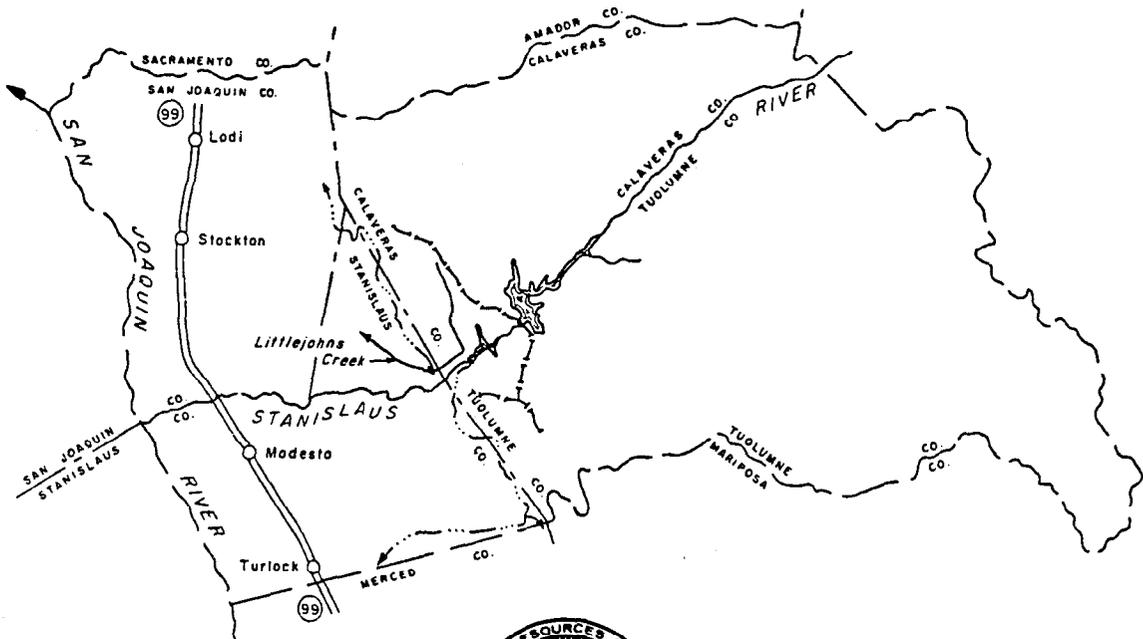


**NEW MELONES DIRECT DIVERSION PROJECT**

**PETITION FOR ASSIGNMENT OF APPLICATION 14858  
AND APPLICATIONS 27319, 27320 AND 27321  
OF THE  
U. S. BUREAU OF RECLAMATION  
STANISLAUS RIVER**

**DECISION 1616**

*AMENDED By  
WR 88-6*



**JANUARY 1988**

**STATE WATER RESOURCES CONTROL BOARD**



**STATE OF CALIFORNIA**

*George Deukmejian, Governor*

**STATE WATER RESOURCES  
CONTROL BOARD**

*W. Don Maughan, Chairman*

*Darlene E. Ruiz, Vice Chairwoman*

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*Danny Walsh, Member*

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*James L. Easton, Executive Director*

1691  
976

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition for )  
Assignment of Application 14858 and )  
Applications 27319, 27320, and 27321 )  
of the )  
U. S. BUREAU OF RECLAMATION, )  
Petitioner and Applicant, )  
OAKDALE IRRIGATION DISTRICT, )  
SOUTH SAN JOAQUIN IRRIGATION DISTRICT, )  
and LAWRENCE FAMILY TRUST, )  
Protestants. )

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DECISION 1616

SOURCE: Stanislaus River

COUNTIES: Tuolumne, Calaveras,  
Stanislaus and  
San Joaquin

DECISION APPROVING APPLICATION 27319 AND  
PETITION FOR ASSIGNMENT OF APPLICATION 14858  
AND DENYING APPLICATIONS 27320 AND 27321

THIS DECISION WAS  
AMENDED BY  
WR 88-6



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## TABLE OF CONTENTS

|  | PAGE |
|--|------|
| 1.0 INTRODUCTION . . . . .   | 1    |
| 2.0 BACKGROUND . . . . .   | 2    |
| 3.0 SUBSTANCE OF PETITION FOR ASSIGNMENT AND APPLICATIONS . .                            | 3    |
| 3.1 Petition for Assignment of Remaining Portion<br>of Application 14858 . . . . .       | 3    |
| 3.2 Application 27319 . . . . .  | 4    |
| 3.3 Application 27320 . . . . .  | 4    |
| 3.4 Application 27321 . . . . .  | 4    |
| 4.0 PROJECT DESCRIPTION . . . . .  | 4    |
| 5.0 PROTESTS . . . . .   | 5    |
| 5.1 Protests Dismissed or Resolved Prior to<br>the Hearing . . . . .                     | 5    |
| 5.1.1 Delta Water Users Association, et al. . . . .                                      | 5    |
| 5.1.2 California Department of Fish and Game . . . . .                                   | 6    |
| 5.1.3 Calaveras County Water District . . . . .  | 7    |
| 5.1.4 Tuolumne Regional Water District . . . . .   | 9    |
| 5.2 Unresolved Protests . . . . .  | 12   |
| 5.2.1 Lawrence Family Trust, Eleanor Gikas and<br>Mike Gikas . . . . .                   | 12   |
| 5.2.2 Oakdale Irrigation District and South San Joaquin<br>Irrigation District . . . . . | 13   |
| 5.2.2.1 Joint Use of Facility . . . . .  | 15   |
| 5.2.2.2 Accretion Flows . . . . .  | 15   |
| 5.2.2.3 Power Generation Rights . . . . .  | 18   |
| 6.0 CONTRACTS FOR CONSUMPTIVE YIELD . . . . .  | 20   |
| 7.0 NEED FOR DIRECT DIVERSION RIGHTS . . . . .   | 20   |
| 8.0 AVAILABILITY OF UNAPPROPRIATED WATER . . . . .                                       | 22   |

|      |  |    |
|------|--|----|
| 8.1  | Decision 1422 . . . . .  | 22 |
| 8.2  | Amount and Season Requested for Consumptive<br>Use and Other Non-Power Purposes . . . . .                      | 22 |
| 8.3  | Amount and Season Requested for Power Purposes . . . . .   | 24 |
| 8.4  | Conclusions Regarding Availability of Water<br>and Limitations on Rate and Quantity of<br>Diversions . . . . . | 24 |
| 9.0  | ASSIGNMENT OF STATE APPLICATION 14858 . . . . .  | 25 |
| 10.0 | COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL<br>QUALITY ACT . . . . .  | 26 |
| 11.0 | CONCLUSION . . . . .   | 27 |
|      | ORDER . . . . .  | 27 |



## 2.0 BACKGROUND

The Bureau initially filed applications to appropriate water by direct diversion and storage for the New Melones Reservoir project in 1960. Board Decision 1422 was entered in 1973 authorizing issuance of permits for storage of water in New Melones Reservoir, but the quantity of water which could be stored was limited to the amount needed for fish and wildlife enhancement, maintenance of water quality, satisfaction of prior rights and flood control until such time as a specific need for water for consumptive use was demonstrated. Similarly Decision 1422 did not authorize direct diversion except for production of hydroelectric power at New Melones Reservoir. New Melones Dam was completed in 1978 at a location about three-quarters of a mile downstream from the original Melones Dam. New Melones Reservoir has a capacity of 2,400,000 acre-feet.

