

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permits 16209, 16210, 16211 and 16212
(Applications 18721, 18723, 21636 and 21637)

U.S. Bureau of Reclamation

NOTICE OF PROPOSED REVOCATION

SOURCES: North Fork American River, Knickerbocker Creek tributary to North Fork American River

COUNTIES: Placer and El Dorado

You are hereby notified, pursuant to section 1410 of the California Water Code, that the State Water Resources Control Board (State Water Board or Board) will revoke Permits 16209, 16210, 16211 and 16212 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permits 16209, 16210, 16211 and 16212, and has not made beneficial use of the water as contemplated in the permits.

The facts and conclusions upon which the proposed revocations are based are as follows:

- A. Permittee has not Appropriated Water under Permits 16209, 16210, 16211 and 16212 within the Terms of the Permits.
1. On February 5, 1970, the State Water Board adopted Decision 1356, which conditionally approved the United States Bureau of Reclamation's (Reclamation or Permittee) applications to appropriate water in connection with the Auburn-Folsom South Unit of the Central Valley Project (CVP) (the Auburn Dam Project). Pursuant to Decision 1356, the State Water Board issued Permits 16209, 16210, 16211 and 16212 on April 13, 1971. The permits authorize Reclamation to divert as follows:
 - (a) Permit 16209 (Application 18721) authorizes direct diversion of 100 cubic feet per second (cfs) and collection to storage of 1,700,000 acre-feet per annum (afa) from the North Fork American River and Knickerbocker Creek tributary to the North Fork American River. The combined maximum amount that may be diverted under Permit 16209 and Permit 16211 is 2,000,000 afa. The authorized season of diversion is November 1 of each year to July 1 of the following year. The authorized purposes of use are irrigation, municipal, industrial, recreational, incidental domestic, and water quality control purposes within the CVP place of use of 10,124,700 acres.
 - (b) Permit 16210 (Application 18723) authorizes direct diversion of 6,300 cfs and collection to storage of 1,700,000 afa from the North Fork American River and Knickerbocker Creek. The maximum amount that may be diverted under Permit 16210 and Permit 16212 is 2,500,000 afa. The authorized season of direct diversion is year-round. The authorized season of diversion to storage is November 1 of each year to July 1 of the following year. The authorized purposes of use are hydroelectric power generation, and incidental

recreational and domestic use. The authorized place of use is the Auburn Powerplant, Folsom Powerplant and Nimbus Powerplant.

- (c) Permit 16211 (Application 21636) authorizes direct diversion of 600 cfs and collection to storage of 800,000 afa from the North Fork American River and Knickerbocker Creek. The combined maximum amount that may be diverted under Permit 16211 and Permit 16209 is 2,000,000 afa. The authorized season of direct diversion is year-round, and the authorized season of diversion to storage is November 1 of each year to July 1 of the following year. The authorized purpose of use is hydroelectric power generation at the Auburn Powerplant, Folsom Powerplant and Nimbus Powerplant.
 - (d) Permit 16212 (Application 21637) authorizes direct diversion of 900 cfs and collection to storage of 800,000 afa from the North Fork American River and Knickerbocker Creek. The authorized season of diversion is from November 1 of each year to July 1 of the following year. The combined maximum amount of water that may be diverted under Permit 16212 and Permit 16210 is 2,500,000 afa. The authorized purposes of use are irrigation, municipal, industrial, domestic, recreational, fish and wildlife enhancement and water quality control purposes within the CVP place of use of 10,124,700 acres.
2. All four permits required that "actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked." The permits required that construction work be completed on or before December 1, 1975 and complete application of the water to the proposed uses be made on or before December 1, 2000.
 3. According to annual progress reports submitted by Reclamation, Reclamation commenced construction in 1971, as required by the permits. By June 30, 1975, Reclamation had expended \$136,982,197 on construction of Auburn Dam, Auburn Powerplant, the Folsom-South Canal, and related facilities.
 4. On August 15, 1975, Reclamation filed a petition for extension of time for the four permits until December 1, 1983 to complete construction and 2008 to complete application of water to beneficial use. Reclamation stated that a diversion tunnel and Reaches 1 and 2 of the Folsom-South Canal had been completed and work was progressing on dam excavation, foundation, and related facilities. Reclamation explained that revisions to the original financial appropriation schedule, updating project costs, and obtaining new appropriations had resulted in major construction delays. Reclamation explained further that minor delays were due to litigation and environmental hearings concerning the Auburn-Folsom South Unit.
 5. In an October 21, 1983 letter, Reclamation renewed its request for time extension. Reclamation updated its pending petition and requested until December 1994 to complete construction and December 2020 to complete application of water to beneficial use. In addition to the work completed by 1975, Reclamation stated that excavation and construction of the foundation for the originally planned arch dam had been completed, a major bridge had been constructed, and seven miles of road had been relocated, bringing total construction costs to \$227,512,000.
 6. Under cover of letter dated January 17, 1984, Reclamation submitted an estimated timetable for construction. The timetable indicated that federal reauthorization of the project was required in order to raise the cost ceiling, authorize minimum flow releases, and approve additional facilities. According to the timetable, Reclamation would: (1) seek Congressional authorization for non-federal financial participation in construction in late Federal Fiscal Year (FFY) 1984; (2) complete cost-sharing arrangements in early 1985; (3) prepare drafts of contracts with non-federal partners in FFY 1985; (4) obtain required reauthorization in FFY 1986 or 1987; (5) complete designs and specifications in FFY 1990; and (6) complete construction in FFY 1995.

