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STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of	)	
Application 28442,	)	
CITY OF PASADENA,	)	ORDER: WR 8C-10
	)	SOURCES: San Gabriel River
Applicant,	)	COUNTY: Los Angeles
METROPOLITAN WATER DISTRICT,	)	
Petitioner.	)	

ORDER GRANTING RECONSIDERATION  
ON PETITION BY  
METROPOLITAN WATER DISTRICT  
REGARDING DISMISSAL OF ITS PROTEST

BY THE BOARD:

The City of Pasadena having filed Application 28442, the application having been duly noticed, The Metropolitan Water District of Southern California (petitioner) having filed a protest, the Division of Water Rights having rejected the protest, the petitioner having filed a petition for reconsideration of the rejection of the protest, the Board, having considered the papers filed regarding the foregoing, finds as follows:

- 1.0 APPLICATION 28442 BY THE CITY OF PASADENA  
Application 28442 was filed by the City of Pasadena (City) on April 19, 1985. The application is for the direct diversion of 90 cubic feet of water per second (cfs) from the San Gabriel Reservoir from January 1 through December 31 of each year. The water would be beneficially used to generate electric power. The reservoir is situated on the San Gabriel River in the County of Los Angeles.

## 2.0 PROTEST OF APPLICATION

The application was noticed on or about July 25, 1985, and a protest was filed by petitioner.

The petitioner alleges that the project injures vested water rights and does not best conserve the public interest. With reference to vested rights, the protest alleges the following injury:

"The application seeks a permit that could improperly expose protestant to claims for increased costs and responsibilities by relying on a conduit that passes through protestant's property adjoining Morris Dam and Reservoir. The conduit is over 80 years old and contains sections which are beyond their reasonable functional life and are currently impaired as a result of geological conditions. In acquiring the Morris Dam and Reservoir from applicant in 1941, protestant undertook certain responsibilities regarding the conduit to satisfy conditions of a January 18, 1897 water rights agreement between applicant's apparent predecessor-in-interest and various downstream water rights holders. Morris Dam and Reservoir are downstream from applicant's point but upstream of applicant's power plant.

"The application could also impair protestant's prior water rights to divert San Gabriel River water to storage in Morris Dam Reservoir, since a portion of the conduit applicant proposes to use lies at an elevation below the top of the spillway gates at Morris Dam."

## 3.0 STAFF ACTION ON PROTESTS

The Chief, Division of Water Rights, is authorized to "[r]eject protests which do not substantially comply with the requirements of law or the rules of the Board." (Resolution No. 85-34, as amended, paragraph 2.17).

By letter dated May 13, 1986 the petitioner's protest was rejected by the Division of Water Rights. The letter stated:

"The Board has recently collected data and information on the Azusa Conduit leading from the San Gabriel Dam to this project in connection with Application 28363 of the San Gabriel Hydroelectric Partnership. One of the Board's findings in the proceeding was that the flow regime into the Azusa Conduit was controlled by others than the City of Pasadena.

"Because the applicant cannot change the flow of the San Gabriel River as you requested in your protest, we cannot include terms requiring them to do so. Your protest is therefore rejected."

#### 4.0 PETITION FOR RECONSIDERATION

The petition for reconsideration was filed on June 12, 1986. The petition contends that the rejection of the MWD's protest was inappropriate and improper because:

- "1. It deprives Metropolitan of a public hearing on proposed water deliveries over the next half century, that significantly affect its rights to the same water source.
- "2. It reduced Metropolitan's opportunity to obtain accurate information needed to evaluate possible physical solutions to problems created by the Application.
- "3. It limits the prospect for obtaining adequate evidentiary findings needed for proper judicial review of complex water rights issues and related public interest determinations.
- "4. It fails to recognize the unusual and complicated nature of the Application.
- "5. It fails to consider other important issues including Metropolitan's inchoate rights to the diversion facilities which are the subject of the Application.
- "6. It is not supported by adequate evidentiary findings and was not made in the manner required by law."

5.0 APPLICABLE LAW

Water Code Section 1357 provides, in part, that the Board may reconsider an order on petition by any person interested in an application. Reconsideration may be sought for the following causes:

- "(a) Irregularity in the proceedings, or any ruling, or abuse of discretion by which the person was prevented from having a fair hearing;
- "(b) The decision or order is not supported by substantial evidence;
- "(c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing;
- "(d) Error in law." (23 Cal.Admin.Code §737.1.)

The Board may refuse reconsideration if the petition fails to raise substantial issues related to the causes for reconsideration. Before taking final action, the Board may hold a hearing for the purpose of oral argument or receipt of evidence or both (23 Cal.Admin.Code §737.4). Finally, the Board must order or deny reconsideration of a petition within 60 days of its filing.

6.0 THE BOARD SHOULD RECONSIDER THE REJECTION OF THE PROTEST TO APPLICATION 28442

The petitioner has raised issues that may warrant reconsideration of the rejection of its protest to Application 28442. At this time, however, the Board is unable to determine whether issues are substantial. Because the Board must order or deny reconsideration before August 15, a date which precedes our next regular meeting, we conclude that reconsideration should be granted. Our granting of reconsideration should not be construed as an indication that we have concluded that the issues raised by the petition are meritorious.

7.0 ORDER

IT IS HEREBY ORDERED that reconsideration of the rejection of the petitioner's protest to Application 28442 is granted.

CERTIFICATION

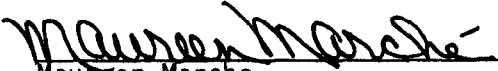
The undersigned, Administrative Assistant to the Board of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 6, 1986.

AYE: W. Don Maughan, Chairman  
E. H. Finster, Member  
Eliseo M. Samaniego, Member  
Danny Walsh, Member

NO: None

ABSENT: Darlene E. Ruiz  
Vice Chairwoman

ABSTAIN: None

  
Maureen Marche  
Administrative Assistant to the Board

