

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS  
SEPTEMBER 17, 2019**

**ITEM 10**

**SUBJECT**

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

**DISCUSSION**

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 in order to resolve ongoing conflicts over water rights, water use, and water allocations within the watershed.

In a statutory adjudication the rights to water in a stream system are determined through a State Water Board proceeding and court decree (Wat. Code, §§ 2500-2868). Upon being petitioned by a claimant to water of a stream system, the Board must evaluate if an adjudication would serve the public interest and necessity (Cal. Code Regs., tit. 23, § 946). More information on statutory adjudications can be found in the Fact Sheet regarding this matter.

The United States Bureau of Reclamation (Reclamation) holds the right to store water behind Hidden Dam in Hensley Lake, which the District effectively operates because it contracts to receive the full benefit of this stored water. The regulation of Fresno River flows below Hidden Dam has been a source of conflict over water allocation and use in the watershed, and the State Water Board has issued several decisions affecting the operations of Hidden Dam (including [Decision 1407](#), [Order WR 73-13](#), [Order WR 99-001](#), and [License 13836](#)). These actions were limited in scope to Reclamation's water rights and did not fully resolve the uncertainties about rights to the Fresno River and storage deliveries to satisfy senior entitlements.

State Water Board staff (staff) has conducted outreach to stakeholders and agencies in the Fresno River Watershed regarding the petition, including the District, Reclamation, representatives of riparian landowners along the lower Fresno River, the California Department of Fish and Wildlife, and local environmental justice and cooperative extension groups. On July 16, 2019, an [outreach package](#) was mailed to approximately 130 currently known water right holders or claimants in the Fresno River Watershed. Public comments on the petition and staff recommendation were received over a 30-day period. This outreach informed staff's recommendation to the Board.

Riparian landowners have requested that the Board postpone action on the pending petition and allow water users an opportunity to pursue a negotiated solution to resolve 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. Accordingly, the proposed resolution would delay action on the petition for eight months in order to allow the parties time to negotiate a proposed settlement.

The proposed resolution includes a list of specific elements that should be addressed in any negotiated settlement that is brought to the Board for consideration to resolve existing and future conflicts and forgo the need for a statutory adjudication. The proposed resolution also includes a list of required milestones during the eight-month period to demonstrate progress towards achieving such a solution. The proposed resolution calls for staff to conduct a desktop investigation while negotiations are occurring. It would target claims of right to divert water along the lower Fresno River, and its results would be made publicly available.

## **POLICY ISSUE**

Should the State Water Board postpone action on the petition for statutory adjudication, allowing the District and riparian landowners to attempt to negotiate a management framework for the Fresno River?

## **FISCAL IMPACT**

State Water Board staff work associated with or resulting from this action will be conducted with existing and future budgeted resources. No additional resources are proposed at this time. During a statutory adjudication the Board must absorb the costs of staff time, but these costs are apportioned equitably among parties to the adjudication and recovered following the adoption of a final order of determination (Wat. Code, §§ 2850-2868). The State Water Board may also require interim payments from parties during the adjudication (Wat. Code, § 2865).

## **REGIONAL BOARD IMPACT**

No Regional Board impact is anticipated as a result of this action.

## **STAFF RECOMMENDATION**

Staff recommends that the State Water Board adopt the proposed resolution, postponing action on the District's petition for up to eight months to allow the District and riparian landowners on the lower Fresno River to negotiate a management framework for the Fresno River to 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, staff proposes to return to the Board and seek adoption of a resolution granting the District's petition for statutory adjudication of the Fresno River. If adequate progress and good cause can be shown, this timeline could be extended to allow additional negotiations.