7. The Division of Water Rights (Division) approved an extension of time to complete construction by Order dated May 11, 1984. The Division found that determination of new dates within which construction work and use of water should be completed should be deferred until more work on activities preliminary to resuming construction was completed. The Division also noted that third parties had expressed concern with regard to the effect of the proposed Auburn Project on unregulated spring outflow of the Sacramento and American Rivers and the Sacramento-San Joaquin Delta, and therefore Reclamation should include in its studies concerning reformulation of the Auburn Project the effects of the project on unregulated spring outflows.
 8. The conditions of the May 11, 1984 Order are as follows:
 - a. The dates contained in Permits 16209, 16210, 16211 and 16212 within which to complete construction work and application of water to the authorized use are deleted.
 - b. Permittee shall, prior to submittal of the Auburn-Folsom South Unit to Congress for reauthorization and prior to resumption of construction, but not later than December 31, 1987, submit the project under Permits 16209, 16210, 16211 and 16212 to the State Water Board for determination and approval in accordance with Water Code section 10504.5 and establishment of dates for completion of construction work and use of water.
 - c. The project submittal to the State Water Board shall include the documents prepared by Permittee to fulfill the requirements of the National Environmental Policy Act (NEPA). In the event the proposed project becomes a joint venture with one or more state or local agencies, the project submittal shall include the documents necessary to fulfill the requirements of the California Environmental Quality Act (CEQA).
 9. The Water Code requires that a permitted project be constructed and the water put to beneficial use with due diligence, in accordance with the terms of the permit, and specifies that permits remain in effect only as long as the water appropriated under the permits is put to beneficial use.
 10. The Water Code authorizes the State Water Board to extend the dates for construction and use for good cause. Under the delegation of authority in effect when the Division approved the May 11, 1984 Order, Resolution No. 83-86, the Division had delegated authority to approve extensions "for up to a total of ten years' time." Neither the Water Code nor Resolution No. 83-86 authorizes the removal or indefinite extension of the dates in the permit, and the Division did not have delegated authority to extend the date for completing construction beyond December 1, 1985. To properly extend the dates for completing construction or applying the water to beneficial use, Reclamation would have to comply with the terms of the May 11, 1984 Order, including submittal of the required information by the December 31, 1987 date specified in the Order, and obtain State Water Board approval of new dates for completing construction and applying the water to beneficial use.
 11. The Division's records indicate that Reclamation has not diverted any water under Permits 16209, 16210, 16211 and 16212.
 12. Since 1983 Reclamation has not submitted annual Progress Reports of Permittee summarizing water use and project status as required by conditions in the permits.
- B. Permittee has not Diligently Pursued Its Petition for Extension of Time.
1. By letter dated April 15, 1988, Reclamation requested that the May 11, 1984 Order approving an extension of time be amended to permit Reclamation to submit the Auburn Dam Project to the State Water Board not later than December 1, 1995, rather than December 31, 1987. The stated reason for the request was an increase in public interest in construction of Auburn Dam since the flood of February 1986. This led to preparation of a July 1987 Auburn Dam Report that analyzed various alternatives for storage facilities at the Auburn site, and the initiation of a Corps of

Engineers feasibility level American River Watershed Investigation to evaluate a single purpose (flood control only) facility at the Auburn site. The watershed investigation was scheduled for completion in the latter part of 1990. The focus of these studies was the need to provide 100-year and 200-year flood protection for the Sacramento metropolitan area. The April 15 letter stated that Reclamation did not expect a decision to be made on the construction of Auburn Dam in the near future.

