

STATE WATER RESOURCES  
CONTROL BOARD

## STIPULATION TO FACTS

2008 JUN -5 AM 8:59

DIV. OF WATER RIGHTS

The State Water Resources Control Board, Division of Water Rights and the U.S. Bureau of Reclamation concur that the following matters are factually accurate and there is no dispute regarding these issues. Both parties concur that no exhibits or testimony are required in any hearing on the proposed revocation of Permits 16209, 16210, 16211 and 16212 on any items agreed upon in the Stipulation to Facts.

1. On February 5, 1970, the State Water Resources Control Board (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. 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 12, 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. Revisions to the original financial appropriation schedule, updating project costs, and obtaining new appropriations had resulted in major construction delays. 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, 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. Since 1983 Reclamation has not submitted annual Progress Reports of Permittee summarizing water use and project status as required by conditions in the permits.
  10. Reclamation has not diverted any water under Permits 16209, 16210, 16211 and 16212.
  11. In an April 15, 1988 letter, 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. Reclamation cited 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. Reclamation stated it did not expect a decision to be made on the construction of Auburn Dam in the near future.
  12. 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.
  13. In a March 27, 1995 letter, Reclamation requested further time extension until December 31, 2001. Reclamation stated that it needed additional time to complete the American River Water Resources Investigation, which had been initiated in 1991 and was 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 State Water Board did not issue public notice of the request.
  14. In a June 11, 1998 letter, 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.
  15. 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).

16. In an October 11, 2001 response, Reclamation asserted that it had exercised due diligence notwithstanding unavoidable obstacles beyond its control. 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, 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 has not yet enacted the necessary reauthorization legislation. Further construction is contingent on the enactment of new legislation, which is 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.

17. In a December 19, 2001 letter, the Division informed Reclamation that the next step in processing the petition for extension of time was to prepare a CEQA document. The 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 State Water Board would not hold a hearing until a draft environmental document had been prepared and circulated under CEQA.

18. In a January 18, 2002 letter, Reclamation advised the Division that until such time as Congress reauthorized the Auburn Dam Project, Reclamation would not be undertaking any environmental work.

19. In a January 29, 2004 letter, the Division 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. To be acceptable, the Work Plan was required to include 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.
20. In a March 26, 2004 response, Reclamation stated that since 2001 Reclamation had done no work on the project. Reclamation further stated that it wanted to preserve the water right permits so that it could promptly move forward with the project if new legislation is enacted and funds are appropriated.
21. Reclamation will not take any further action to construct the project unless and until it receives Congressional reauthorization and appropriate funding. Reclamation has not proposed any legislation currently pending before Congress to reauthorize the Auburn Dam Project, and has not requested any appropriation of funds for the further construction of the project.
22. Reclamation has requested continuing appropriations for the operation and maintenance of property within the project area. Congress has neither directed nor made proposals for Reclamation to dispose of project property.

Executed By:  
Division of Water Rights:

U.S. Bureau of Reclamation:

Signed:

*John O'Hagan*

Signed:

*Richard J. Woodery*

Printed Name: John O'Hagan

Printed Name: RICHARD J. WOODERY

Date: June 5, 2008

Date: June 4, 2008

\* Jim Kassel

**PROOF OF SERVICE**

I, Sheri K. Denson, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22<sup>nd</sup> Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On this date, I served the within documents:

**Stipulation To Facts**

	<b>BY FACSIMILE:</b> I caused a true and correct copy of the document to be transmitted by a facsimile machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
<b>X</b>	<b>BY ELECTRONIC MAIL:</b> I caused a true and correct copy of the document(s) to be transmitted by electronic mail compliant with section 1010.6 of the California Code of Civil Procedure to the person(s) as shown.
	<b>BY HAND DELIVERY:</b> I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
	<b>BY OVERNIGHT MAIL TO ALL PARTIES LISTED:</b> I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
	<b>BY FIRST CLASS MAIL TO PARTIES NOT RECEIVING EMAIL:</b> I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By placing a true copy thereof in electronic mail addressed to:

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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on June 5, 2008 at Sacramento, California.



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Sheri K. Denson  
Senior Legal Typist