

**ORDER ON PROTESTS SUBMITTED BY
DELTA WATER USERS ASSOCIATION
AND SOUTH DELTA WATER AGENCY**

AGAINST

**CERTAIN PETITIONS AND APPLICATIONS
TO APPROPRIATE WATER FROM
THE WATERSHEDS OF THE
SACRAMENTO RIVER AND
THE SAN JOAQUIN RIVER**

ORDER: WR 89-8



APRIL 20, 1989

STATE WATER RESOURCES CONTROL BOARD



STATE OF CALIFORNIA

George Deukmejian, Governor

STATE WATER RESOURCES
CONTROL BOARD

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of)
)
CERTAIN PETITIONS AND)
APPLICATIONS TO APPROPRIATE)
WATER FROM THE WATERSHEDS OF)
THE SACRAMENTO RIVER AND THE)
SAN JOAQUIN RIVER)
)
In Which Delta Water Users)
Association and South Delta)
Water Agency Have Filed)
Protests.)
_____)

ORDER: WR 89- 8

ORDER DISMISSING, REJECTING, AND ACCEPTING PROTESTS

BY THE BOARD:

1.0 INTRODUCTION

Forty-six protests having been filed in advance of our notice of hearing for June 27, 1988 by the Delta Water Users Association and the South Delta Water Agency¹ (hereinafter collectively referred to as Protestants) against petitions and applications to appropriate water from the Sacramento and San Joaquin Rivers and their tributaries; there being substantial controversy over whether some or all of the protests may be maintained; the Board having held a hearing on June 27, 1988 to determine whether to receive evidence relative to the protests, delay processing the applications and

¹ South Delta Water Agency filed protests against only the petitions of the United States Bureau of Reclamation.

petitions pending completion of the Bay-Delta Proceeding, or reject or dismiss the protests; the Board having considered all discussions of available evidence and all legal arguments concerning the validity of the protests, the Board finds and concludes as follows:

2.0

BACKGROUND

Protestants, by the time the Notice of Hearing in this matter was issued, had filed protests against forty-six applications and petitions for change involving diversions from the Sacramento and San Joaquin Rivers and their tributaries. The protested applications and petitions are listed in Table 1 together with relevant information including the county, source, purpose, whether changes are requested in places of use, nature of the action requested whether an application or a change, and whether a right sought to be changed is licensed or permitted. With two exceptions, the protested applications and petitions can be grouped into Sacramento River and tributaries filings and San Joaquin River and tributaries filings. The Delta Wetlands applications and the Simon Newman, Inc., application are for diversion from channels in the Delta. The applications and petitions can be further grouped into those with other protests, those with and without apparent hydraulic continuity with the Delta

TABLE 1

SACRAMENTO RIVER WATERSHED

PETITIONS TO CHANGE

<u>App. No.</u>	<u>Status</u>	<u>Petitioner</u>	<u>County</u>	<u>Source</u>	<u>Use</u>	<u>Season</u>	<u>Amount</u>	<u>Requested Change</u>
5109	Licensed	M&T, Inc.	Butte	Butte Creek	I,S	1/1-12/31	20 cfs	3,620 net irrigable acres within a gross area of 4,580 acres.
5626	Permitted	U.S. Bureau of Reclamation	Shasta	Sacramento R.	D,I,R,S D,I,R,S	9/1-6/30 10/1-6/30	8,000 cfs 3,190,000 afa	Add Clifton Court Forebay as a trial point of diversion for the Central Valley Project; and add Dudley Ridge Water District as a trial place of use to receive approximately 2,000 af of water.
8188	Licensed	M&T, Inc.	Butte	Butte Creek	I,S	1/1-12/31	100 cfs	3,620 net irrigable acres within a gross area of 4,580 acres.
15866	Licensed	M&T, Inc.	Butte	Butte Creek	I,S	3/1-7/15	5.9 cfs	3,620 net irrigable acres within a gross area of 4,580 acres.

SACRAMENTO RIVER WATERSHED

APPLICATIONS

<u>App. No.</u>	<u>Applicant</u>	<u>County</u>	<u>Source</u>	<u>Use</u>	<u>Season</u>	<u>Amount</u>
27306	Quincy Water Co., Inc.	Plumas	W. Branch Mill Cr.	M	1/1-12/31	23 cfs
27307	Quincy Water Co., Inc.	Plumas	W. Branch Mill Cr.	P	1/1-12/31	45 cfs
27308	Quincy Water Co., Inc.	Plumas	Unnamed Spring trib. W. Branch Mill Cr.	P	1/1-12/31	6 cfs
27309	Quincy Water Co., Inc.	Plumas	Unnamed Spring trib. W. Branch Mill Cr.	M	1/1-12/31	6 cfs
27310	Quincy Water Co., Inc.	Plumas	Unnamed Spring trib. Gansner Cr.	P	1/1-12/31	1 cfs
27311	Quincy Water Co., Inc.	Plumas	Unnamed Spring trib. Gansner Cr.	M	1/1-12/31	1 cfs
27312	Quincy Water Co., Inc.	Plumas	Unnamed Spring trib. E. Branch Rock Cr.	P	1/1-12/31	1 cfs

*See Uses Key (attached)

SACRAMENTO RIVER WATERSHED

APPLICATIONS

<u>App. No.</u>	<u>Applicant</u>	<u>County</u>	<u>Source</u>	<u>Use</u>	<u>Season</u>	<u>Amount</u>
27313	Quincy Water Co., Inc.	Plumas	Unnamed Spring trib. E. Branch Rock Cr.	M	1/1-12/31	1 cfs
28468	California Trout, Inc.	Plumas	N. Fork Feather R.	R,W	10/1-4/30	150 cfs 180,000 afa
28888	Bella Vista Water District	Shasta	Sacramento R.	D,S I	1/1-12/31 5/1-9/30	60 cfs
28975	Albert & Janyce Rae Wutzke	Lassen	Unnamed Stream trib. Willow Creek	I	10/15-4/1	25 afa
28985	Garreth and Marlene Schaad	Yolo	Colusa Basin Drain	R	11/1-1/15	2.7 cfs
28992	Bob and Virginia Ferguson	Sierra	Sierra Valley Ch.	I	5/1-8/1	1 cfs
28994	Leon Whitney	Glenn	Unnamed Stream trib. Grindstone Cr.	E,I,R,S	11/1-4/30	1,300 afa
29050	Waegell Brothers Ranch, Inc.	Sacramento	Unnamed Stream trib. Frye Creek	H,I,R,S,W	11/1-4/30	74 afa
29117	Michael & Violeta Sorina	Tehama	Unnamed Spring trib. Coyote Creek	D,E,G,I,R,S	10/1-4/30	24 afa
29127	Neil & Cozette Graham, et al.	Plumas	Twelve Mile Ravine	D,R	1/1-6/15	0.045 cfs

SAN JOAQUIN RIVER WATERSHED

PETITIONS TO CHANGE

<u>App. No.</u>	<u>Status</u>	<u>Petitioner</u>	<u>County</u>	<u>Source</u>	<u>Use</u>	<u>Season</u>	<u>Amount</u>	<u>Requested Change</u>
5626	Permitted	U.S. Bureau of Reclamation	Contra Costa	Old River	D, I, R, S	9/1-6/30 10/1-6/30	8,000 cfs 3,190,000 afa	Add Clifton Court Forebay as a trial point of diversion and redirection for the Central Valley Project; and add Dudley Ridge Water District as a trial place of use to receive approximately 2,000 af of water.
16186	Licensed	Merced Irrigation District	Mariposa	Merced River	D, H, I, R, W	10/1-7/1	605,000 afa	Add Mining and Industrial uses; add point of diversion and redirection and 3,200 gross acres to the place of use for gravel operation.
23284	Permitted	Frank Calosso	Sacramento	Dry Creek	I	4/1-10/31	3 cfs	Relocate existing point of diversion and add two points of diversion on the same source. Move place of use from portions of Sections 17 and 20 to portions Sections 19 and 20, all within T5N, R8E, MDB&M.