2. The Division issued public notice of the request for a time extension on May 12, 1988. No protests to approval of the time extension request were filed with the State Water Board. No further action was taken on the time extension request.
3. By letter dated March 27, 1995, Reclamation requested further time extension until December 31, 2001. The extension request stated that additional time was needed to complete the American River Water Resources Investigation, initiated in 1991 and scheduled to be completed in 1996 with the release of a Final Planning Report/ Programmatic EIS/EIR. Among the alternatives being considered in the EIR/EIS was a multi-purpose dam at Auburn. If construction of a multi-purpose dam was selected as the recommended plan of action, Reclamation estimated that construction would begin sometime around the turn of the century. The March 27 request was not noticed.
4. By letter dated June 11, 1998, Reclamation modified the time extension request to December 31, 2008. The State Water Board issued public notice of this request on July 16, 1998. The California Sportfishing Protection Alliance protested approval on a number of grounds, including: (a) failure to exercise due diligence, (b) the need to reevaluate project impacts in light of legal and factual changes that had occurred since the State Water Board issued water right permits for the project, and (c) potential impacts to water availability and water quality in the Bay-Delta estuary.
5. By letter dated August 17, 2001, Division staff requested that Reclamation complete the following actions within the next six months:
 - (a) Respond to the protest: In responding to the protest, Division staff asked that Reclamation document whether it had completed final project design and obtained funding approval to proceed with project development, and whether it could put the water to beneficial use.
 - (b) Provide a time schedule for preparation of a CEQA document: Division staff stated that the CEQA document must describe the impacts of the incremental increase in water use that may occur during the time extension period, using the unbuilt current condition as the baseline.
 - (c) Provide the information required by the May 11, 1984 Order Approving Extension of Time, conditions 2 and 3 (listed above in Items 8 (b) and (c) of the present order).
6. By letter dated October 11, 2001, Reclamation responded to the Division's August 17 letter. Reclamation asserted that it had exercised due diligence notwithstanding unavoidable obstacles beyond its control. Reclamation stated that of the five proposed reaches of the Folsom South Canal, two had been completed, and construction of the three remaining reaches had been deferred pending studies of the interaction of maintaining minimum flows in the Lower American River and satisfying other Reclamation water supply commitments.

As for the Auburn Dam, Reservoir and Powerplant, Reclamation explained that a major design change had been made after the initial Congressional authorization of the project in 1965. In 1975, Reclamation halted further construction of the dam due to concerns regarding seismic safety after an earthquake occurred near the State of California's Oroville Dam. Reclamation undertook a four-year re-analysis of the design of Auburn Dam and determined in 1979 that a safe dam could be built on the site by means of a further design change. However, inflation and increased costs of proposed design changes pushed the estimated cost of the project over the

Congressionally authorized cost ceiling. Congress had not yet enacted the necessary reauthorization legislation. Reclamation stated that further construction was contingent on the enactment of new legislation, which was entirely beyond the control of Reclamation.

In response to Division staff's request for a CEQA timetable, Reclamation stated that, should Congress decide to reauthorize the Auburn Dam Project, Reclamation would have to prepare an environmental assessment to determine the significance of the impacts of the construction and operation of the reauthorized project to comply with NEPA.

7. The Division's December 19, 2001 letter of response informed Reclamation that the next step in processing the petition for extension of time was to prepare a CEQA document. Division stated that the environmental documentation that Reclamation would prepare to comply with NEPA if the Auburn Dam Project were reauthorized might be adequate to serve as a joint document under both CEQA and NEPA if it met all CEQA requirements. The Division asked Reclamation to advise the Division when Reclamation commenced preparation of its document under NEPA to enable coordination of the preparation of a joint environmental document.

