracted from the lower aquifer system and diverted from the river would be used to reduce the extraction of water from the overdrafted aquifers.

To encourage implementation of the project, on February 19, 1981 the Board provided an \$8 million State Assistance Project Grant to United and the County (grantees) for Phase I of the two-phase project. Among other matters the grantees were required to commit to the construction of Phase II of the project including the proposed Vern Freeman diversion Dam. Further, the grantees were required to provide a fishway and fish screen and to comply with any terms and conditions set forth as conditions to a water right permit for the diversion of water at the dam. (Resolution 81-17.)

10.0 RELATED FEDERAL ACTIONS

United is seeking a low interest loan from the U. S. Bureau of Reclamation pursuant to the Small Reclamation Projects Act of 1965 (P.L. 84-984; 42 USC § 422a et seq.). The approval of such loans is subject to the requirements of the National Environmental Protection Act (NEPA) (42 USC 4231 et seq.). United released an EIS/EIR during

March of 1986 (see 11.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT, infra, for discussion of the EIS/EIR).

The project also requires the issuance of a permit pursuant to Section 404 of the Federal Clean Water Act (33 USC § 1344). Such permits are issued by the Corp of Engineers (Corp) when an activity may result in the discharge of dredged or fill material into the waters of the United States. The Corp has issued a draft permit which includes all of the measures sought by the Department (see 6.0 AGREEMENT BETWEEN UNITED AND THE DEPARTMENT, supra, p. 7.)

11.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT

As a responsible agency, the Board is required to consider the EIR prepared by the lead agency. (14 Cal.Admin.Code § 15096(a).)

Further, the Board is required, when feasible, to avoid or mitigate any significant effects of the project within its jurisdiction or adopt a statement of overriding consideration. (Public Resources Code §§ 21002 and 21002.1.)

Pursuant to the requirements of NEPA and the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) a final EIS/EIR was released by United during March of 1986. Although the EIS/EIR does not identify any significant environmental effects from the proposed project, it does include commitments by United to undertake some but not all of the measures being sought by the Department. Among the commitments are the following: (1) provision for the passage of subsurface flow, (2) a fish ladder, (3) water for the passage of fish when flows exceed 375 cubic feet per second,

(4) canal crossings for wildlife, and (5) a deer-proof fence along the canal. Absent are commitments to: (1) provide a fish screen, and (2) fund follow-up studies of the effectiveness of mitigation measures.

On April 16, 1987 United approved the proposed project and filed a Notice of Determination stating that: (1) the proposed project would not have significant effect on the environment, and (2) mitigation measures were not made a condition of project approval. It is unclear whether United approved the preceding commitments as a part of the project; however, the July 15, 1987 negotiations for the Section 404 permit, following adoption of final EIS/EIR, and the conditions negotiated with the Department strongly suggest that the project approval did not include the commitments made in the final EIS/EIR (see 6.0 AGREEMENT BETWEEN UNITED AND THE DEPARTMENT, supra).

The Board has reviewed the EIR. Given the impacts identified in the Impact Matrix of the EIR, pp. 9-16, we are skeptical that it is reasonable to conclude that no significant effects will occur from the proposed project without one or more mitigating measures.

Nevertheless, CEQA requires that the Board, as a responsible agency, presume that an EIR complies with the requirements of the Act. (14 Cal.Admin.Code § 15231.)

12.0 CONCLUSIONS

Jurisdiction was reserved to adopt appropriate conditions to protect the steelhead resource of the Santa Clara River following completion

of a study. In our view the study and testimony in support of the study demonstrate the continued existence of a steelhead resource in the river. Absent conditions to protect the resource, the proposed Vern Freeman Diversion Dam will adversely affect the resource and, conversely, the conditions sought by the Department may result in the enhancement of the resource.

United is already required to construct a fish ladder and fish screen as a condition of an \$8 million dollar grant from the Board. The quantity of the water sought for bypass, about 220 cfs and less than 2 percent of the estimated yield, could make a significant difference to the protection of the steelhead. We conclude, accordingly, that it is in the public interest to require bypass flow for the steelhead. (Water Code §§ 1243 and 1257.)

13.0 ORDER

NOW, THEREFORE, IT IS ORDERED that Permit 18908 for United should be amended by deleting condition 15 and by adding the following new conditions:

1. Permittee shall install fish screens and ladders in the improved Vern Freeman Diversion Dam to facilitate the passage of anadromous fish species migrating upstream and downstream through the project. The fish ladder shall have a hydraulic capacity of 40 cfs and the fish screen shall be operated whenever water is diverted at the dam. The design, installation and operation of the fish screen and ladder shall be developed in consultation with the California Department of Fish and Game.

IT IS FURTHER ORDERED that Permit 18709 for the Department of Water Resources be amended by deleting conditions 13, 15 and 16.

Permit 18710 for the Department of Water Resources be amended by deleting conditions 13, 15, 17 and 18.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on **SEP 03 1987**

AYE: W. Don Maughan, Chairman
Darlene E. Ruiz, Vice Chairwoman
Edwin H. Finster, Member
Danny Walsh, Member

NO: None

ABSENT: Eliseo M. Samaniego, Member

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

2. Permittee shall construct a low flow channel from the exit of the fish ladder to the natural channel.
3. Permittee shall provide flow to facilitate migration of steelhead through the project. From February 15 through May 15 of each year, each time the flow in the Santa Clara River immediately upstream from the point of diversion subsides to 415 cubic feet per second, permittee shall bypass 40 cubic feet per second through the fish ladder for 48 hours. The total amount of water bypassed under this condition in any one year shall not exceed 500 acre-feet on a ten-year average.
4. The bypass requirement in Condition 3 and the requirement to operate the fish screen in Condition 1 shall lapse seven years following completion of the proposed project and the application of water to beneficial use unless the California Department of Fish and Game presents the Board with the results of a study or other competent evidence that the Santa Clara River supports a viable steelhead population. If a study or other competent evidence is presented to the Board, jurisdiction is reserved to modify or delete the conditions for the protection of the steelhead. If the permittee and the Department are not in agreement for a permanent bypass flow condition, the Board will hold a hearing to determine what changes, if any, should be made in the conditions for the protection of steelhead.