

## TESTIMONY OF KEITH DEVORE

My name is Keith DeVore. I am the Director of the Department of Water Resources for Sacramento County. I am appearing on behalf of Sacramento County as well as the Sacramento County Water Agency.

As an initial matter, the County of Sacramento is not taking a position on the issue of whether the Bureau of Reclamation's water right permits for Auburn Dam should be revoked. Sacramento County is testifying to make certain that the State Water Resources Control Board is aware of potentially unintended consequences of its actions and, most importantly, to further ensure that the water under Reclamation's permits, whether revoked or not, is preserved for beneficial uses within the American River watershed.

Sacramento County's interest in preserving the water under Reclamation's permits for the benefit of the American River watershed is two-fold. First, Sacramento County is committed to protecting flows in the Lower American River. Any decision made by the State Water Resources Control Board regarding Reclamation's permits must be protective of the Lower American River. Second, any water that is made available by the State Water Resources Control Board must be prioritized for use within the American River watershed.

Sacramento County has the principal responsibility for administration and management of the American River Parkway pursuant to Urban American River Parkway Preservation Act. (Pub. Resources Code, § 5840 et seq.; see also D-1400 at pp. 10-11.) The American River Parkway is a unique regional asset with the American River being its central focus.

The Lower American River is classified as a "recreation" river within the State and Federal Wild and Scenic Rivers System. Sacramento County's American River Parkway Plan provides management guidance and direction for all State Departments, including the State Water Resources Control Board, in carrying out their respective responsibilities under the State Wild and Scenic Rivers Act and the Urban American River Parkway Preservation Act.

Sacramento County is in the process of updating its American River Parkway Plan (Parkway Plan). A copy of the Final Draft American River Parkway Plan is provided as Sacramento County Exhibit 1 to this testimony. One of the important goals of the final draft Parkway Plan is to "preserve, protect, interpret and improve the natural, archeological, historical and recreational resources of the Parkway, including an adequate flow of high quality water, anadromous and resident fishes, migratory and resident wildlife and diverse natural vegetation."

To accomplish that objective the Parkway Plan sets forth certain water flow policies. Water Flow Policy 4.1 states that it is the intent of the Parkway Plan that "available water flows protect the lower American River" resources. Those resources

specifically identified for protection in the Water Flow Policy include “water quality, appropriate water temperatures, waterway recreation, aesthetics, riparian vegetation, fisheries and other aquatic species.” The Water Flow Policy also incorporates the minimum flow regime agreed to by Reclamation and the Water Forum in 2005, known as the Flow Management Standards for the Lower American River.

The Water Forum stakeholders and Reclamation are currently working towards implementation of the Flow Management Standards. Until such time as the Flow Management Standards are fully enforceable, the conditions adopted in Decision 1400 (D-1400) are of critical importance.

Decision 1356 (D-1356) approved Reclamation’s permits to appropriate water for the Auburn Dam Project. In Decision 1356, the State Water Resources Control Board reserved jurisdiction to formulate terms and conditions relative to minimum flows for recreational purposes and for the protection and enhancement of fish and wildlife. Acting upon its reserved jurisdiction, the State Water Resources Control Board established minimum flows in D-1400.

In D-1400, the State Water Resources Control Board concluded that the flow requirements imposed on Reclamation’s operation of Folsom Dam by Decision 892 (D-893) were inadequate and, therefore, minimum flow requirements were necessary for the entire reach of the American River from Nimbus Dam to the Sacramento River in order to be protective of fish and wildlife. However, because the State Water Resources Control Board did not reserve continuing jurisdiction when it issued D-893, the State Water Resources Control Board determined it only had the authority to impose the D-1400 minimum flow standards on Reclamation’s Auburn Dam permits.

While the D-1400 minimum flow standards do not apply to Folsom Dam and Reservoir, the State Water Resources Control Board made clear in its reconsideration of D-1400 that minimum flows were to be supplemented by sufficient releases at Nimbus from the direct flow accounted for under the Auburn Dam permits or through release of storage at Auburn. (See Order Denying consideration of D-1400 at p. 2.) Furthermore, Reclamation has historically been willing to meet the minimum flow standards as a discretionary matter. With the proposed revocation of the Auburn Dam permits, any enforceable requirement to meet the higher minimum flow standards will be eliminated and it may be a year or two before the American River Flow Management Standards are fully implemented.

As the local agency with responsibility for the American River Parkway, the “jewel” of the region, Sacramento County cautions the State Water Resources Control Board to ensure that its actions do not result in less protection for the Lower American River.

In addition to the issues raised regarding minimum flows in the Lower American River, Sacramento County is also concerned that water made available by the revocation of Reclamation's Auburn Dam permits may be appropriated for use outside of the American River watershed.

Demands within the American River watershed are rapidly growing. The areas of origin have been consistently promised a priority to the use of water. The State Water Resources Control Board by its decision must ensure that the water under Reclamation's permits is preserved for the beneficial uses within the American River watershed.

The draft final American River Parkway Plan establishes a water flow policy that is specifically directed toward the use of water outside of the American River watershed. Water Flow Policy 4.3 expressly states: "New surface water diversions that deplete flows in the lower American River, whether by execution of a new contract or new water right, to serve entities in counties outside the American River watershed are inconsistent with this American River Parkway Plan." In accordance with the Urban American Parkway Preservation Act, the State Water Resources Control Board should be guided by that policy directive in making its decision. (See Pub. Resources Code, § 5842.)

The Sacramento County Water Agency provides water to the central portion of Sacramento County. As part of its long-term water supply planning, the Sacramento County Water Agency concluded that reliance solely on groundwater to serve the water supply needs of Sacramento County would deplete the central county groundwater aquifer resulting in shallow wells drying up, degradation of groundwater quality, increased pumping costs and land subsidence. To avoid such injury the Sacramento County Water Agency has vigorously pursued the acquisition of surface water entitlements to use conjunctively with groundwater.

The Sacramento County Water Agency is investing millions of dollars in developing the Freeport Regional Water Project which will allow for the diversion and treatment of surface water in a manner that beneficially protects the flows on the Lower American River for fisheries, recreation and water quality purposes. Sacramento County's investment should not be put at risk by allowing water previously appropriated under Reclamation's permits to be used outside the basin.

Sacramento County requests that the State Water Resources Control Board in its decision expressly preserve the water under the permits to facilitate the implementation of flow standards on the Lower American River and for other public trust and beneficial uses within the American River watershed.