The Division advised Reclamation that, due to the existence of an unresolved protest against Reclamation's time extension petition, the State Water Board was required to hold a hearing before acting on the petition. The Division stated that the Board would not hold a hearing until a draft environmental document had been prepared and circulated under CEQA.

8. By letter dated January 18, 2002, Reclamation advised the Division that until such time as Congress reauthorized the Auburn Dam Project, Reclamation would not be undertaking any environmental work.
9. The Division, by letter dated January 29, 2004, requested that Reclamation document what actions it had taken from 2001 to the present to provide information required by the Division to complete processing of the petition. Reclamation was also requested to produce a Work Plan documenting that it would proceed with the petitions with due diligence. The Division specified that, to be acceptable, the Work Plan must provide a timeline, with dates for completion of each task, showing when Reclamation would (a) obtain funding to prepare the requisite environmental document, (b) initiate and complete all studies needed for inclusion in the environmental document, (c) issue a Notice of Preparation, (d) issue a Draft EIR/EIS, and (e) issue a Final EIR/EIS. The Division requested that a response be submitted by March 30, 2004. The Division advised Reclamation that failure to timely submit the material might result in denial of the petition without further notification and issuance of a Notice of Proposed Revocation for each permit.

C. Permittee has not put Water to Beneficial Use under Permits 16209, 16210, 16211 and 16212.

In its March 26, 2004 letter of response, Reclamation stated that it had no plans to complete the project, and since 2001 Reclamation had done no work on the project. However, since Congress had not de-authorized the project, Reclamation stated that it wished to preserve the subject water right permits so that it could promptly implement any future Congressional direction regarding the project.

Based on the above facts and the conclusions set forth below, cause exists for revocation of Permits 16209, 16210, 16211 and 16212 pursuant to Water Code section 1410, subdivision (a).

Reclamation has not prosecuted construction work with due diligence, completed construction work, or applied water to beneficial use as contemplated by Permits 16209, 16210, 16211 and 16212 and in accordance with the Water Code. Although Reclamation obtained an Order that could have provided the basis for extending the December 1, 1975 deadline to complete construction and the December 1, 2000 deadline to apply water to beneficial use, Reclamation did not satisfy the requirements of that Order. Reclamation did not meet the December 31, 1987 deadline to submit the Auburn Dam Project to the State Water Board for establishment of new deadlines to complete construction and apply water to beneficial use. In addition, Reclamation has not submitted any evidence that it has completed any of the

activities preliminary to resuming construction that it proposed to complete prior to December 31, 1987, including entering into cost-sharing agreements and obtaining Congressional reauthorization of the project.

Reclamation has not diligently pursued its time extension petition for the four permits. Reclamation has requested three extensions of the December 31, 1987 deadline, most recently until December 31, 2008. In the interim, while Reclamation has conducted several studies, it has not prepared the CEQA documentation necessary for the State Water Board to process the pending time extension petition. Moreover, Reclamation has stated that it has not performed any work on the project since 2001 and has no intention of performing any work unless Congress reauthorizes the project.

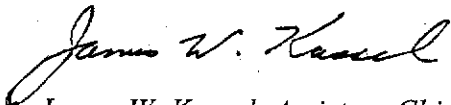
Because Reclamation has not diverted and used water beneficially under Permits 16209, 16210, 16211 and 16212, Reclamation is not in compliance with Water Code section 1390, which provides, "A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division [of the Water Code], but no longer."

Reclamation has violated term 13 of Permits 16209, 16210, 16211, and 16212, which requires that "Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued."

As required by Water Code section 1410.1, Reclamation is notified that, unless a written request for a hearing signed by or on behalf of Permittee is delivered or mailed to the Board within 15 days after receipt of this notice, the Board may act upon the proposed revocation of the permit without a hearing. Any request for a hearing may be made by delivering or mailing the request to the Board at the address given on the cover letter for the notice.

Based on the above facts and conclusions, the State Water Board will revoke Permits 16209, 16210, 16211 and 16212 after the passage of fifteen days upon Permittee's receipt of this notice, unless by that date the State Water Board receives a written request for a hearing signed by or on behalf of the Permittee.

STATE WATER RESOURCES CONTROL BOARD



*James W. Kassel, Assistant Chief
Division of Water Rights*

Dated: January 24, 2008