SAN JOAQUIN RIVER WATERSHED

APPLICATIONS

<u>App. No.</u>	<u>Applicant</u>	<u>County</u>	<u>Source</u>	<u>Use</u>	<u>Season</u>	<u>Amount</u>
19266	Cosumnes River Water and Power Authority	El Dorado	Steeley F Cosumnes R. N. F. Cosumnes R. M. F. Cosumnes R. S. F. Cosumnes R. Cosumnes R. Sopiago Creek	P, R	1/1-12/31 9/1-6/30	1,080 cfs 624,000 afa
21835	Cosumnes River Water and Power Authority	El Dorado	Steeley F Cosumnes R. N. F. Cosumnes R. M. F. Cosumnes R. S. F. Cosumnes R. Cosumnes R. Sopiago Creek	D, I, J M, R, W, Z	10/1-6/30	582 cfs
26032	George A. Pope Trust	Madera	Cottonwood Creek	I	9/1-6/1 3/1-9/1 9/1-3/1	624,000 afa 15.11 cfs 600 afa

SAN JOAQUIN RIVER WATERSHED

APPLICATIONS

<u>App. No.</u>	<u>Applicant</u>	<u>County</u>	<u>Source</u>	<u>Use</u>	<u>Season</u>	<u>Amount</u>
26033	Morgan Johnson, et al.	Madera	Cottonwood Creek	I	3/1-9/1 9/1-3/1	12 cfs 1,000 afa
27108	County of Tuolumne	Tuolumne	Clavey River	I D,J,M,R D,I,J,M,R	3/1-10/31 1/1-12/31 11/1-5/31	385 cfs 50,600 afa
28380	Oakdale Irrigation District	Stanislaus	Littlejohns Cr. Stanislaus River	I	10/1-5/31	62,000 afa
28712	Grassland Water District	Fresno	San Joaquin River	I,R,W	9/1-6/30	500 cfs
28739	Simon Newman, Inc.	Contra Costa	Italian Slough Orestimba Cr.	D,I,J,M,Z,K	9/1-6/15	360,000 afa
28916	Robert H. Brown	San Joaquin	Hospital Creek	I	4/1-5/31 1/1-5/31	3.2 cfs 95.0 afa
29012	Edward & Margaret McAlpine	Mariposa	Piney Creek	I,D,R	1/1-5/1	3 afa
29046	Mark F. Cash John F. Cash	Fresno	Unnamed Stream trib Dry Creek	E,H,I,S,W,Z	11/1-4/30	3 afa
29047	John & Mayla Clark	Tuolumne	Turnback Creek	I S I,S	3/15-6/15 & 9/1-12/15 9/1-6/15 10/1-6/1	0.037 cfs 6.1 afa
29061	Delta Wetlands	San Joaquin	Little Potato Slough, Potato Slough, Mokelumne River, San Joaquin River	D,I,M	12/15-5/1	96,070 afa
29062	Delta Wetlands	Contra Costa	Old River False River Fishermans Cut Suisun Bay	D,I,M	12/15-5/1	106,900 afa

SAN JOAQUIN RIVER WATERSHED

APPLICATIONS

<u>App. No.</u>	<u>Applicant</u>	<u>County</u>	<u>Source</u>	<u>Use</u>	<u>Season</u>	<u>Amount</u>
29063	Delta Wetlands	Contra Costa	Old River Sand Mound Slough Roosevelt Cut Rock Slough Holland Cut	D, I, M	12/15-5/1	69,050 afa
29066	Delta Wetlands	San Joaquin	Old River Santa Fe Dredge Cut Middle River Connection Slough	D, I, M	12/15-5/1	110,570 afa
29112	John Richard Sasser	Calaveras	French Gulch Unnamed Stream trib. French Gulch Unnamed Stream trib. French Gulch	I E, I, R, S	4/1-4/30 11/1-4/30	10,000 gpd 15 afa
29157	Robert D. & Eileen M. Ritz	Mariposa	Unnamed Spring trib. Fox Creek	D I	1/1-12/31 5/1-10/31	8,150 gpd

USES KEY

- B - Mining
- C - Milling
- D - Domestic
- E - Fire Protection
- G - Dust Control
- H - Fish Culture
- I - Irrigation
- J - Industrial
- L - Heat Protection
- M - Municipal
- N - Frost Protection
- P - Power
- R - Recreational
- S - Stockwatering
- W - Fish and Wildlife Protection / Enhancement
- Z - Other

SACRAMENTO RIVER WATERSHED

Filings with Apparent Hydraulic Continuity	Filings Proposing Winter Diversion or Without Apparent Hydraulic Continuity	Special Situations	Filings Where DWUA is Sole Protestant
28992 - Ferguson 27306 through 27313 - Quincy Water Company	28975 - Wutzke 28994 - Whitney 29050 - Waegell Bros. 29117 - Sorina 29127 - Graham 28468 - California Trout 28985 - Schaad	5626-U.S.B.R.	28985 - Schaad 28992 - Ferguson 29050 - Waegell Bros.

SAN JOAQUIN RIVER WATERSHED

Filings with Apparent Hydraulic Continuity	Filings Proposing Winter Diversion or Without Apparent Hydraulic Continuity	Special Situations	Filings where DWUA is Sole Protestant
19266 - Cosumnes River 21835 - Water and Power 27108 - County of Tuolumne 28712 - Grassland Water District 28739 - Newman, Inc. 29047 - Clark 29112 - Sasser 29157 - Ritz	23284 - Calosso 26032 - George Pope Trust 26033 - Johnson 28380 - Oakdale I.D. 28916 - Brown 29012 - McAlpine 29046 - Cash	5626 - U.S.B.R. 16186- Merced I.D. 29061 through 29063, 29066 - Bedford Properties	23284 - Calosso 28916 - Brown 29012 - McAlpine

during the diversion season, and special situations. Table 2 shows the various groupings. Protests already have been accepted on many of the projects.

3.0 ISSUES TO BE DECIDED HEREIN

The Key Issue listed in the Notice of Public Hearing was, "Should protests filed by the [Protestants] against numerous water right petitions and applications in the Sacramento River and San Joaquin River watersheds be accepted, rejected, or dismissed?".

