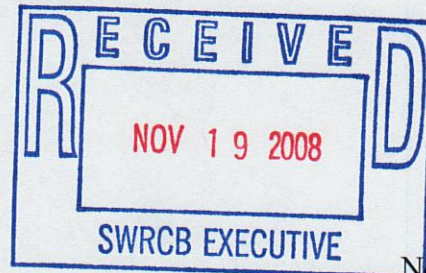


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November 19, 2008

COMMENT LETTER – 12/02/08 BOARD MEETING:
AUBURN DAM PROJECT DRAFT ORDER

Friends of the River, Save the American River Association, and Defenders of Wildlife congratulate the Board on the development of a well-reasoned draft revocation order. The Board clearly stated the facts and explained its responsibilities to administer the water rights system under the water code. We are also appreciative that the order provided a clear and succinct summary of the Board’s historic American River decisions related to San Joaquin County — something that should prove helpful to decision-makers in San Joaquin County.

We support the draft order and urge the Board to finalize it expeditiously.

We do have some suggested clarity or technical corrections and edits:

Page 5, §3.1, first sentence, first paragraph: The draft order states that the Auburn dam and reservoir is located “near the town of Auburn.” Auburn is a city under California law and became the seat of Placer County in 1851. We suggest a text change to “near the town **city** of Auburn.”

Page 17, §2, last sentence: The draft order states:

If the State Water Board were to accept Reclamation’s argument, Reclamation could reserve water rights indefinitely for any reclamation project that has *not been authorized* or funded and may never be built, in direct contravention of the due diligence requirement and the Congressional directive to comply with state water law when appropriating water. (*Emphasis added*)

Reclamation is clearly making the argument that the Board should not revoke water rights for Federally *authorized* projects that have not been constructed, funded, and may never be built. However, we note that the reasoning in the draft order applies to a slightly larger subset of circumstances. This is appropriate since the record shows that although authorized 45 years ago, the partially funded and constructed Auburn dam has never been reauthorized and requires new authority for resumption of construction and operation of the project; therefore, by inference, Reclamation's argument could also apply to *unauthorized* Federal Projects as noted in the draft order. We believe that the Board intends to be scrupulously fair in characterizing the arguments of the participants of this proceeding. Thus, a more complete statement in a final order might be the following:

If the State Water Board were to accept Reclamation's argument, Reclamation could reserve water rights indefinitely for any reclamation project that has not been ~~authorized~~ or **sufficiently** funded and may never be built, **whether or not Congress has effectively authorized the project**, in direct contravention of the due diligence requirement and the Congressional directive to comply with state water law when appropriating water. **Indeed, it is possible that Reclamation could make this deference argument for projects that may have been the subject of advanced planning and secured water rights, but were never authorized by the Congress or funded.**

Page 22, §1 & 2: We think the draft order here does a good job in responding to San Joaquin parties' requests and divining the reasons for their requests of the Board — which, frankly, were not always consistent or clear.¹ Nevertheless, some language changes may make the order's reasoning more clear and responsive to San Joaquin parties' concerns.

¹ Mr. Hanson, representing two San Joaquin County parties, requested time to obtain either an assignment of the water right or a contract (Transcript p. 130). In his prior written testimony, also representing Central Delta Water Agency, he only requested time to seek an assignment of the right (SJC-10, p. 15). DeeAnn Gillick, also representing the previous two San Joaquin County parties, requested that the county be given more time to work with Reclamation "to perfect the priority water of the Bureau's permit" (Transcript p. 124). Mel Lytle, this time also representing South Delta Water Agency (Transcript p. 118), requested more time "to explore and prepare project alternatives to utilize a portion of water to be diverted pursuant to the Bureau's permits for the intended beneficiaries, namely, Sacramento, Placer, and San Joaquin Counties." (Transcript, p. 135). In contrast, Stockton East Water District's do-not-revoke request was framed as providing time to execute a CVP water-service contract for the benefit of San Joaquin interests (Karna Harringfeld, Stockton East Water District, Transcript p. 158 and Kevin Kauffman, Stockton East Water District, Transcript p. 161).

For example, on page 21, the draft order notes:

“both the county and Stockton East oppose revocation of the permits because they would like three years to negotiate with Reclamation for a water supply contract or acquisition of the permits.”

However, in paragraph 1 of the next page, the draft order only addresses the case where the county would acquire Reclamation’s permits. To be fully responsive, it may be helpful for the order to fully address both scenarios, either of which appear to have been advocated by the county and Stockton East. The following proposed language is one approach to doing this:

If the county were to acquire the Auburn Dam Project permits **(or obtain contracts under the permits)**, the county does not **presently** propose to construct **(and recognizes that Reclamation has no current plans to construct)** Auburn Dam or otherwise change the county’s proposal to divert from the Sacramento River at Freeport (except, necessarily, to change the source of the proposed appropriation from the South Fork American River to the North Fork American River). Instead, the county desires the permits **(or contracts under the permits)** because they are senior in priority to the 1990 priority date of the county’s pending application **(as well as others, in the case of contract deliveries)** and the authorized season of diversion for the **Reclamation** permits includes the additional month of November...

...There are a number of flaws, however, with the county and Stockton East’s argument that they should be given the opportunity to acquire the Auburn Dam Project permits **(or contracts under these permits)**.

We raise the issue of “present” proposals and Reclamation’s “current plans” because this was the subject of cross examination of Dr. Lytle, who reaffirmed that San Joaquin County’s historic positions in favor of Auburn dam and the Folsom South Canal extension remain in place, the county recognizes Reclamation’s difficulties in constructing the project, and the county’s interest in a third option of direct diversions at Freeport from some American River source (Transcript pp. 142–144).²

Page 25, §5.3, last paragraph: In its brief discussion of the environmental implications of revoking the permits, the draft order notes that “the Auburn Dam Project would

² San Joaquin County is also a member of the American River Authority, a JPA formed “to support the common interest of seeing a dam, reservoir and hydroelectric powerplant at the Auburn Dam site.” (SJC-1, Testimony of Mel Lytle, p. 24)

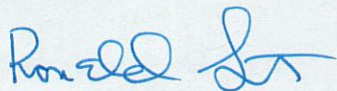
inundate more than 30 miles of river canyon above the dam site," referring to SJC Exhibit 9, p. 6. However, more accurate and authoritative estimates of the river miles of canyon that would be inundated by Reclamation's Auburn dam are in the record.

In FOR et. al. Exhibit X-19 (EPA ruling puts new cloud in Auburn Dam plans future), Reclamation's dam is described as flooding "48 miles of canyon." This is the generally accepted mileage of Reclamation's full pool Auburn Reservoir. For example, in FOR et. al. Exhibit X-26, pp. 3 & 4, Reclamation and the interagency wild-and-scenic-river study managers describe three project-area river segments of 23 miles, 16 miles, and 5 miles, respectively. That's 44 miles, a mileage total that does not include the four or so miles of Lake Clementine Reservoir (the mileage here could be estimated, perhaps, from the SWRCB map exhibits) behind the North Fork Debris Dam, which would also be inundated.

Here is a suggested technical correction:

In addition, the project would inundate ~~more than 30 miles~~ **nearly 50 miles** of river canyon above the dam site. (SJC Exhibit 9, p. 6; **FOR Exhibit X-19; FOR Exhibit X-26**)

Sincerely yours,



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cc: Service List