In Order Nos. WR 80-20, 82-3, 82-9 and 83-3, the Board interpreted and revised certain conditions and restrictions of the New Melones permits. Order No. WR 83-3 allowed the Bureau to fill the reservoir for consumptive use purposes. Rediversion of stored water at Goodwin Dam, Knights Ferry Diversion Dam and various other locations between New Melones Dam and the mouth of the Stanislaus River was authorized on August 9, 1985. The petition and applications presently before the Board request direct diversion of water at New Melones Reservoir and downstream locations for consumptive use. The Bureau also requests an increase in its existing rights for direct diversion for hydropower purposes at New Melones Reservoir.

3.0 SUBSTANCE OF PETITION FOR ASSIGNMENT AND APPLICATIONS

3.1 Petition for Assignment of Remaining Portion of Application 14858

Application 14858 was originally filed on June 16, 1952 by the Department of Finance under the provisions of Water Code Section 10500 et seq. governing applications for water intended for development as part of a general or coordinated state plan. The application was transferred to the Board pursuant to Water Code Section 10504. The application covers year round direct diversion of 8,800 cubic feet per second (cfs) and storage of 980,000 acre-feet per annum (afa) from October 1 of each year to July 1 of the succeeding year. In Decision 1422, the Board assigned the storage portion of this application to the Bureau and issued a permit subject to specified terms and conditions. The current petition requests assignment and approval of the direct diversion portion of the application for 8,800 cfs with the total amount of water not to exceed 1,000,000 afa. The requested purposes of use are irrigation, domestic, municipal, industrial, recreation, water quality control, and fish and wildlife enhancement uses. The water will be diverted at New Melones Dam, Goodwin Dam, Knights Ferry Diversion Dam and at various unspecified locations between New Melones Dam and the confluence of the Stanislaus River and the San Joaquin River. Water will be used for consumptive purposes within the portion of Tuolumne, Calaveras, Stanislaus and San Joaquin Counties shown on the revised application map dated August 16, 1984 on file with the Board.

3.2 Application 27319

Application 27319, filed on May 3, 1982, requests a right to divert 4,000 cfs by direct diversion for hydropower generation at the New Melones power plant.

3.3 Application 27320

Application 27320 was filed on May 3, 1982 for year round direct diversion of 2,250 cfs with the total amount of water diverted not to exceed 1,000,000 afa. The purposes of use, points of diversion and places of use are the same as those stated above for Application 14858.

3.4 Application 27321

Application 27321 was filed on May 3, 1982 for year round direct diversion of 8,800 cfs with the total amount of water not to exceed 1,000,000 afa. The purposes of use, points of diversion, and places of use are the same as those stated above for Application 14858.

4.0 PROJECT DESCRIPTION

Direct diversion of water for consumptive use is proposed by pumping from New Melones Reservoir into pipelines leading both north and south into areas where water is needed. Direct diversion for consumptive use is also proposed through canals at Goodwin Dam and at Knights Ferry Diversion Dam. There are also points of diversion proposed between Goodwin Dam and the confluence of the Stanislaus River with the San Joaquin River which have not been specifically located. Points of rediversion may be established in the future. Water will be

delivered to various users within the four county place of use specified in the applications. Water will be used consumptively for irrigation, domestic, municipal and industrial uses.

The project will also involve an increase in the authorization for diversion of water for hydroelectric purposes at New Melones Dam. The Bureau presently holds Permit 16598 (Application 14859) which authorizes year round direct diversion of 6000 cfs of water for hydroelectric purposes at New Melones Dam. Issuance of a permit on Application 27319 would allow the Bureau to divert an additional 4,000 cfs for hydroelectric power production at the existing New Melones power plant which can utilize a total rate of flow of 10,000 cfs with a production capacity of 300,000 kilowatts.

## 5.0 PROTESTS

Seven protests were filed and accepted against the applications and petition for assignment. One of the protests was dismissed by the protestant and three were conditionally resolved prior to the hearing.

### 5.1 Protests Dismissed or Resolved Prior to the Hearing

#### 5.1.1 Delta Water Users Association, et al.

The Delta Water Users Association withdrew its protest on the basis of an October 1986 agreement between the Bureau, the Department of Water Resources and the South Delta Water Agency and the fact that the Bureau and the South Delta Water Agency were continuing negotiations regarding scheduling of the water quality releases required by Decision 1422. The protest withdrawal was conditioned upon the Board

reserving jurisdiction in any permits issued on these applications for further review of the downstream effects of the Bureau's diversions. In this regard, the Board's standard permit term 80 (Reservation of Jurisdiction -- Delta and Tributary Rivers) was acceptable to the Association and the protest was subsequently dismissed.

#### 5.1.2 California Department of Fish and Game

The Bureau and the California Department of Fish and Game (DFG) entered into an agreement in June 1987 which allowed for dismissal of the DFG protest provided that any permits issued on Applications 14858, 27319, 27320 and 27321 contain provisions sufficient to implement paragraph III of the agreement. Paragraph III of the agreement calls for the Bureau to make specified instream flow releases for fishery purposes on an interim basis in accordance with a detailed plan of study attached to the agreement. Paragraph III of the agreement also sets forth the parties' intentions to reach a final agreement on long-term fishery resource protection measures and to request mutually that the Board require implementation of such measures as a condition of the appropriate permits or licenses issued. If a final agreement on long-term fishery protection measures cannot be made within a prescribed period, the parties agree that either may submit its independent recommendations and request to the Board.

The Board recognized the need for detailed studies to determine an appropriate instream flow schedule for fishery protection when it approved issuance of the first New Melones water right permits in

Decision 1422. The June 1987 agreement between the Bureau and DFG prescribes a reasonable method for conducting those studies as well as an agreed upon approach for making interim instream flow releases during the period of the study. Following completion of the studies, the intention of the parties and the Board is to establish long-term instream flow standards for protection of the fishery.