Within this framework, several specific questions were posed in the hearing notice, as follows:

- "1. What evidence exists that water is or is not available for appropriation for the protested applications?
- "2. What permit terms and conditions would protect senior water right holders in the southern Delta?
- "3. Would the water rights in the southern Delta be adequately protected by including Standard Permit Terms 80, 90, 91, and 93, as appropriate, in any permits issued on the protested applications?
- "4. What bases exist for delaying action on the protested applications until the ongoing Bay-Delta Proceeding is concluded?"

To address the key issue, reach some conclusions, and set a framework for further proceedings, we will discuss in the context of the subject protests

- (1) whether any basis exists to maintain these protests

against the projects on the Sacramento and San Joaquin Rivers and their tributaries and in the Delta; (2) the kinds of evidence that will be relevant to resolve the protests against the proposed place of use changes; (3) the applicable burdens of proof.

4.0 EXCLUSIONS FROM THE SCOPE OF THE ORDER

For most of the protested applications, Protestants argue that the Board should act on the protested applications collectively and should not act on the applications until it has completed the Bay-Delta Proceeding. However, Protestants indicate that certain applications need not be delayed or considered in a combined hearing. These applications are discussed briefly below.

4.1 United States Bureau of Reclamation Change Petitions

The United States Bureau of Reclamation (hereinafter USBR) has filed petitions to change the places of use and to add a point of diversion in the Delta to certain of its Central Valley Project permits, filed under Application 5626 and eighteen others. By letters dated December 5, 1986, Protestants' and other parties' protests against these petitions were individually accepted in whole or in part, or rejected. The Board is processing the petitions. We have no current

indication that the issues regarding these petitions can be resolved without a hearing; therefore we expect that these petitions will be heard separately from the other petitions or applications protested herein, after all of the preliminary steps including environmental documentation have been completed. Consequently, we will not discuss the USBR petitions further herein.

4.2

Applications of the Department of Water Resources

Applications 16954 and 22709 of the Department of Water Resources (DWR) have been protested by Protestants and others. Protestants' protests have been accepted. However, during the hearing DWR's representative stated that DWR no longer is pursuing the assignment and approval of the applications, which are state-filed under Water Code Section 10500. Consequently, we will cancel the petition for assignment of these applications. Protestants stipulated at the hearing to the dismissal of their protests against these applications. Consequently, we will dismiss these protests.

4.3

The Delta Wetlands Applications

Delta Wetlands, Inc., has filed Applications 29063, 29066, 29061, and 29062 to store water on four Delta islands (Bouldin Island, Webb Tract, Holland Tract, and

Bacon Island) during periods of high flow. At the hearing, Delta Wetlands' representative asked that the Board accept the protests filed against the project and consider the Delta Wetlands' applications separately from the other applications and petitions protested by Protestants. Protestants agreed that Delta Wetlands' applications present a unique situation which should be treated separately from the other cases. Based on Protestants' and Delta Wetlands' agreement, the Division of Water Rights has accepted the protests and is processing the applications.

4.4 The M & T, Inc. Petitions.

Protestants have settled their protest against the petitions filed by M & T, Inc. under licensed Applications 5109, 8188, and 15866. Consequently, these protests will be dismissed and will receive no further consideration herein.

5.0 **PROTESTS AGAINST SACRAMENTO RIVER SYSTEM DIVERSIONS**

Protestants have filed numerous protests against applications to appropriate water and petitions for changes, regarding diversions from the Sacramento River or its tributaries. These protests were based on a theory that because water from the Sacramento River system reaches Protestants' area when the export pumps

of the Central Valley Project and the State Water Project are operating, Protestants are entitled to claim the natural flow of the Sacramento River under their riparian rights. Protestants argue that new appropriations or increased diversions due to expansion of the places of use of existing appropriative rights would decrease the amount of natural flow from the Sacramento River reaching the southern Delta. Based on the following discussion, the protests against applications or petitions on the Sacramento River and its tributaries upstream of the Delta shall be dismissed.

5.1 Effect of New Appropriations on Sacramento River Flow

The Board will subject new appropriations to the requirements of Water Right Decision 1594 (D-1594). New appropriations or increased diversions under existing permits diverting water in accordance with D-1594 would not affect the natural flow of water in the Sacramento River during periods when there is inadequate flow to satisfy all demands; i.e., during the seasons when water is in demand for irrigation. Pursuant to D-1594, the Board includes Standard Permit Terms 80, 90, and 91 in all new permits of 1 cfs or more or 100 afa or more and includes Standard Permit Term 90 in all new permits, if hydraulic continuity

with the Delta exists or is likely to exist during the requested diversion season.² ("New permits" in this context means all permits issued since the mid-1960's with term 80 in them.) Additionally, pursuant to D-1594, the Board routinely restricts the season of diversion of new permits for less than 1 cfs or less

2 Term 80 provides that:

"The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing."

Term 90 provides that:

"This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the _____* are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing."

"* Sacramento, Cosumnes, Mokelumne, Calaveras or San Joaquin River Basins for Sacramento-San Joaquin Delta."

Term 91 provides that:

"No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

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

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

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

than 100 cfs, when the diversion point has hydraulic continuity with the Delta, to prevent diversion during periods when no natural flow is available for appropriation. Thus, the Board limits the rights in new permits so that they do not affect the natural flow during the periods of limited flow. Since any new permits would not allow diversion during the periods of inadequate availability of water, they could not reduce the natural flow of the Sacramento River that reaches Protestants' members during the seasons when the availability of water is limited. Stated another way, the combined effect of (1) conditioning new appropriations as described above and (2) the present obligations of the CVP and the SWP to maintain water quality in the Delta, mitigates for the effects of new appropriations in the Sacramento River watershed.

Regardless whether Protestants have senior claims, any new appropriation or any appropriative right which contains the D-1594 restrictions on the Sacramento River is not expected to interfere with Protestants' asserted water rights. Any permits issued on the protested applications will be conditioned pursuant to D-1594 so that they cannot be exercised during periods of inadequate flow. Further, the licensed appropriators seeking changes in their places of use

cannot increase their use of water without initiating a new right; their rights already have been fully proved up for the maximum authorized use of water under their current rights. See Water Code Section 1610.

Consequently, the only kind of change petition on the Sacramento River system which might affect the availability of water in the southern Delta would be a petition to change a permit that had not yet reached its full beneficial use, but which nevertheless was old enough to not be subject to the D-1594 restrictions. This type of change petition can be subjected to the D-1594 restrictions as a condition of its approval. In any event, no protested change petitions noted herein fall in this latter category. Therefore, we will dismiss all of the protests discussed herein regarding diversions from the Sacramento River or its tributaries.

5.2 Protestants' Claim to Sacramento River Water

Protestants allege that approval of the protested applications and petitions would violate their riparian and appropriative rights and would violate the Delta Protection Act (Water Code Sections 12200 through 12205).

All of the protests against Sacramento River system diversions considered herein will be dismissed based on the discussion in finding 5.1 above; however, there may be some future cases in which the above analysis does not apply. Herein, for the purpose of explaining the issues to be considered in such a case, we provide the following analysis.

