

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 28363 )

SAN GABRIEL HYDROELECTRIC )  
PARTNERSHIP, )

Applicant, )

CALIFORNIA DEPARTMENT OF )  
FISH AND GAME, )

Petitioner. )

ORDER: WR 86-2

SOURCE: San Gabriel River

COUNTY: Los Angeles

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE BOARD:

1.0 BACKGROUND/INTRODUCTION

The Board having received Application 28363 to divert water for a hydroelectric project on the San Gabriel River to be operated by the San Gabriel Hydroelectric Partnership; the Chief of the Division of Water Rights having approved the application and issued Permit 19720 on December 3, 1985 pursuant to the delegation of authority from the Board; the Department of Fish and Game having filed a petition for reconsideration dated December 27, 1985; and the petition having been duly considered; the Board finds as follows:

2.0 GROUNDS FOR RECONSIDERATION

Section 737.1 of Title 23 of the California Administrative Code provides that reconsideration of a Board decision or order may be requested for any of the following causes:

- a. A procedural irregularity which has prevented the petitioner from receiving a fair hearing;
- b. The decision is not supported by substantial evidence;
- c. There is relevant evidence available which in the exercise of reasonable diligence could not be produced at the hearing; or
- d. An error in law.

### 3.0 SUBSTANCE OF PETITION FOR RECONSIDERATION

The petition for reconsideration alleges that the Board has failed to comply with Section 1243 of the Water Code which provides as follows:

"The use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. In determining the amount of water available for appropriation for other beneficial uses, the board shall take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.

"The board shall notify the Department of Fish and Game of any application for a permit to appropriate water. The Department of Fish and Game shall recommend the amounts of water, if any, required for the preservation and enhancement of fish and wildlife resources and shall report its findings to the board.

"This section shall not be construed to affect riparian rights."

The Department contends that the public interest would be served by ordering reconsideration of the issuance of Permit 19720 because the

Board has not considered the potential benefit of using a portion of the water covered by the permit for maintaining instream uses in the San Gabriel River. Specifically the Department suggests that the Board should consider whether up to 35 cubic feet per second (cfs) of the water sought to be appropriated by Application 28363 should be left in the river for aesthetic, recreational and fishery uses. The Department argues that the failure of the Board to make such a determination is not in the public interest and therefore a violation of Water Code Sections 1243 and 1253.

#### 4.0 DESCRIPTION OF PROJECT PROPOSED BY APPLICATION 28363

The proposed project will utilize water from the San Gabriel River which is stored behind the existing San Gabriel Dam. The kinetic energy provided by water released from San Gabriel Dam presently is dissipated by releasing the water through a pressure reducing valve into a structure referred to as a sandbox. The proposed project will generate power by installing two electrical generating units to utilize the kinetic energy which presently is dissipated. The first generator will utilize approximately 220 cfs which will be returned to the San Gabriel River upstream of Morris Dam. The second generator will utilize approximately 85 cfs which will then continue to flow through the existing Azusa Conduit to serve an existing downstream powerplant and groundwater spreading facilities.

#### 5.0 WATER RIGHTS FOR WATER RELEASED FROM SAN GABRIEL RESERVOIR

The storage of water in San Gabriel Reservoir is authorized by License 9991 (Application 9118) and Permit 18114 (Application 25975)

held by the San Gabriel Valley Protective Association. License 9991 authorizes direct diversion and diversion to storage of a total of 200,000 acre-feet to be used for irrigation, domestic, municipal, industrial and salinity control purposes. Permit 18114 authorizes direct diversion and diversion to storage of an additional 120,000 acre-feet for the same purposes. A portion of the water diverted under both rights is collected to temporary storage in San Gabriel, Cogswell, and Morris Reservoirs before being released to storage in underground basins. A series of spreading grounds is used in placing the water in underground storage.

In addition to the rights acquired under permit or license from the state, water is diverted from the upper San Gabriel River under various pre-1914 appropriative water rights. With respect to the water which will be utilized for the project of the San Gabriel Hydroelectric Partnership, the most significant pre-1914 right is claimed by the San Gabriel River Water Committee as reported in Statement of Water Diversion and Use No. 1524. The "Committee" claims the right to divert up to 134.4 cfs for domestic, irrigation, groundwater spreading, municipal and industrial uses in accordance with conditions stated in an agreement between various pre-1914 appropriators which became effective in 1889. Among other facilities, water diverted under the claimed pre-1914 right is diverted into the Azusa Conduit which has a capacity of 85 cfs and which leads to the existing Azusa Powerplant and various groundwater spreading facilities.

There also are a large number of other agencies and water users with rights to the use of water from the upper San Gabriel River watershed. The rights were adjudicated by the Superior Court for Los Angeles County in 1972 (Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al. No. 924128). Although some of the rights defined by the 1972 judgment influence the operation of the reservoirs on the San Gabriel River, a discussion of those rights is not essential to making a determination on the petition for reconsideration.