In order to obtain necessary information on appropriate instream flows and to protect the fishery, the Board concludes that any permits issued pursuant to the applications under consideration should include a condition requiring that a fishery study be conducted as agreed to by the Bureau and DFG and that interim instream flows be maintained pursuant to the June 1987 agreement. A condition should also be included providing that the Board reserves jurisdiction to revise instream flow standards for fishery and water quality purposes. Including such conditions in any permits issued will serve to protect public trust resources affected by Stanislaus River flows and will allow for further Board action as appropriate when the instream flow studies are complete.

#### 5.1.3 Calaveras County Water District

In accordance with an agreement reached with the Bureau in April 1985 Calaveras County Water District (CCWD) agreed to withdraw its protest provided that the substance of paragraphs one through four of a July 31, 1972 agreement between the Bureau and CCWD be included in any permits issued. With the exception of the first condition, no testimony was presented relative to the intent or purpose of the specified conditions which are as follows:

- "1. 'The United States agrees to recognize the priority of the water rights of Calaveras [County Water District] upon the Stanislaus River including the priority Calaveras has obtained through permits granted by the former California State Water Rights Board in Decision 1114 and as amended by Decision 1226.'
- "2. 'The United States agrees to recognize the priority of State Water Right Applications 5647 and 5648 as they pertain to the Stanislaus River, the North Fork of the Stanislaus River and its tributaries for diversion into Calaveras County.'
- "3. 'The United States further agrees that within the limitations of permits that may be issued on Applications 14858 and 19304, to determine the quantities of water ultimately required for the reasonable and beneficial uses of those areas shown on Exhibit A attached hereto within Calaveras County that can be economically supplied from New Melones Reservoir; and to, within the limitations of Federal Reclamation Laws, negotiate primarily a contract with Calaveras or secondarily, contracts with any appropriate governmental agency for the purchase of water from New Melones Reservoir for use on this area.'
- "4. 'Within the limitations of available funds and authority, the United States will undertake studies to provide an appraisal of the water requirements for the entire county, the available water supplies from all sources -- Calaveras, Mokelumne, and Stanislaus Rivers, and the proposed East Side Division of the Central Valley Project and a desirable plan for meeting those requirements.'"

The permitted applications approved in Board Decision 1226 include Applications 18727, 18728, 19148 and 19149 of CCWD which are junior in priority to Application 14858. CCWD contends that condition 1 of the July 31, 1972 agreement subordinates any assignment to the Bureau of Application 14858 to CCWD's rights acquired under permitted Applications 18727, 18728, 19148 and 19149. Under cross-examination, the Bureau representative apparently agreed with CCWD's position.

(T,20:9-22:16.) In addition, the Bureau did not respond when Board Chairman Maughan asked, in effect, if there were any objections to reversing priority. (T,111:5-112:21.) Therefore, in accordance with the parties' agreement, the rights acquired under any permit issued to the Bureau under Application 14858 should be subordinate to CCWD's rights under permitted Applications 18727, 18728, 19148 and 19149.

Condition 2 of the July 31, 1972 agreement merely emphasizes the priority of state filed Applications 5647 and 5648. Application 5647, however, is for diversion from the Mokelumne River watershed and no information was provided as to why it should be referenced in a permit to appropriate water from the Stanislaus River.

Conditions 3 and 4, for the most part, deal with matters outside the normal scope of a water right permit except for the provision relative to the purchase of Stanislaus River water. Therefore, with the exception of requiring that the Bureau make water available for sale to CCWD or other appropriate governmental agency, the Board concludes that the provisions of Conditions 3 and 4 should not be included in any permits issued on the applications under consideration.

#### 5.1.4 Tuolumne Regional Water District

The Bureau and Tuolumne Regional Water District (TRWD) entered into an agreement in June 1987 in which TRWD agreed to withdraw its protest provided that the substance of paragraphs one, two and four of a November 29, 1972 agreement between the Bureau and TRWD be included, by way of reference or otherwise, in any permits issued. These conditions are as follows:

"1. 'The United States agrees that any person, district, agency, corporation, utility or entity, including T.C.W.D. #2<sup>1</sup> may divert and/or impound water from the Stanislaus or any tributary thereto for the reasonable and beneficial use within the T.C.W.D. #2 service area delineated on Exhibit A, attached hereto and made a part hereof, or anywhere else within the Stanislaus River Basin; and that the right to do so, whenever initiated, shall be prior and superior to any rights of the United States to divert or impound any of the waters of the Stanislaus River. It is recognized that use within T.C.W.D. #2 service area may be supplied in part by water from Tuolumne River Basin and to that extent need for Stanislaus River water would be decreased correspondingly.'

"2. 'The United States further agrees that in the event T.C.W.D. #2 or any user within T.C.W.D. #2 should desire to purchase water impounded by the United States in New Melones Reservoir, for release as replacement water in order to satisfy other prior rights downstream from New Melones Dam, or for other reasonable and beneficial purposes, that the United States will sell such water to such user or T.C.W.D. #2 at prices not exceeding those applicable for such water to other New Melones Unit customers for the use to which T.C.W.D. #2's water will be put out.'

\* \* \*

"4. 'The United States further agrees that any permits issued to it for the diversion or storage of water at New Melones shall be subordinate and junior to any present or future appropriation or use of water out of the Stanislaus River or any of its tributaries for the generation of hydroelectric power, which will aid in financing and the construction of any works to provide water for beneficial uses within T.C.W.D. #2. Such present or future appropriation or use of water shall not include export, unless returned to the Stanislaus River above New Melones, of any water from the Stanislaus River Basin solely for the production of power, except to the extent that the right to do so

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<sup>1</sup> The name of Tuolumne County Water District #2 was changed to Tuolumne Regional Water District in September 1981.

exists on the date of this agreement in T.C.W.D. #2 or any other entity.

'Nothing in this paragraph, however, shall prohibit the district or any person or entity from filing applications to appropriate water for any purpose whatsoever.'

There was no testimony presented regarding the intent or purpose of these conditions though condition 1 clearly subjects any rights granted the Bureau to all existing and future appropriations in the Stanislaus River Basin. It is not limited to appropriations either by TRWD or for use within the TRWD service area due to the phrase "or anywhere else within the Stanislaus River Basin". This excessively infringes on the priority of any vested rights granted the Bureau for diversion from the Stanislaus River to the point where, in theory at least, the rights could ultimately have little value. Furthermore, insofar as the condition pertains to diversions from the Stanislaus River for use outside the boundaries of TRWD, TRWD would have no standing to request enforcement of the condition. Therefore, the Board concludes that any permits issued on the pending applications should be conditioned to make the Bureau's rights subject to any existing and future appropriations of water within the TRWD service area. The 1972 agreement provides no basis, however, for subjecting the Bureau's rights to future appropriations for use in areas outside of the TRWD service area.