If a protestant's rights are not otherwise protected, and the Board must decide whether water is available for appropriation, the Board must decide whether diversion and use of water under the requested appropriation would impair the rights of any protestant who claims to be a senior water right holder. This determination requires that the Board, solely for the purpose of deciding whether water is available for appropriation, determine the existence and extent of the water rights of any alleged water right holder who protests the application or change petition. Temescal Water Co. v. Dept. of Public Works (1955) 44 Cal.2d 90, 280 P.2d 1. Therefore, the following analysis serves the sole purpose of explaining when the appropriative and riparian water rights within the Delta may make water unavailable for appropriation by applicants and petitioners. The basic question is whether water right holders in particular

geographic parts of the Delta have a valid claim to the waters of the Sacramento River system.

5.2.1. Effect of the Burns-Porter Act

Protestants' claims to Sacramento River water are in part founded on the California Water Resources Development Bond Act, at Water Code Sections 12930-12944. Protestants' attorney argues that this law places the entire Delta, including the southern Delta, in the watershed of the Sacramento River, and that since they are in the Sacramento watershed, even the southern Delta water right holders have claims to the waters of the Sacramento River. Protestants are correct that this Act places the Delta within the watershed of the Sacramento River, but it does so only for the purposes of the Act. See Water Code Section 12931. This argument does not help Protestants.

First, the relevant part of Section 12931 states, "For the purposes of this chapter the Sacramento-San Joaquin Delta shall be deemed to be within the watershed of the Sacramento River." (Emphasis added.) This chapter is, as its title indicates, a law authorizing the use of bond funds to construct the State Water Project. It is not a water rights law. Indeed, Section 12931 additionally states, "The enactment of this chapter

shall not be construed as creating any right to water or the use thereof nor as affecting any existing legislation with respect to water or water rights, except as expressly provided herein, nor shall anything herein contained affect or be construed as affecting vested water rights." (Emphasis added.) An examination of the Act reveals that it contains no provisions either expressly creating a water right or expressly affecting existing legislation with respect to water rights. Because of Section 12931, Protestants must rely on any rights they have outside of this Act, and not depend on this Act to give them rights they otherwise would not have.

Second, the provision of Section 12931 placing the Delta in the watershed of the Sacramento watershed would not, even if it were applicable to matters other than bonding, be sufficient by itself to bestow a water right on users of water. Being in the watershed, absent meeting other legal requirements, is not enough to establish a water right. Absent Protestants' interpretation of the California Water Resources Development Bond Act, the sole remaining arguments for a claim on the Sacramento River are under claims of riparian or appropriative rights, and are discussed below.

5.2.2. General Rule

In order to be injured by a new appropriation or a change in an existing appropriation, a water right holder must ordinarily be downstream from the proposed diversion. Peabody v. Vallejo (1935) 2 Cal.2d 351, 40 P.2d 486, Meridian v. San Francisco (1939) 13 Cal.2d 424, 90 P.2d 537. In their papers, Protestants have not formally delineated their membership or the areas where their members divert water. However, Protestants indicated during the hearing that many of their diversions are in the southern Delta. Protestants have since the hearing advised us that some of their members divert water north of the San Joaquin River, adjacent to the Sacramento River or its tributaries. However, to the extent that Protestant's members in the southern Delta³ are not adjacent to any channel of the Sacramento River or its tributaries and are located along the San Joaquin River upstream of its confluence with the Sacramento River in the estuary, it is questionable whether they could be downstream from the Sacramento River diversions. However, if Protestants have members in the parts of the Delta adjacent to the Sacramento River, such members would be downstream of diversions in the Sacramento River system.

³ For purposes of this discussion we are assuming that the southern Delta is located south of the main stem of the San Joaquin River within the Delta.

5.2.3

Riparian Rights

Assuming for purposes of discussion that Protestants' members divert and use water only in the southern Delta, the riparian rights asserted by Protestants would not extend to the Sacramento River for two important reasons in addition to the reason that Protestants are not downstream from the applicants and petitioners. First, in order to claim a riparian right, the lands of a water user must be adjacent to the stream from which the right is claimed and not severed. Rancho Santa Margarita v. Vail (1938) 11 Cal.2d 501, 81 P.2d 533. Second, only natural flows can be claimed under a riparian right. Bloss v. Rahilly (1938) 16 Cal.2d 70, 104 P.2d 1049. The water of the Sacramento River, to the extent it reaches the southern Delta, is unlikely to flow there under natural conditions, and consequently would not be natural flow in that geographic location. If the Sacramento River's water would not flow to a particular location, the water could not be taken at that location under a claim of riparian right and, as a matter of law, there could be no impairment of the riparian rights of diverters in that area because of a new or increased appropriation on the Sacramento River.

If Protestants' alleged rights were not protected by the provisions of D-1594, the Board would need proof of Protestants' rights before subjecting a new appropriation or a change petition to satisfaction of Protestants' needs. If it were necessary to decide whether Protestants' members had a senior claim to water from the Sacramento River, the Board would be willing to consider evidence offered to prove that some of Protestants' members have rights to water from the Sacramento River. Relevant evidence would include, among other items, evidence that specific members have land adjacent to the Sacramento River or its tributaries or that Sacramento River water flows south of the San Joaquin River under natural conditions. (We note here that flows induced by pumping, whether by the CVP and the SWP or by others are not natural.)

5.2.4 Appropriative Rights

5.2.4.1 Appropriative Rights to Water Drawn Into the Southern Delta

It is helpful to review the effects of diversions from the Sacramento River on the appropriative rights of Protestants absent D-1594. Protestants' members rights could be affected by (1) higher priority water rights in the Sacramento River system, (2) the extent to which unappropriated water from the Sacramento River actually reaches Protestants' individual members, (3) the

operation of the SWP and CVP pumps to draw Sacramento River water to the area, (4) the extent to which water is drawn from the Sacramento River in excess of that needed to accomplish export diversions of the SWP and CVP, and (5) the extent to which the Protestants' members through their own pumping have drawn water from the Sacramento River and have used it under their own prior appropriative rights. The following discussion applies only to water that has not been stored upstream by the DWR or the USBR for subsequent export from the southern Delta. We note that water stored for export is appropriated, and is not available to the Protestants unless it is subsequently abandoned.

Under natural conditions it is questionable whether water from the Sacramento River would reach certain parts of the Delta. Currently water from the Sacramento River reaches the southern Delta primarily because of the action of the export pumps operated by the USBR and the DWR in the southern Delta. (It is possible that Sacramento River water may also reach distant parts of the Delta under certain hydrological conditions as a result of pumping by water users in those parts of the Delta.) The DWR and the USBR divert the water from its natural channel at either the Delta Cross Channel or the confluence of the Sacramento River

with other natural and artificial channels in the Delta which connect directly or indirectly with the San Joaquin River. The USBR has points of diversion in its permits to divert Sacramento River water into the San Joaquin River system at the Delta Cross Channel. Although both the DWR and the USBR have points of direct diversion in the San Joaquin River system in addition to the USBR diversion point at the Delta Cross Channel, they in fact control the portion of Sacramento River flow destined for export as soon as the water leaves its natural course.