6.0 EFFECT OF PROPOSED HYDROELECTRIC PROJECT ON THE INSTREAM USES FOR WHICH THE PETITIONER SEEKS PROTECTION

The 220 cfs utilized by the first generating plant will be diverted from an existing outlet pipe into 120 feet of new pipeline leading to the proposed powerhouse. After passing through the powerhouse, the water will be returned to the San Gabriel River upstream from Morris Dam. The remaining 85 cfs will be diverted from another existing pipe into a 20-foot section of new pipeline leading to a second proposed powerhouse. After passing through the powerhouse, the water will be discharged into the existing Azusa Conduit leading to the Azusa Powerplant below Morris Dam.

The position of the Department of Fish and Game is that before acting upon Application 28363, the Board was obligated to consider the amount of water required for fish, wildlife and recreation in the San Gabriel River below Morris Dam. The project before the Board, however, will

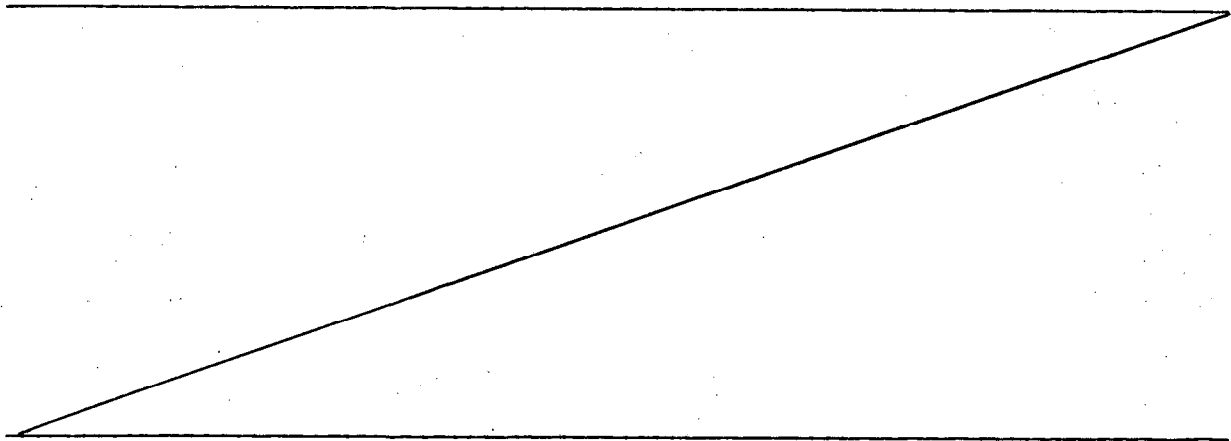
have no impact upon the rate or quantity of instream flow below Morris Dam. In fact, Condition 17 in the permit issued for the proposed project expressly provides that the "permit does not authorize any change in the releases from San Gabriel Dam or any change in the streamflow regime of the San Gabriel River."

The project authorized by the issuance of Permit 19720 on Application 28363 is a retrofit hydroelectric facility which will generate hydroelectric energy by using water collected behind an existing dam and released through existing outlet pipes for other purposes. The water utilized by the project is the subject of earlier appropriative rights which are not subject to the Board's jurisdiction in this proceeding. Issuance of a permit on Application 28363 does not authorize increased diversion of water from the San Gabriel River. Rather, it authorizes an additional non-consumptive use of water which is already diverted under separate rights. The Board's action in approving a permit will have no adverse effect upon the San Gabriel River since the water will be diverted regardless of Board action on this application. Authorization of the additional use proposed by the permittee is fully consistent with the public interest and the mandate of Article X, Section 2 of the California Constitution to maximize beneficial use of the state's waters.

#### 7.0 CONCLUSION

The petitioner contends that Water Code Section 1243 imposes upon the Board an obligation to consider the potential beneficial uses for

instream purposes of a portion of the water sought to be appropriated under Application 28363. As explained above, however, the water with which the application is concerned is diverted from the San Gabriel River under other rights not currently before the Board. No conditions which the Board could impose upon a permit issued on this application would alter the flow in the stretch of the San Gabriel River with which the petitioner is concerned. Since the Board lacks jurisdiction in this proceeding to provide for the increased instream flows which petitioner seeks, it is nonsensical to argue that the Board could not act upon the application without evaluating whether such instream flows are in the public interest. If the question of instream flows in the San Gabriel River is to be addressed, it would have to be done in a properly noticed proceeding where all potentially affected parties have an opportunity to present evidence. The petition for reconsideration does not present sufficient cause to reconsider the issuance of Permit 19720.



ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

The petition for reconsideration filed by the California Department of Fish and Game is denied.

CERTIFICATION


The undersigned, Executive Director of the State Water Resources Control 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 February 20, 1986.

AYE: Raymond V. Stone  
Darlene E. Ruiz  
E. H. Finster  
Eliseo M. Samaniego  
Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None

  
Raymond Walsh  
Interim Executive Director