Conditions 2 and 4 of the 1972 agreement address matters within the Board's jurisdiction which were part of the basis for resolving the protest of TRWD. The Board concludes that any permits issued in this proceeding should be conditioned accordingly.

## 5.2 Unresolved Protests

### 5.2.1 Lawrence Family Trust, Eleanor Gikas and Mike Gikas

The Lawrence Family Trust, Eleanor Gikas and Mike Gikas (collectively referred to herein as LFT) filed a protest alleging that the proposed appropriations will result in injury to vested rights, will not best conserve the public interest, will be contrary to law, and will have an adverse environmental impact. The protestants claimed that the proposed appropriations will reduce Stanislaus River inflow to the San Joaquin River resulting in various water quality problems, lower water levels in the Middle and Old Rivers, and detrimental effects on navigation fishery resources, recreational uses, aesthetic values, the agricultural economy and riparian vegetation. By letter dated May 27, 1987, LFT advised the Board that their protest could be withdrawn provided that the Board reserves jurisdiction to: (1) review the effect of the appropriation on LFT's prior rights and public trust uses, and (2) further condition any permits issued in the event that LFT continues to encounter water level or water quality problems in the future.

Although LFT was represented at the hearing, no evidence was presented in support of their protest or the need for the requested permit conditions. However, since all permits are issued subject to prior rights, the Board always has jurisdiction to review complaints of infringement on prior rights. This jurisdiction includes the authority to take action to protect prior rights including amendments

to the conditions of water right permits, if necessary, following notice and opportunity for a hearing. Therefore, although the record provides no basis for including the specific conditions requested by LFT, the Board has sufficient jurisdiction to protect LFT's rights against infringement by the Bureau under any permits which may be issued.

5.2.2 Oakdale Irrigation District and South San Joaquin Irrigation District

Oakdale Irrigation District and South San Joaquin Irrigation District filed separate protests alleging that the proposed appropriations will result in injury to vested rights, will utilize points of diversion which are not within the Board's jurisdiction, will not best conserve the public interest, and will be contrary to law. Both Districts' protests state that although the Districts own Goodwin Dam and the canals which extend from that dam, the Bureau has made no arrangements for the use of the Districts' facilities.

In October 1972, prior to issuance of the storage permits for New Melones Reservoir, the two Districts (jointly referred to herein as OSSJID) and the Bureau entered into an agreement intended to quantify the yield for consumptive purposes of the OSSJID water rights on the Stanislaus River. The agreement provided that, upon completion of New Melones Dam and Reservoir, the Bureau would provide OSSJID the following annual quantities of water in recognition of the Districts' rights:

- "1. 200,000 acre-feet from New Melones storage,
- "2. 36,000 acre-feet for storage in Woodward Reservoir,

"3. That portion of the New Melones Reservoir inflow required to meet the Districts' direct diversion requirements but not to exceed 1,816.6 cubic feet per second.

"Subject to the following limitation:

"The maximum quantity of water delivered each year is limited to 654,000 acre-feet or the total quantity of New Melones Reservoir inflow during the water year (October 1 of one year through September 30 of the succeeding year), whichever is the smaller." (USBR, 8.)

The Bureau's position is that the above conditions of the agreement fully compensate OSSJID for its consumptive use water rights on the Stanislaus River. (T,29:29-30:7; 5,32:18-33:1.)

The agreement, however, did not address OSSJID power rights at the Tulloch power plant or compensation for the taking of OSSJID property and loss of power revenues arising out of the construction of New Melones Dam. Similarly, the agreement did not address the status of tributary inflow (accretion flows) below New Melones Dam to Tulloch and Goodwin Reservoirs. OSSJID made an evidentiary presentation at the hearing on these issues and alleged operational problems at Tulloch and Goodwin Dams. The issuance of direct diversion rights, per se, was not opposed by OSSJID though they requested that three conditions be included in any direct diversion permits issued to the Bureau. As discussed in the following sections, these conditions involve joint use of facilities, accretion flows and recognition of OSSJID rights to water for power production at Tulloch Reservoir.

5.2.2.1 Joint Use of Facility

The first permit condition requested by OSSJID is as follows:

"Bureau will not utilize, or permit the utilization by any contractor or water purchaser of the Bureau, of the Joint Districts, [sic] Goodwin Dam and/or facilities regulating water or diverting or transporting water from such facility, until such time as and only upon the condition that, a written agreement between the Joint Districts and the entities desiring to utilize such dam or other facilities has been entered into providing for the use of those facilities and other customary conditions in regard to payment, regulation, priority and similar conditions. The completion of such agreement shall be a precondition to exercise of the diversion rights at Goodwin Dam or from the Goodwin Dam Pool to be granted the Bureau herein." (OSSJID,7; T,94:4-95:11.)

In essence, this condition would require the Bureau's contractors to enter into an agreement with OSSJID, for the regulatory use of Goodwin Reservoir, prior to directly diverting water from the Goodwin Dam Pool for consumptive purposes. The Bureau recognizes the need for such an agreement, provided it is limited to Goodwin Dam, and has been discussing the matter with OSSJID. (T,29:8-15; T,39:10-41:6; T,42:4-18.)

Two of the Bureau's contractors, Stockton East Water District and Central San Joaquin Water Conservation District also recognize the need for an agreement but are opposed to requiring it as a permit condition. This opposition, however, is apparently based on a concern that the agreement would not be limited to the regulatory use of Goodwin Reservoir. (T,131:18-135:5; T,136:8-13.)

Based on the language proposed by OSSJID, the Board concludes that the intent of the requested condition is to limit the agreement to the operation of Goodwin Reservoir. Inasmuch as OSSJID own and operate this regulatory reservoir, and in view of the recognized need for an

operations agreement, the Board concludes that the consumptive use permit should be conditioned to require an executed agreement with OSSJID regarding operation of Goodwin Reservoir prior to direct diversion from the Goodwin Dam Pool.

#### 5.2.2.2 Accretion Flows

The second permit condition requested by OSSJID is as follows:

"Bureau shall in its releases downstream of New Melones Reservoir and Tulloch Reservoir recognize that the accretion flows downstream of New Melones Reservoir and upstream of Goodwin Dam are waters available to the Joint Districts for satisfaction of their water rights for consumptive and non-consumptive purposes and shall provide for those waters to be released to the Joint Districts to the extent of their rights." (OSSJID,7; T,95:18-23.)