The right to use a natural watercourse as a conduit for water appropriated from another watercourse is recognized by Water Code Section 7075. Section 7075 provides:

"Water which has been appropriated may be turned into the channel of another stream, mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another shall not be diminished."

By their export pumping, DWR and the USBR are turning water into the channels of the San Joaquin River, commingling it, and then reclaiming it, as this section authorizes.⁴

⁴ *DWR and the USBR turn both carriage water and water for export into the San Joaquin River. Both kinds of water are required to accomplish their exports.*

The principle codified in Section 7075 and its predecessors has given rise to various court decisions regarding the rights of appropriators along the watercourses in which the appropriated water is conveyed. One case in particular is similar to the situation in the Delta. In that case water was diverted from the Merced River into Owens Creek, a natural watercourse, and then into the East Side Canal for beneficial use. During a drought year, an appropriator from Owens Creek diverted substantial quantities of the imported water, and the importer sought and received an injunction against the Owens Creek appropriator. The California Supreme Court held on appeal that the imported water was available to the Owens Creek appropriator, but only to the extent that it was excess to the needs of the importer. Stevinson Water District v. Roduner (1950) 36 Cal.2d 264, 223 P.2d 209. See generally Modesto Properties Co. v. State Water Rights Board (1960) 179 Cal.App.2d 856, 4 Cal.Rptr. 226; Stevens v. Oakdale Irr. Dist. (1939) 13 Cal.2d 343, 90 P.2d 58.

We note that while the SWP and the CVP divert some of their water from the Sacramento River at a permitted point of diversion at the Delta Cross Channel and that

the USBR clearly appropriates water at that location, the permitted points of diversion for the balance of the water are in the San Joaquin River system. Based on the locations of the approved points of diversion, it could be argued that much of the water pulled into the southern Delta is unappropriated until it reaches the projects' diversion facilities. Nevertheless, the projects have the water under physical control as soon as it leaves the Sacramento River. The courts have consistently recognized that an appropriation is characterized by physical control over the water; no statutory enactment has altered this judicial definition of an appropriation. See Fullerton v. California State Water Resources Control Board (1979) 153 Cal.Rptr. 518, 524, 90 Cal.App.3d 590, 599. Since the USBR and the DWR are authorized by their permits to draw water to their export diversion points in the southern Delta, we believe that for the purpose of Section 7075 the water drawn by the export pumps to the Protestants' area is appropriated water.

We have no indication that the quantity of water drawn into the San Joaquin River system by the export pumps exceeds the amount required by the DWR and the USBR. Based on the Stevinson case, we consider the water reaching the southern Delta as a result of DWR and USBR

pumping available to Protestants' members in the southern Delta under their appropriative rights, but only to the extent that it is in excess of the water required by the DWR and the USBR for export or for carriage purposes.

As noted above, it is possible that Protestants' members, because of their own pumping, are appropriating the waters of the Sacramento River in parts of the Delta where the Sacramento River would not naturally flow. Whether or not this is occurring would require proof. Consequently, any claim of Protestants against new appropriations or change petitions from the Sacramento River system would be subject to adequate proof. Such proof should establish either (1) that the USBR and DWR divert Sacramento River water in excess of their own needs into Protestants' area and that the excess would be diminished if the Board approved the protested applications or change petitions, or (2) that Protestants' members have established their own senior appropriations of water from the Sacramento River that would be impaired by approval of protested applications or petitions.

5.2.5. Delta Protection Act

Protestants further assert that authorizing the proposed applications and changes would violate the

Delta Protection Act (Water Code Sections 12200-12205). The Delta Protection Act states, among other things, that it is the policy of the state to maintain an adequate water supply in the Delta to maintain and expand agriculture, industry, urban, and recreational development in the Delta area. Water Code Section 12201. This policy is subject to the provisions of Water Code Sections 10505 and 11460-11463.

The Delta Protection Act addresses the effects of diversion and export of water from the Delta by the State Water Project and the Central Valley Project. To the extent that it discusses upstream rights, it makes Delta protection subject to the projects' satisfaction of the reasonable and beneficial uses of the areas of origin, under Water Code Sections 10505 and 11460-11463. We conclude that the Delta Protection Act does not preclude reasonable new development of water uses in the areas of origin. All of the Sacramento River system applications and petitions except those disposed of in section 4 above are for diversion and use within the Sacramento River system. Therefore the Delta Protection Act would not be violated by this Board's approval of reasonable changes in appropriations or approval of new appropriations from the Sacramento River and its tributaries.

6.0. PROTESTS AGAINST SAN JOAQUIN RIVER SYSTEM DIVERSIONS

Protestants have filed protests against seventeen applications and one change petition within the San Joaquin River system upstream of Vernalis. About half of the protests are against applications to divert water from parts of the system which apparently lack hydraulic continuity with the Delta for part of the year. One protest is against an application to divert and store water for nonconsumptive power purposes as part of a large multipurpose project (Application 19266 of Cosumnes River Water and Power). One protest is against a petition to increase the place of use under licensed Application 16186 of Merced Irrigation District (License 11395).

Pursuant to D-1594, the Board: (1) reserves jurisdiction over the season of diversion of new permits by placing Standard Water Right Permit Term 80⁵ in all new permits in the San Joaquin

⁵ Permit Term 80 provides that:

"The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing."

watershed; (2) includes Standard Permit Term 93⁶ in all new permits upstream of Vernalis in the San Joaquin River watershed (this term allows the Board to stop diversions whenever water is not available for the appropriation); (3) includes Term 90 in all permits when hydraulic continuity exists with the Delta during the diversion season (this term advises the permittee that water may not be available during the entire season of diversion); (4) includes Term 91 in all permits authorizing the diversion of 1 cubic foot per second (cfs) or more or 100 acre-feet per annum (afa) or more (this term forbids diversions when the SWP or the CVP is required to release supplemental project water for inbasin entitlements).

In addition, the Board sets a fixed season of diversion for all new permittees diverting less than 1.0 cfs by direct diversion or less than 100 afa by diversion to storage. The fixed season excludes the period from

6 Standard Permit Term 93 provides:

"No diversion is authorized by this permit under the following conditions: (1) when in order to maintain water quality in the San Joaquin River at Vernalis at a level of 500 parts per million (ppm) Total Dissolved Solids (TDS), the Bureau of Reclamation is releasing stored water from New Melones Reservoir or is curtailing the collection of water to storage, or (2) during any time of low flows when TDS levels at Vernalis exceed 500 ppm. These restrictions shall not apply when, in the judgment of the State Water Resources Control Board, curtailment of diversion under this permit will not be effective in lowering the TDS at Vernalis, or when in the absence of the permittee's diversion, hydraulic continuity would not exist between the permittee's point of diversion and Vernalis. The Board shall notify permittee at any time curtailment of diversion is required under this term."

June 16 to August 31. If the applicant cannot provide reasonable assurances that it has water available from another source during this period, and the applicant's season of water use includes this period, a permit cannot be granted. 23 CCR Section 700. Protested Applications 29112 (Sasser) and 29157 (Ritz) fall within the less than 1 cfs classification.

