



Fact Sheet

Petition for Statutory Adjudication of Water Rights in the Fresno River Watershed

Background

On October 18, 2018, the State Water Resources Control Board (State Water Board or Board) Division of Water Rights (Division) received a petition from Madera Irrigation District (District) seeking to initiate a statutory adjudication of the water rights to the Fresno River and its tributaries. The District has requested that the State Water Board use its existing authorities to resolve ongoing conflicts over water rights, use, and allocations within the Fresno River Watershed by determining the rights to surface water in the stream system. Materials related to the petition are available on the State Water Board's website at:

www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fresno_riv_adjud

A statutory adjudication is a proceeding by which the rights to water in a stream system are determined through a State Water Board proceeding and court decree (Wat. Code, §§ 2500-2868). More information on statutory adjudications is provided below under "Procedures for Conducting a Statutory Adjudication."

The Fresno River Watershed

A comprehensive statutory adjudication of the Fresno River Watershed would evaluate and determine all claims of rights to water in the Fresno River and its tributaries. The geographic scope of the adjudication is proposed to include all of the upper watershed around Oakhurst, extending downstream to the Fresno River's confluence with the San Joaquin River northeast of Dos Palos. This area encompasses approximately 300 water right claims that are currently documented with the Division.

The regulation of Fresno River flows below Hidden Dam/Hensley Lake has been a source of conflict over water allocation and use in the watershed since the dam was constructed. The United States Bureau of Reclamation (Bureau) holds the right to store water behind Hidden Dam. The District contracts with the Bureau to receive the full benefit of this stored water and operates the release of water from Hidden Dam. The State Water Board has issued several decisions affecting the operations of Hidden



Dam, including [Decision 1407](#) and [Order WR 73-13](#) (issuing a permit to the Bureau to store water at Hidden Dam and finding that the Fresno River was fully appropriated from May 1 through November 30), [Order WR 99-001](#) (requiring the Bureau to release sufficient flows from Hidden Dam to satisfy certain downstream riparian landowners), and in the issuance of [License 13836](#) for Hidden Dam in 2011 (finding that the Bureau had perfected its right to store and use water from the Fresno River). These actions were, however, limited in scope to the Bureau's water right and did not fully resolve with finality the uncertainties about riparian and senior appropriative rights to the Fresno River and proper timing of deliveries to satisfy senior entitlements.

Staff Recommendation

The State Water Board may grant, deny, or conditionally postpone action on the pending petition for statutory adjudication of rights to water in the Fresno River Watershed. Riparian landowners have requested that the Board postpone action on the pending petition for adjudication and allow water users an opportunity to pursue a negotiated solution to resolve the longstanding conflicts in the watershed and avoid the need for a comprehensive adjudication. The State Water Board recognizes that, in some circumstances, a properly structured negotiated settlement can effectively resolve water rights disputes.

State Water Board staff proposes that the Board postpone granting the District's petition for up to eight months to allow the District and riparian landowners on the lower Fresno River to attempt to negotiate a management framework for the Fresno River that will resolve existing and future conflicts over the diversion and use of water in the watershed. If, after eight months, negotiations have not resulted in substantial progress towards a feasible voluntary solution that will achieve long-term water administration and compliance in the Fresno River Watershed, staff proposes to return to the Board and seek immediate adoption of the petition for statutory adjudication.

While negotiations are ongoing, staff will begin a desktop investigation of the validity and known uses of approximately 40 claims of right to divert water along the mainstem of the Fresno River between Hidden Dam and the San Joaquin River. The results of this investigation will be made public on the State Water Board's website.

Staff proposes that the following specific criteria are necessary elements of any negotiated solution to resolve existing and future conflicts and forgo the need for a statutory adjudication of water rights in the Fresno River Watershed:

- Inclusion and consent of a substantial number of water users and riparian landowners in the watershed, including, at a minimum, consent by all water right claimants named in the petition, Madera Irrigation District, and the Bureau of Reclamation.

- Procedures for administration and enforcement of the terms of the agreement.
- Protocol for water rights accounting that meets, at a minimum, the state's legal requirements for measurement and reporting of water diversion and use.
- Clear rules for water allocation during various hydrologic conditions, from wet to critically dry.
- Protocol for changes in location or capacity of points of diversion, changes in place of use, and new points of diversion and places of use.
- Consideration of flows to protect public trust resources and meet water quality standards.
- Identification of a party or entity (i.e., a watermaster or equivalent) who will oversee and have authority to enforce water allocations on the Fresno River, and a mechanism to fund that role.
- Protocol for ensuring longevity of the negotiated solution and contingency plans for modification of the agreement's terms in the future.