The requested condition arises from a dispute regarding the interpretation of the October 1972 agreement between the Bureau and each of the two Districts. (USBR,8.)

The issue in dispute is whether OSSJID is entitled to receive the total quantity of New Melones inflow plus the accretion flows from tributary streams between New Melones and Goodwin Dam or whether the quantity of water received at Goodwin Dam is limited to the amount of inflow at New Melones Reservoir. OSSJID accepts that the maximum quantity of water which it ever has a right to receive is 654,000 afa, but contends that the Districts should receive the benefit of the accretion flows plus the inflow to New Melones up to their maximum entitlement of 654,000 afa. (T,82:14-22.) The Bureau contends that the quantity of inflow at New Melones is the limit of OSSJID's total

entitlement at Goodwin Dam, irrespective of the amount of accretion between New Melones Dam and Goodwin Dam. (T,38:1-39:1.)

The agreement itself is ambiguous with respect to the parties' intent. In the "whereas" clause, the agreement states that "the parties wish to agree upon the yield for consumptive purposes of the Districts' water rights on the Stanislaus River". This language could be construed as referring to the Districts' total rights on the Stanislaus River, not just those rights that would be affected by New Melones Reservoir. Yet, as counsel for OID points out, the underlying intent of the agreement was simply to address the effect of New Melones Reservoir on the Districts' rights. Arguably, there is no reason to assume the agreement would address water not controlled by New Melones Reservoir, such as the accretion flows at issue.

The agreement goes on to state that the United States "will deliver each year to the Districts for diversion at Goodwin Diversion Dam the following quantities of water...." The language cited is of no assistance in resolving the ambiguity. Since the water the Districts are to receive is to be measured at Goodwin Dam, it could be concluded that the agreed upon quantity was to include any inflows above Goodwin Dam, including the accretion flows in question. Similarly, it could be argued that if the focus was only on inflow to New Melones, then the agreement would have called for releases of a specified quantity of water from New Melones. On the other hand, the use of the term "deliver" seems to imply that the Bureau has control over the water in question, an inference which would be erroneous with respect to the accretion flows in question.

In summary, the 1972 agreement is inherently ambiguous with respect to accretion flows. No other evidence was presented which is sufficient to resolve the ambiguity of the agreement. In the absence of more certainty regarding the parties intentions, the Board declines the OSSJID request to condition any permit(s) which may be issued to provide that the Districts have a right to the accretion flows plus the inflow to New Melones up to a maximum entitlement of 654,000 afa.

The 1972 agreement was intended to resolve a disagreement regarding the extent of the Districts' rights. Unfortunately, the parties to the agreement now disagree on its interpretation and the wording of the agreement itself is unclear. In the face of such ambiguity, the Board concludes that any permits issued for direct diversion from the Stanislaus River in this proceeding should be specifically subject to all existing water rights as determined by the Stanislaus River Adjudication (San Joaquin County, Superior Court No. 16873) as amended by all applicable supplemental decrees, provided that such adjudicated rights are maintained. If either party desires to obtain a judicial interpretation of the 1972 agreement, it may file an action in the appropriate court for such a determination.

#### 5.2.2.3 Power Generation Rights

The third permit condition requested by OSSJID is as follows:

"In the operations of New Melones Reservoir and of Tulloch Reservoir, the Bureau shall not, without an operating agreement with the Joint Districts, and pursuant to that agreement's terms, store or delay the receipt of inflow to New Melones or of accretion flows

to Tulloch Reservoir in such a manner that those flows are not available for power generation by the Joint Districts at Tulloch Reservoir under their power generation rights." (OSSJID,7; T,96:4-5.)

At the outset, we note that the applications before the Board are for direct diversion and not for storage. Therefore, imposing a restriction on the storage of water at New Melones in any permits which may be issued in this proceeding would be ineffectual. The evidence in the record shows a definite need for coordinating the releases from New Melones Reservoir with the OSSJID operations at Tulloch Reservoir. (T,68:6-71:13.) In addition, the October 1972 agreement which was made with respect to the Bureau's original petition for assignment of Applications 14858 and 14859 states that the parties intend to negotiate an agreement on the use of water for power generation at the Tulloch Power Plant under the District's rights. Unfortunately, attempts to negotiate a coordinated operating agreement for New Melones and Tulloch Reservoirs have been unsuccessful. (T,71:14-72:1.)

One of the major issues in dispute concerning the effect of New Melones Reservoir on power generation at Tulloch Reservoir is the lost power generation experienced by OSSJID during the filling of New Melones. (T,96-08-97:8.) The effect of the initial filling of New Melones on OSSJID power revenues has already occurred. The filling of the reservoir was undertaken pursuant to permits authorizing the storage of water which are not presently before the Board. Therefore, the Board does not believe it is appropriate to condition the direct diversion permits upon the Bureau and OSSJID reaching an agreement with respect to lost power revenues.

There will be ongoing operational problems to consider in order to protect OSSJID's prior rights for power generation. Consequently, the Board concludes that any direct diversion permits granted should be conditioned to require the Bureau to conclude an operations agreement with OSSJID governing operations at New Melones and Tulloch Reservoirs. If no agreement can be reached within a reasonable period of time, the Bureau or either of the Districts should have the right to petition the Board to prescribe operating criteria governing releases from New Melones Reservoir which will protect the prior rights of OSSJID at Tulloch Reservoir.

#### 6.0 CONTRACTS FOR CONSUMPTIVE YIELD

In December 1983, Central San Joaquin Water Conservation District and Stockton East Water District entered into contracts with the Bureau for 49,000 afa on a firm basis and 106,000 afa on an interim basis. In addition, contracts for 5,000 afa and 400 afa have been negotiated with Tuolumne Regional Water District and Calaveras County Water District, respectively. Calaveras County Water District is reluctant to execute the proposed contract, however, until the Bureau receives direct diversion rights from the Stanislaus River.

#### 7.0 NEED FOR DIRECT DIVERSION RIGHTS

In the operation of a large reservoir project such as New Melones, where there is inflow during periods that water is being diverted to beneficial uses, direct diversion rights are usually essential to

maximize the yield of the project. If the project operator could divert water only pursuant to storage rights, then the use of water would be restricted to when water could be withdrawn from storage. Anytime that inflow to the reservoir exceeds the bypass flow requirements, the diversion of water to beneficial use would be viewed as a direct diversion of water rather than a withdrawal from storage. In order to divert and use water during periods of high inflow to the reservoir, direct diversion rights are needed.

