

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2020-0040**

PETITION BY MADERA IRRIGATION DISTRICT FOR THE STATUTORY
ADJUDICATION OF WATER RIGHTS IN THE FRESNO RIVER WATERSHED

WHEREAS:

1. 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) to conduct a statutory adjudication of the water rights to the Fresno River and its tributaries (Petition) in an effort to resolve ongoing conflicts over water rights, water use, and water allocations within the Fresno River Watershed;
2. On September 17, 2019 the Board adopted [Resolution No. 2019-0049](#), postponing action on the Petition and giving the District and riparian landowners (parties, collectively) approximately eight additional months, until May 2020, to negotiate a settlement and management framework for the lower Fresno River that would resolve existing and future conflicts over the diversion and use of water;
3. That negotiation timeframe was later extended to October 2020, in part due to the COVID-19 public health crisis;
4. Board Resolution No. 2019-0049 outlined eight requirements that a negotiated settlement and management framework should meet to address the issues raised in the Petition, as well as seven milestones which the Board would use to assess progress towards a successfully negotiated settlement;
5. The Board directed State Water Board staff to examine all water rights and claims along the Fresno River below Hidden Dam and make the results of the investigation publicly available to aid the parties in their negotiations. Staff released the results of the [Desktop Investigation](#) on December 4, 2019 and the [Fresno River Investigation Geodatabase](#) on July 24, 2020;
6. In September 2019, staff, at the direction of the Board, arranged for a Board-funded facilitator (Kearns & West) to mediate negotiations and aid the parties in making substantial progress towards a successful settlement within the timeframe specified in Resolution No. 2019-0049;
7. Kearns & West submitted a Final Report on the Mediation to the Board on August 7, 2020, indicating that while the parties have made progress in some areas, they have not met all of the required elements described in Board Resolution 2019-0049 or reached an agreement on water right quantities, water accounting, or administration. The Staff Report details the findings in the Final Report on Mediation and includes an assessment of parties' progress towards Resolution 2019-0049's requirements and milestones;

8. In an August 7, 2020 letter contained in the Final Report on Mediation (Exhibit J, Party Endorsements), the petitioner, Madera Irrigation District, renewed its request for the Board to conduct a statutory adjudication of the watershed;
9. A statutory adjudication is a proceeding by which the rights to water in a stream system are determined through a Board proceeding and court decree (Wat. Code, §§ 2500-2900);
10. A comprehensive statutory adjudication of the Fresno River Watershed would evaluate and determine all claims of right to water in the Fresno River and its tributaries, from the upper watershed to the confluence with the San Joaquin River, encompassing approximately 300 claims that are currently documented with the Division;
11. The Board may grant, deny, or conditionally postpone action on the pending Petition after evaluating whether a statutory adjudication would serve the public interest and necessity (Cal. Code Regs., tit. 23, § 946);
12. The Board, in determining whether the public interest and necessity would be served by a statutory adjudication, considers relevant facts and conditions including: (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);
13. 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 (Reclamation) holds the right to store water behind Hidden Dam, and the District contracts with Reclamation to receive the full benefit of this stored water and operates Hidden Dam for water supply purposes;
14. The Board has issued several decisions and orders affecting the operations of Hidden Dam, including [Decision 1407](#) (1973) and [Order WR 73-13](#) (issuing a permit to Reclamation 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 Reclamation to release sufficient flows from Hidden Dam to satisfy certain downstream riparian landowners), and [License 13836](#) (issued in 2011, finding that Reclamation had perfected its right to store water behind Hidden Dam and use water from the Fresno River);
15. The Board's previous actions were limited in scope to Reclamation's water rights and did not fully resolve uncertainties about riparian and senior appropriative rights to the Fresno River and timing of deliveries to satisfy senior entitlements;

16. Over the past two years, Board staff has conducted extensive outreach to stakeholders in the Fresno River Watershed regarding the Petition, the process for a statutory adjudication, and the Desktop Investigation and Geodatabase, including meetings with representatives from the District, riparian landowners, Reclamation, and the California Department of Fish and Wildlife;
17. There are significant competing demands for water from the Fresno River stream system that can exceed available supplies, resulting in persistent conflicts and uncertainty regarding Fresno River water rights;
18. Previous Board actions that were less comprehensive than an adjudication, including enforcement actions and efforts to mediate private agreements, have not been successful in resolving the uncertainty regarding relative priorities of rights to the use of water in the Fresno River stream system;
19. A system-wide decree or watermaster service, or both, would improve fair and efficient management of the waters of the Fresno River stream system;
20. A statutory adjudication would provide an opportunity for the State Water Board to evaluate the public trust resources of the Fresno River stream system and the flows necessary to protect those resources and meet applicable water quality standards; and
21. If an adjudication goes forward, the Board will be required to recover expenses incurred in performing the adjudication through fees for those filing claims and equitable apportionment of remaining costs among the parties to the proceeding (Wat. Code, §§ 2850-2868). The Board may, at its discretion, exclude claims to minor quantities of water which would have no material effect on the rights of other claimants from adjudication proceedings and cost recovery (Wat. Code, § 2502).

THEREFORE BE IT RESOLVED THAT:

The State Water Board finds that the facts and conditions are such that the public interest and necessity will be served by a determination of the water rights to the Fresno River and its tributaries through a statutory adjudication.

BASED ON THE ABOVE, THE STATE WATER BOARD HEREBY ORDERS:

1. The Petition by the Madera Irrigation District for Statutory Adjudication of the Fresno River is granted.

2. State Water Board staff shall make arrangements to proceed with the determination of the rights of the various claimants to the water of the Fresno River stream system in accordance with Water Code sections 2500-2900 and applicable provisions of Title 23 of the California Code of Regulations.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 20, 2020.

AYE: Chair E. Joaquin Esquivel
 Vice Chair Dorene D'Adamo
 Board Member Tam M. Doduc
 Board Member Sean Maguire
 Board Member Laurel Firestone

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board