All of the protested applications and the protested change petition in the San Joaquin watershed are upstream from Protestants' diversions. Protestants allege that even with inclusion of the standard permit terms the proposed diversions and the proposed change may adversely affect their water supply and would violate their prior riparian and appropriative rights, the Delta Protection Act (Water Code Sections 12200-12205), and the San Joaquin River Protection Act (Water Code Sections 12230-12232).

Protestants' basic concern is that as flows decrease, less water is present to dilute saline discharges into the San Joaquin River upstream of their diversions, and less fresh water is available to repel seawater intrusion into their area. Essentially, Protestants assert that because of the salinity problems any unappropriated water must remain in the stream to

protect their uses, and therefore no water remains available for appropriation upstream of their area.

As we noted in Water Right Order 84-2, the D-1594 restrictions do not fully resolve the salinity problems within the southern Delta. Both drainage of salt-laden water into the San Joaquin River upstream of the confluence with the Stanislaus River and low flows in the San Joaquin River have an effect. Additionally, the Board may find after receiving evidence that the water quality objective of 500 ppm TDS at Vernalis is not equivalent to the water rights of Protestants in all parts of the affected area. See U.S. v. State Water Resources Control Board (1986) 182 Cal.App.3d 82, 227 Cal.Rptr. 161, 181-182.

The salinity problem raises some mixed questions of fact and law, the resolution of which will require the Board's receipt and consideration of evidence if the protests are not resolved among the parties. These questions for future consideration include, among others, whether it is reasonable to deny new applications in order to continue diluting salt in the river, whether dilution of salts discharged into the river is a reasonable use of the water, making it unavailable for appropriation under Water Code

Section 1201, what are the reasonable and beneficial needs of the Protestants' members and what are the actual effects on Protestants' members of applications for which no hydraulic continuity exists with the Delta during the proposed diversion season.

Protestants' papers do not specifically discuss the individual applications and petition, do not allege all of the facts that are needed to show that approval of the applications and petition will worsen their water supply situation, and do not identify their members' individual water right claims. However, Protestants have given us assurances that they will provide the necessary evidence in a hearing. Protestants' protests therefore remain unresolved at this time. Without a hearing or Protestants' agreement, we will not make a final determination that Protestants' interests are fully protected by Terms 80, 90, 91, and 93. Consequently, we will accept all of Protestants' protests against new diversions in the San Joaquin River watershed, provided that Protestants correct their protests as necessary to meet the requirements of 23 CCR Section 745.

6.1. Effect of Delta Protection Act

As with the Sacramento River applications and petitions, Protestants assert that authorizing the

proposed applications and change petition would violate the Delta Protection Act (Water Code Sections 12200-12205). For the same reasons stated in Section 5.2.3. above, we conclude that the Act would not be violated by our approval of the applications or change petition discussed herein.

6.2 Effect of San Joaquin River Protection Act

Protestants have in part based their protests on the San Joaquin River Protection Act, set forth at Water Code Sections 12230-12233. This law forbids the Board to do anything in connection with its responsibilities to cause further significant degradation of the quality of water in the reach of the San Joaquin River between the Merced River and the Middle River. Consequently, one of the issues to be addressed in any hearing on the San Joaquin River protests will be whether the Board will comply with this law if it approves the application or petition as requested or whether terms and conditions can be placed on the Board's approval to ensure compliance.

6.3. Handling of San Joaquin River Protests

The protests will be processed in accordance with the Board's regulations at 23 CCR Sections 745-753. Any hearing or proceeding in lieu of hearing on the

protested applications will be held in accordance with the regulations at 23 CCR Sections 760-771. Compliance with these regulations will be required. We call attention to Section 745(b), which requires that a protest based upon interference with a prior right state the basis of the Protestant's claim of right and when the use began, the use that has been made in recent years, and present use. The protests herein do not accomplish this; rather they generalize that rights exist without specifying the asserted rights.

Protestants argue that precise compliance with this section before the cases are ready for an evidentiary hearing is unnecessary and unreasonable. Protestants allege that hundreds of water rights are being exercised in their area, and that their current papers are sufficient to allege their multiple long-standing water rights and their interest in the water that is proposed to be diverted, thereby satisfying the purposes of Section 745(b). We disagree. Section 745(b) contains legal requirements and all protestants are bound to comply with it. Protestants herein are not exempt from these legal requirements.

Consequently, we will give Protestants 90 days from the date of this order to submit amendments to their protests complying with Section 745(b). The protest amendments must include the type of right for each

diversion whether riparian or appropriative, when each use began, the water right permit or license numbers authorizing appropriations since 1914, and the recent and present uses of water under each diversion, including the quantities of water used. The Board's staff is directed to review the amendments and prepare responses accepting or dismissing the protests.

Further, it is the burden of a Protestant to prove that it has a right that will be impaired by a proposed diversion and use of water or by a proposed change in a water right. See Temescal Water Co., supra. Section 745(b) recognizes this burden by requiring certain allegations in the protest. Since Protestants claim to be asserting the rights of numerous diverters in the Delta, they will be required to provide complete documentation of the rights they assert before a hearing is held.

The applicants should file their answers to the protests in accordance with Section 751. We encourage the applicants and Protestants to negotiate settlements to the extent possible. If settlements are not reached within 90 days after Protestants have amended their protests in accordance with Section 745(b), we will schedule an evidentiary hearing or hearings on the unresolved protests.

At the request of the parties, and upon a showing of good cause, we will consider hearing an individual application or a small number of applications as a test case to develop the issues and an orderly procedure for the other applications.

6.4. The Change Petition

We note that the protested change petition filed by Merced Irrigation District is a petition to change the place of use of a licensed appropriation. Since this right is licensed, the maximum diversion and beneficial use of water under this appropriation already has been proved up. Consequently, the quantity of water diverted and put to beneficial use under this right cannot be increased without initiating a new right. See Water Code Section 1610. The grounds for protesting a change petition are that the change will in effect initiate a new right or will injure another lawful user of water. 23 CCR Section 791. Protestants allege in their protest against this petition that approval of this petition could result in injury to legal users of the water among Protestants' members and would cause a reduction in the natural flow of water in the Delta. Protestants allege that this proposed change may result in a net increase in the amount of water used upstream

because of a substantial increase in the place of use coupled with a reduction in the amount of water returning to the river after use. Protestants allege that such an increase in the amount of water put to beneficial use would injure certain of Protestants' members. As we have noted, an increase in beneficial use would exceed the right represented by License 11395. However, it is possible that the petitioned change will result in injury to the Protestants' members, because the total diversion is large and the proposed change on its face appears to result in a substantial increase in beneficial use. Since it appears that a material factual dispute exists over whether approval of the petition would actually result in injury to downstream water right holders or would increase the amount of water put to beneficial use, we will accept the protest against this petition, provided that Protestants correct their protests to meet the requirements of 23 CCR Section 745.

6.5. Burdens of Proof

At the time of hearing, the parties will have to carry their burdens of proof when they present their cases.