For the February 1983 hearing, which resulted in Board Order No. WR 83-3, the Bureau submitted a study demonstrating operation of New Melones without direct diversion rights. In this study all deliveries to project contractors were made from storage. The resulting yield from releases under storage rights only was 33,400 afa or about 20 percent of the estimated consumptive yield under both storage and direct diversion rights. (USBR,28,12.; T,10:23-11:9; T,47:13-48:1.)

The Board concludes that direct diversion rights from the Stanislaus River are necessary to provide operational flexibility and to maximize the beneficial use of water from the New Melones project particularly if water is to be supplied on a year round basis for municipal, domestic and industrial uses.

No evidence or testimony was provided in opposition to the applicant's exercise of direct diversion rights, per se, except for the concern of OSSJID that, without an operating agreement, these rights would further complicate regulation of flows at Goodwin Dam. The subject of regulation of flows at Goodwin Dam was addressed in Section 5.2.2.1 above.



8.0 AVAILABILITY OF UNAPPROPRIATED WATER

8.1 Decision 1422

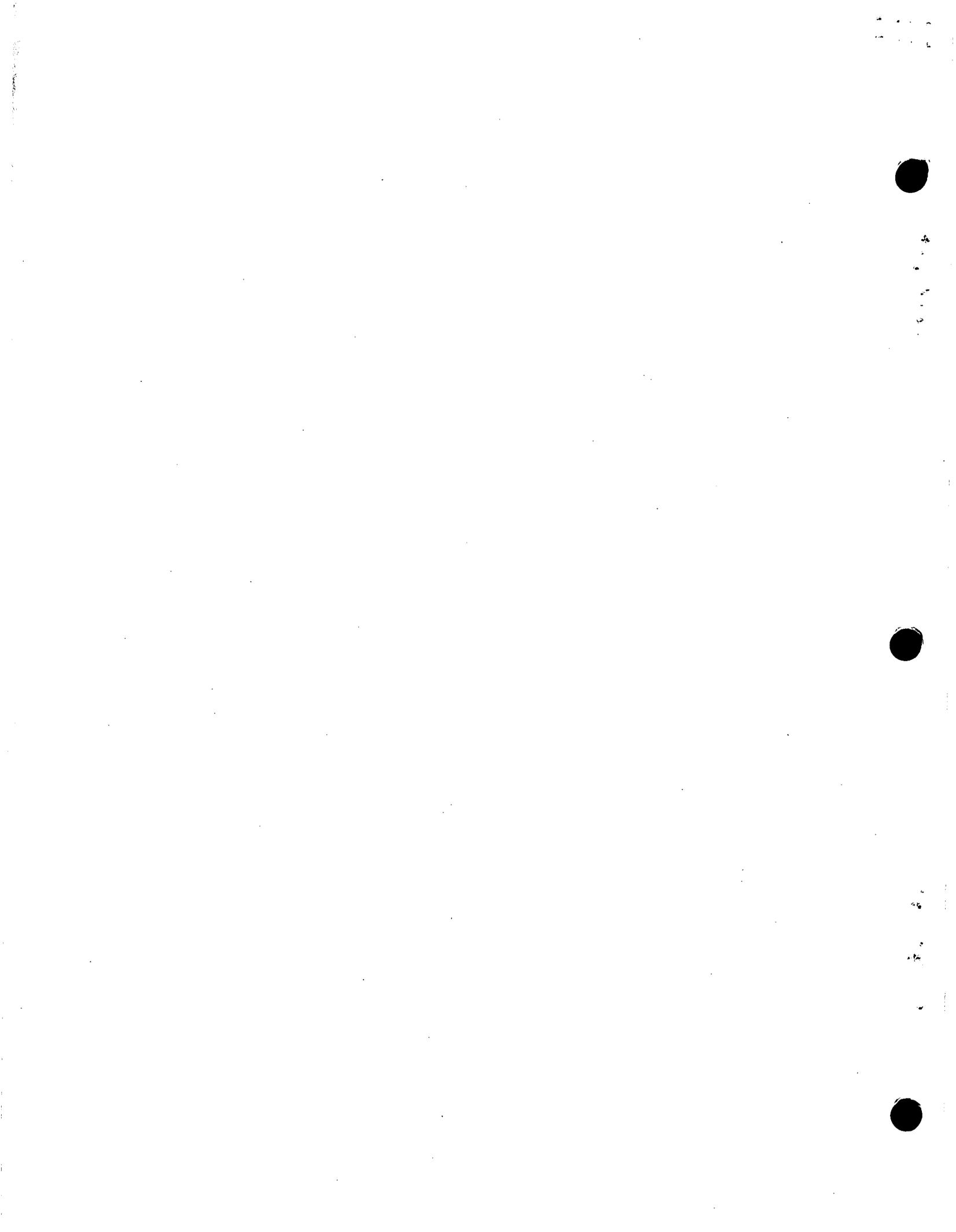
In Decision 1422 the Board found that there was unappropriated water available in the Stanislaus River watershed to satisfy the then proposed New Melones project which included both storage and direct diversion. The season of availability, however, was limited to the period November 1 through June 30. No evidence or testimony was offered to challenge these findings.

In a report (Bureau Exhibit 20 from the 1972 hearing) which identified the demand for Stanislaus River water, allowances were made for active and dormant riparian rights, adjudicated rights, appropriative rights and nearly 9,000 afa of undefined "other rights". The appropriative right demand included allowances for all applications on file with the Board as of 1972, even though some had a lesser priority than Application 14858. (Staff, 8, New Melones Engineering Staff Analysis, February 16, 1973.)

The number of filings on the Stanislaus River since 1972 were found to be relatively insignificant by the Bureau, but in any event such applications would normally be considered junior in priority to Application 14858.

8.2 Amount and Season Requested for Consumptive Use and Other Non-Power Purposes

In the petition for assignment of State Filing 14858 and Applications 27320 and 27321, the Bureau has requested an appropriation totaling 19,850 cfs, not to exceed 3 million afa, with a year round diversion season for irrigation, domestic, municipal, industrial and recreation



purposes, water quality control and fish and wildlife enhancement. The annual amount requested exceeds available supply, by the Bureau's own determination, and the diversion season is not consistent with Decision 1422.

The only reason offered by the Bureau for filing the applications as they did was to be in accordance with the way the Bureau originally filed for direct diversion in 1960. During cross-examination, however, the Bureau stated they would be willing to accept a diversion season consistent with the findings of Decision 1422 and that a direct diversion rate of 2,250 cfs should be adequate for the above purposes. (USBR,28,3; T,43:24-44:25.) In addition, since the issuance of Decision 1594, the Board has included Standard Permit Term 91 in permits for direct diversion of one cfs or more within the Sacramento-San Joaquin watershed. Thus, in some years, the November through June season of diversion could be further restricted depending on the availability of water in the particular year.