Milestones to demonstrate progress towards achieving a negotiated solution might include:

- Identification of a mediator or committee who will take a primary role in drafting a proposed settlement and agreement on the allocation of any associated costs.
- Exchange of data and information by a substantial number of water right claimants, demonstrating the nature of their water right entitlements (e.g., riparian acreages, documentation of the priority date and quantity of pre-1914 water right claims).
- Quantification of the location, capacity, and source of existing points of diversion.
- Substantial agreement regarding the location and quantity of riparian acreage in the watershed.
- Substantial progress in developing or identifying:
 - A comprehensive system of water accounting and agreement as to measurement and reporting protocols.
 - Protocols for senior right holders to submit a "call" on the river.
 - Potential physical solutions for storage and delivery of replacement water in exchange for forbearance in the exercise of senior rights.

Staff recommends that the Board delay granting the petition for statutory adjudication for up to eight months to allow the parties to negotiate an alternative framework. If the parties reach a negotiated settlement agreement, the District may choose to withdraw its petition or the Board may deny the petition for adjudication. If the parties do not reach an agreement that meets the identified criteria, staff recommends that the Board grant the petition and proceed with the adjudication. The next section lays out the procedures for conducting a statutory adjudication if the Board were to grant the petition.

Procedures for Conducting a Statutory Adjudication

A statutory adjudication is a proceeding by which all of the rights to water in a stream system are determined through an administrative proceeding conducted by the State Water Board and confirmed by entry of a decree by the superior court. Since 1924, the State Water Board has completed approximately 28 statutory adjudications of surface streams throughout the state.

A statutory adjudication may be initiated by a claimant to water of any stream system by a petition to the State Water Board requesting the determination of the rights of the claimants to the water of that stream system. The State Water Board may either grant or deny the petition after evaluating whether an adjudication would serve the public interest and necessity. In making its determination, the State Water Board must consider (1) the degree to which the waters of the stream system are fully used; (2) the existence of uncertainty as to the relative priority of rights to the use of waters of the stream system; (3) the unsuitability of less comprehensive measures, such as private litigation or agreements, to achieve certainty of rights to the use of waters of the stream system; and (4) the need for a system-wide decree or watermaster service, or both, to assure fair and efficient allocation of the waters of the stream system (Cal. Code Regs., tit. 23, § 946).

If the petition is granted, the State Water Board initiates the statutory adjudication process by notifying all known potential water right claimants in the watershed of the pending proceeding. The notices set a deadline by which claimants to water of the stream system must notify the State Water Board in writing of their intent to file a proof of claim. The State Water Board then conducts an investigation of the water supply and demands in the watershed and conducts field visits of each point of diversion and place of use. After the field investigations are complete, claimants are provided with a copy of the investigation report for reference in preparing their proofs of claim to water in the system. A proof of claim must be submitted on the form provided by the State Water Board and includes the nature of the claimed right, the date initiated, the purpose of use, a description of the diversion works, the season of diversion, the amount of water diverted and used, and other relevant facts necessary for the State Water Board to make a determination of right.

After conducting the investigations and receiving the proofs of claim, the State Water Board prepares a report describing the water supply and abstracting the claim of water right of each claimant. The report also includes a preliminary order of determination determining and establishing the rights to the water of the stream system. A copy of the report is sent to each claimant, and copies of the proofs of claims and any evidence submitted by claimants is made available to all interested persons. Within the time period set by the Board, claimants may file objections to the findings in the report and the order of determination. These objections are subject to the taking of evidence and hearing before the State Water Board. Upon completion of the hearing(s), the Board

adopts an order determining and establishing the rights to water in the stream system. The order of determination and a statement of expenses incurred by the Board in conducting the proceeding is mailed to each party. State law requires the State Water Board to recover expenses incurred in performing an adjudication from participating parties through fees and other cost recovery equitably apportioned among the parties to the proceeding (Wat. Code, §§ 2850-2868).

A certified copy of the order, the evidence submitted, and a transcript of testimony received by the Board is filed with the clerk of the superior court of the county in which the stream system is located. Each party of interest may file with the clerk a notice of exceptions to the order of determination stating briefly the exceptions taken, the reasons for the exceptions, and the request for relief. No exception to the order of determination will be considered, except at the court's discretion for good cause shown, unless the matter was presented to the State Water Board in the form of an objection. The court may conduct proceedings including hearings, as necessary, to enter a decree determining the rights of all parties involved in the proceeding. After a decree is entered, any claimant who failed to appear and submit proof of claim is barred from subsequently asserting any right to water of the stream system.

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