In general, the party seeking an approval or entitlement has the burden of proof in administrative

proceedings such as water right hearings. However, this rule varies when public policy considerations favor protecting a particular interest. CEEED v. Calif. Coastal Zone Conservation Comm'n (1974) 43 Cal.App.3d 306, 118 Cal.Rptr. 315; State v. City and County of San Francisco (1979) 94 Cal.App.3d 522, 156 Cal.Rptr. 542. Thus, it appears that both statutory policies and doctrinal policies such as the public trust doctrine may influence a party's burden of proof.

Further, the Evidence Code at Section 500 provides that:

"Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

While this provision is not directly applicable to our proceedings, it has persuasive value in determining the burden of proof to be applied in our proceedings.

Based solely on the general rules, our preliminary impression of the burdens of proof which the parties must meet are as follows: (1) Applicants will have the burden of proving initially that water is available for appropriation under their applications.

(2) Protestants must establish their prior rights.

(3) Protestants must establish the likelihood of harm to their prior rights. (4) Protestants must establish the relationship between the harm to their rights and the proposed diversion. (For example, if the applicant has provided records showing that the proposed diversion is not in hydraulic continuity with Protestants' area during the season of diversion, Protestants must show that the diversion nevertheless will reduce their supply of better quality water. This may mean proving that hydraulic continuity actually exists below the surface and that the diversion will reduce the water supply reaching Protestants when they are using water, or proving some other cause for harm because of the diversion.) (5) Applicants will have the burden of proving that their diversions will not harm Protestants. (6) Applicants will have the burden of proving that their intended uses will be beneficial.

Other facts will also require proof, based on the circumstances of each proposed appropriation. The factual issues requiring proof will be listed in the notice(s) of hearing that will be sent to the parties if negotiations between the parties fail to resolve all of the issues. Absent overriding public policy reasons, the burden of proving each fact will be on the party whose case the fact supports.

6.6.

Environmental and Public Trust Considerations

The California Environmental Quality Act (CEQA) applies to the applications. For applications for which the Board is the lead agency, the Board will decide on a case-by-case basis what the required documentation will be under CEQA. Where the Board is the responsible agency, the Board will consider the environmental documentation prepared by the lead agency.

Additionally, the Public Trust doctrine applies to these applications, and the Board will take into account any public trust values that may be affected by the applications when it takes action to approve, deny or conditionally approve these applications.

Finally, the Board will apply the public interest and reasonableness requirements of the Water Code to its consideration of these applications.

6.7

Effect of the Bay-Delta Hearings

Protestants argue that consideration of the applications herein should be delayed until the ongoing Bay-Delta Proceeding is concluded. Protestants' argument is premised on the assumption that the outcome of the Bay-Delta Proceeding will include findings that

little or no more water can be appropriated in the San Joaquin River watershed. However, this result is speculative, and cannot be used as the basis for a determination herein. Nevertheless, we have long recognized that the availability of water in the San Joaquin River watershed may change as a result of future Board decisions. (See D-1594.) Consequently, we routinely reserve jurisdiction under Standard Permit Term 80 to change the season of diversion of new permits. Such a change could result in either an increase or a decrease in the availability of water for the more recent appropriators during the irrigation season. The applicants are warned that in their priority levels they cannot be as certain as their predecessors that water will be available from the source stream when they want to use it.

7.0. CONCLUSIONS

Based on the foregoing, we conclude as follows:

1. All of the protests herein against applications and petitions in the Sacramento River system should be rejected or dismissed;
2. The protests against all of the applications and change petitions in the San Joaquin River watershed

including the change petition filed by the Merced Irrigation District under License 11395 will be accepted if Protestants meet the requirements in the Board's regulations;

3. Protestants and the applicants and petitioner should proceed to negotiate in good faith their differences, so as to reach stipulated permit terms and conditions upon which they can agree to dismiss the protests;
4. In any hearing on these matters, the Board will expect each party to introduce evidence tending to establish the facts that will support that party's position. The Board may decide against a party who fails to adequately meet a burden of proof.
5. To the extent that it is convenient and does not cause excessive delays, the protested applications herein should be grouped for hearing. However, we will not authorize more than a 90-day delay pending completion of ongoing negotiations before proceeding with a hearing on other applications that are ripe for hearing.

ORDER

IT IS HEREBY ORDERED that:

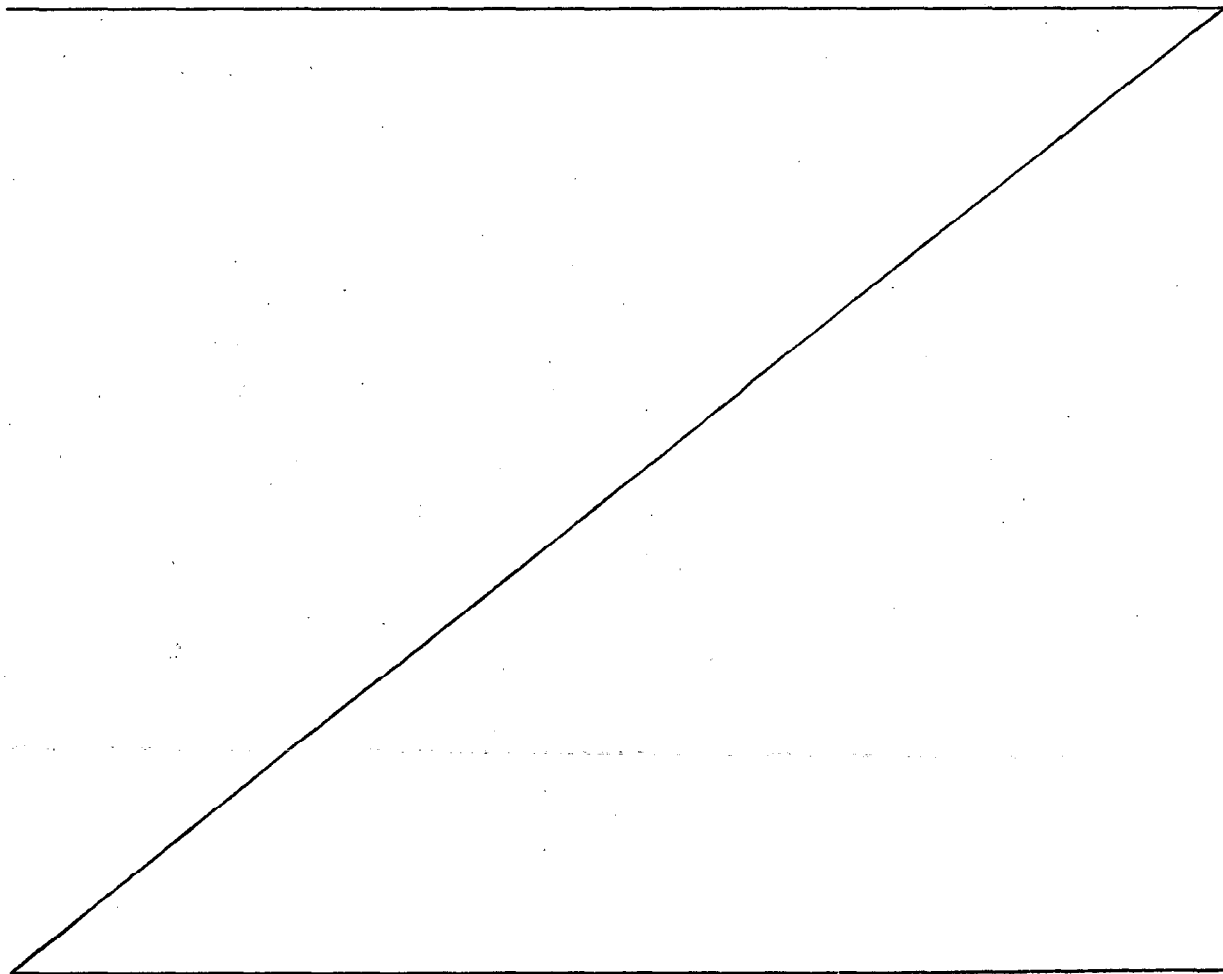
1. The protests filed by Delta Water Users Association against Applications 27306-27313 (Quincy Water Co., Inc.), 28468 (California Trout, Inc.), 28888 (Bella Vista Water District), 28975 (Wutzke), 28985 (Schaad), 28992 (Ferguson), 28994 (Whitney), 29050 (Waegell), 29117 (Sorina), and 29127 (Graham) on the Sacramento River and its tributaries are dismissed and rejected.