An annual limitation on direct diversion of 1,000,000 af, as requested under Application 14858, would be consistent with a diversion rate of 2,250 cfs for an 8-month period. In addition, an annual limitation of this amount offers the flexibility of using direct diversion in wet to very wet years in amounts that would exceed the normal year yield of the project. At the time of licensing, the annual limitation will be based on the recorded maximum annual use which may be less than that authorized under the permit.

8.3 Amount and Season Requested for Power Purposes

In Application 27319, the Bureau has requested an appropriation of 4,000 cfs with a year round diversion season for the purpose of power generation. Under Permit 16598 (State Filed Application 14859), the Bureau has direct diversion rights for 6,000 cfs for power generation at the New Melones power plant. The capacity of the plant, in terms of rate of flow, is 10,000 cfs. Application 27319 is for the difference between the power plant capacity and existing rights. A substantial portion of the water that would be diverted through the power plant is water that the Bureau is obligated to supply downstream of New Melones for satisfaction of prior rights, fishery purposes and water quality control. (Staff,7,WR No. 83-3.)

8.4 Conclusions Regarding Availability of Water and Limitations on Rate and Quantity of Diversions

Based on Sections 8.1 through 8.3, the Board concludes that unappropriated water is available to serve the direct diversion needs of the New Melones project subject to the following limitations on the diversion of water for any purposes other than the power production:

1. The season of direct diversion should conform to the availability of unappropriated water which is normally the months of November through June. This season may be further restricted in years when it is necessary to implement Standard Permit Term 91. (Condition 17 of Section 11.1.)
2. The rate of direct diversion should be reduced from 19,850 cfs to 2,250 cfs;
3. The maximum amount to be diverted should be limited to 1,000,000 afa;

4. Applications 27320 and 27321 are not needed and should be denied as the recommended rate of diversion and annual amount can be met by Application 14858.

9.0 ASSIGNMENT OF STATE APPLICATION 14858

The Board may assign applications filed in accordance with Water Code Section 10500 and held by the Board when the assignment is for the purpose of development not in conflict with a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the State or with water quality objectives established pursuant to law. No such assignment may be made that will deprive the county in which the water covered by the application originates, or any such water necessary for the development of the county. (Water Code Sections 10504 and 10505.)

In Decision 1422, the Board determined that the New Melones project was not in conflict with any such general plan or with water quality objectives and assigned the storage portion of Application 14858 to the Bureau. A partial assignment of the direct diversion portion of the application should be subject, in conformity with Section 10505 of the Water Code, to any and all rights of any county in which the water sought to be appropriated originates to the extent that any such water may be necessary for the development of such county. As so conditioned, the assignment will not deprive any such county of any water necessary for its development. Any additional permit issued pursuant to Application 14858 should contain a similar term.

The counties of origin are further protected by Public Law 87-874. It provides that the needs of the Stanislaus River basin have priority in allocating water developed by the New Melones Project.

#### 10.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Issuance of permits for the direct diversion of water is among a series of approvals needed for the eventual overall development of the New Melones project. Previous environmental documents have been prepared that describe the project and its impacts to the extent possible at the time of their publication. In accordance with the "staged EIR" approach provided for in Section 15167 of the CEQA Guidelines (Title 14, California Administrative Code, Section 15000 et seq.), the Board circulated a supplement titled "Draft Supplement to Previous Environmental Documents for the Stanislaus River Direct Diversion Applications" on April 28, 1987. The document focused on water quality and fisheries issues.

The Board received four letters commenting on the Draft Supplement. A "Final Supplement to Previous Environmental Documents for the Stanislaus River Direct Diversion Applications" (December 1987) was prepared which responds to all comments received on the Draft Supplement. With respect to the comment of Calaveras County concerning the need to analyze the specific land use impacts of the proposed Farmington Canal, the Final Supplement explains that CEQA allows a segmented or "staged" approach to environmental documentation

for large capital projects such as the New Melones Project. (Title 14, California Administrative Code, Section 15167.) The impacts of the proposed Farmington Canal water delivery facilities will be addressed in the environmental documents for that project. The Final Supplement has been reviewed and considered by the Board prior to Board action on the pending applications. The Board has certified that the Final Supplement complies with the California Environmental Quality Act.

11.0 CONCLUSION

Based on the foregoing findings, the Board concludes as follows:

- a. The petition for assignment of the direct diversion portion of Application 14858 should be approved in part and a permit should be issued subject to the terms and conditions specified in the Order which follows.
- b. A permit should be issued on Application 27319 subject to the terms and conditions specified in the Order which follows.
- c. The purposes of use proposed by the petition for assignment of Application 14858 and Application 27319 are beneficial.
- d. Applications 27320 and 27321 are not necessary for the direct diversion of water proposed by the Bureau and should be denied.

ORDER

IT IS HEREBY ORDERED that the petition for assignment of the direct diversion portion of Application 14858 be approved in part and a permit be issued to the

petitioner subject to prior rights and subject to the terms and conditions specified below.

IT IS FURTHER ORDERED that Application 27319 be approved and a permit be issued subject to prior rights and subject to the terms and conditions specified below.

IT IS FURTHER ORDERED that Applications 27320 and 27321 be denied.

Application 14858

In addition to standard permit terms 6 and 10 through 13,<sup>2</sup> the permit issued on Application 14858 shall include the following terms:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2,250 cubic feet per second to be diverted from November 1 of each year through June 30 of the succeeding year. The maximum amount diverted under this permit shall not exceed 1,000,000 acre-feet per annum.
2. Complete application of the water to the authorized use shall be made by December 31, 1997.
3. Rights under this permit are, and shall be, specifically subject to existing rights determined by the Stanislaus River Adjudication, Superior Court, San Joaquin County dated November 14, 1929, Action No. 16873 with supplemental decrees dated February 24, 1930; March 8, 1934; May 8, 1935; and November 29, 1960, insofar as said adjudicated rights are maintained.

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<sup>2</sup> A copy of the Board's standard permit terms is available upon request.