2. The protests filed by Delta Water Users Association against Applications 19266 and 21835 (Cosumnes River Water and Power Authority), 26032 (George A. Pope Trust), 26033 (Johnson), 27108 (County of Tuolumne), 29047 (Clark), 29046 (Cash), 29012 (McAlpine), 28916 (Brown), 28739 (Newman), 28712 (Grassland Water District), 28380 (Oakdale Irrigation District), 29112 (Sasser), and 29157 (Ritz) are accepted for processing subject to Protestants' meeting the requirements of 23 CCR Section 745, and will be processed in accordance with the regulations of the State Water Resources Control Board.

3. The protest filed by Delta Water Users Association against the petitions of Calosso under permitted Application 23284 and Merced Irrigation District under licensed Application

16186 are accepted for processing subject to Protestants' meeting the requirements of 23 CCR Section 745, and will be processed in accordance with the regulations of the State Water Resources Control Board.

4. The petitions of the Department of Water Resources for assignment of state filed Applications 16954 and 22709 are cancelled, and the protests filed by Delta Water Users Association against the assignment and approval of these applications are dismissed.



5. Within 90 days after the date of this order, Protestants shall amend their protests against the applications and petition listed in Order paragraphs 2 and 3 above to comply with the requirements of 23 California Code of Regulations Section 745(b). If the protests have not been adequately amended within 90 days, the chief of the Division of Water Rights may dismiss the protests without further Board action.

CERTIFICATION

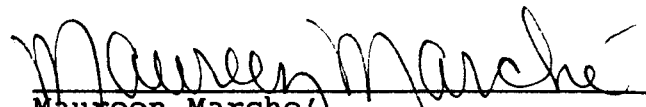
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 20, 1989.

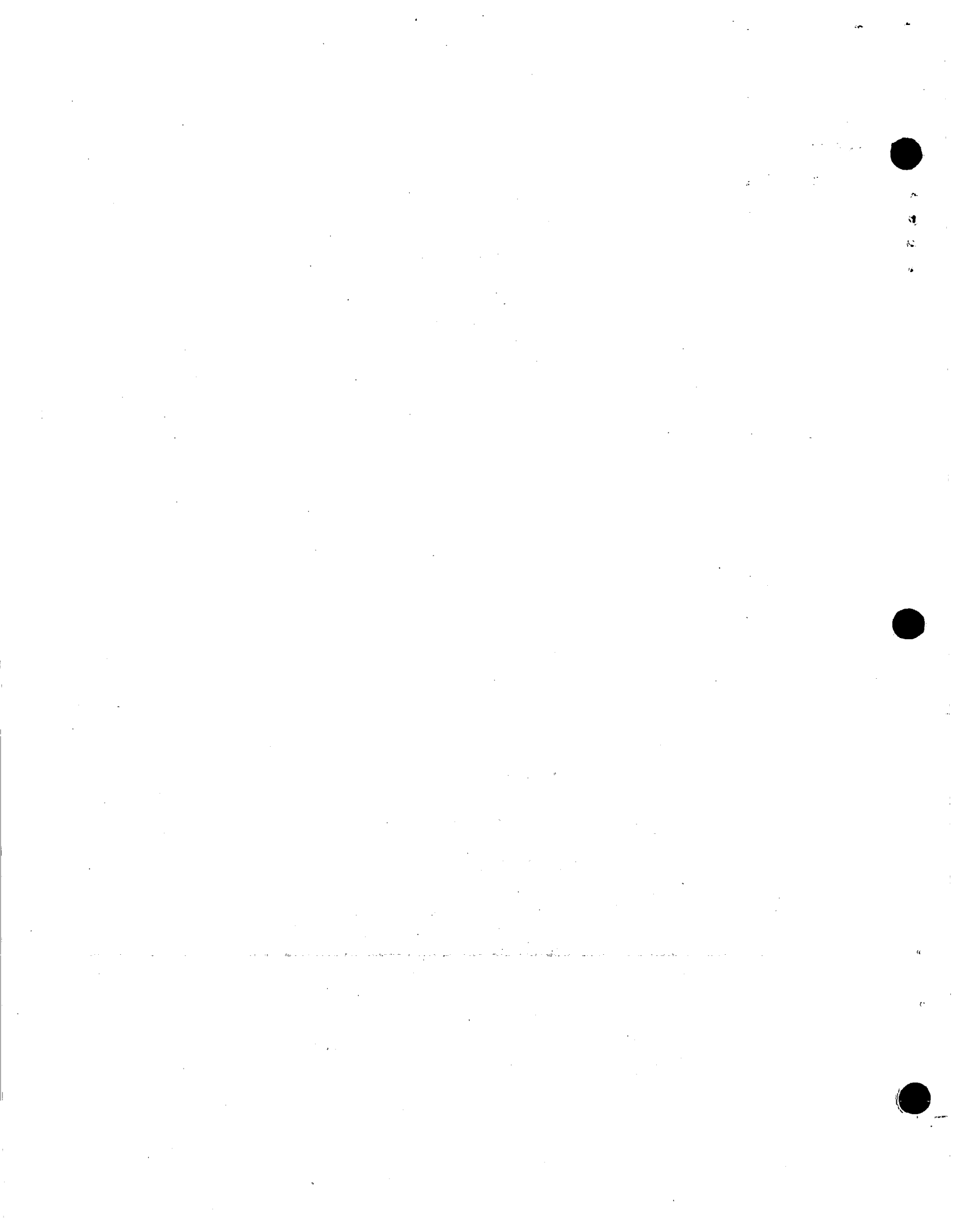
AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Eliseo M. Samaniego
Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to
the Board



STATE WATER RESOURCES CONTROL BOARD
P. O. Box 100, Sacramento, CA 95801

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