4. This permit shall be subject to appropriation by storage upstream from New Melones Reservoir for stockwatering and recreational purposes, provided the individual capacities of reservoirs for such purposes do not exceed 10 acre-feet and the reservoirs are kept free of phreatophytes.
5. Permittee shall comply with the following provisions which are derived from the agreement between permittee and the Calaveras County Water District (CCWD) executed on July 31, 1972 and filed with the State Water Resources Control Board:
  - a. This permit is specifically subject to the prior rights of the CCWD under appropriations issued pursuant to Applications 11792, 12910, 12911, 12912, 13091, 13092, 13093 and is also subject to the priority of state filed Application 5648 insofar as it pertains to the Stanislaus River, the North Fork of the Stanislaus River and its tributaries for diversion into Calaveras County.
  - b. The rights acquired under this permit shall be junior to the rights acquired under permits issued pursuant to Applications 18727, 18728, 19148 and 19149 of the CCWD.
  - c. Within the limitations of Federal Reclamation Laws, permittee shall, upon request, negotiate a contract(s) primarily with the CCWD or secondarily, with any appropriate governmental agency, for the sale of water authorized for diversion under this permit that can be economically supplied for reasonable and beneficial uses within Calaveras County.

Inclusion in this permit of certain provisions of this agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

6. Permittee shall comply with the following provisions which are derived from the agreement between the permittee and the Tuolumne Regional Water District (TRWD) executed on November 29, 1972 and filed with the State Water Resources Control Board:

a. Any person or entity, including TRWD, may divert and/or impound water from the Stanislaus River or any tributary thereto for reasonable and beneficial use within the TRWD service area and the right to do so, whenever initiated, shall be prior and superior to the rights authorized under this permit.

Use within TRWD service area may be supplied in part by water from the Tuolumne River Basin and to that extent the need for Stanislaus River water shall be decreased correspondingly.

b. This permit shall be subordinate and junior to any present or future appropriation or use of water from the Stanislaus River or any of its tributaries for the generation of hydroelectric power which will aid in financing and the construction of any works to provide water for beneficial uses within TRWD. Such present or future appropriation or use of water shall not include water diverted out of the Stanislaus River watershed solely for the production of power unless such water is

returned to the Stanislaus River above New Melones Dam except to the extent that the right to do so exists as of November 29, 1972 in TRWD or any other entity.

- c. In the event TRWD or any use within TRWD should desire to purchase water authorized for diversion under this permit as replacement water in order to satisfy other prior rights downstream from New Melones Dam, or for other reasonable and beneficial purposes, permittee shall sell such water to such user or TRWD at prices not exceeding those applicable for such water to other New Melones Unit customers for the use to which TRWD's water will be put.

Inclusion in this permit of certain provisions of this agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

7. Permittee shall negotiate an agreement with Oakdale and South San Joaquin Irrigation Districts governing diversion and release of water at New Melones and Tulloch Reservoirs for power generation purposes. If no agreement is reached within two years from the date of this permit, then either the permittee or Oakdale and South San Joaquin Irrigation Districts may petition the State Water Resources Control Board to specify terms and conditions which will protect the prior water rights for power generation of the Districts at Tulloch Reservoir.

8. This permit shall not be construed as conferring upon the permittee right of access to any points of diversion downstream of New Melones Dam.
9. No water shall be diverted under this permit from the Goodwin Dam Pool (point of diversion 2) until an agreement(s) has been executed between the Oakdale and South San Joaquin Irrigation Districts and the permittee's contractor(s) and/or the permittee providing for the joint use of Goodwin Reservoir.
10. No diversion under this permit from point of diversion 4, shall be made until a description of the specific location of the particular point of diversion and statement of the maximum rate of diversion and quantity of water to be diverted is filed with the State Water Resources Control Board.
11. The equivalent of the continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there be no interference with other rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed.
12. For the protection of water quality, no consumptive use diversion is authorized under this permit when the mean monthly total of dissolved solids concentration in the San Joaquin River at Vernalis is greater than 500 parts per million or the dissolved oxygen concentration in the Stanislaus River is less than that specified in Water Quality Control Plan, San Joaquin River Basin 5C, State Water Resources Control Board, April 1975.

In the event that the water quality control plan is amended or superseded the foregoing water quality objectives shall be modified to conform to then current criteria.

13. Permittee shall file with the State Water Resources Control Board an annual report showing a daily record of total dissolved solids at Vernalis, and a daily record of minimum dissolved oxygen level for the day at Ripon or at an alternate location approved by the Board. The record of total dissolved solids and minimum dissolved oxygen levels shall be submitted as a specific report for the New Melones Project.
14. For the protection of fish and wildlife, permittee shall, in conjunction with the permits issued pursuant to Applications 14858A, 14859, 19303, and 19304, provide such interim instream flows and shall conduct such instream flow and fisheries studies as are required by the June 1987 "Agreement Between California Department of Fish and Game and the United States Department of the Interior, Bureau of Reclamation Regarding Interim Instream Flow and Fishery Studies in the Stanislaus River below New Melones Reservoir" on file with the State Water Resources Control Board.
15. The State Water Resources Control Board reserves jurisdiction over this permit for the purpose of revising instream flow requirements for water quality objectives and fishery purposes and for establishing dry year criteria pursuant to studies to be conducted by the permittee and other parties in an effort to better define water needs.
16. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

17. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for the diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the permit are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.
  
18. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.
  - a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.
  
  - b. Supplemental Project water is defined as water imported to the basin by the projects, and water released from Project storage, which is in

excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Resources Control Board shall notify the permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise the permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

19. This permit does not authorize the use of any water outside the counties of origin which is necessary for the development of the counties.
20. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).
21. Prior to any diversion of water for municipal, domestic or irrigation purposes, Permittee shall consult with the Chief of the Division of Water Rights and develop a Water Management Program in conformance with State Water Resources Control Board requirements as appropriate. The proposed program shall be presented to the Board for approval. Board approval of the program shall also fulfill the requirements of Term 26 of Permits 16597 (Application 14858A) and 16600 (Application 19304).

All cost-effective measures identified in the water management program shall be implemented in accordance with the schedule for implementation found therein.

Application 27319

In addition to standard permit terms 6 and 10 through 13, the permit issued on Application 27319 shall include the following terms:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 4,000 cubic feet per second to be diverted from January 1 to December 31 of each year.
2. Same as Application 14858.
3. Same as Application 14858.
4. Same as Application 14858.
5. Same as Application 14858 except delete paragraph c.
6. Same as Application 14858 except delete paragraph c.
7. Same as Application 14858.
8. Same as Condition 13 of Application 14858.
9. Same as Condition 14 of Application 14858.
10. Same as Condition 15 of Application 14858.

11. Water diverted under this permit is for nonconsumptive uses and is to be released to the Stanislaus River within the NE1/4 of NE1/4 of Section 15, T1N, R13E, MDB&M (New Melones Power Plant).

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 21, 1988.

AYE: W. Don Maughan  
Eliseo M. Samaniego  
Danny Walsh

NO: None

ABSENT: Darlene E. Ruiz  
Edwin H. Finster

ABSTAIN: None

  
Maureen Marche  
Administrative Assistant to the Board

