

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of:)	
)	
HEARING RE: THE PROPOSED)	TESTIMONY OF
REVOCATION OF U.S. BUREAU OR)	JAMES C. HANSON
RECLAMATION PERMITS FOR)	
AUBURN DAM PROJECT)	
(Applications 18721, 18723, 21636 and 21637))	

I am James C. Hanson, P.E. I am appearing today on behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (collectively hereinafter "County"). Attached hereto as SJC-11 is a copy of my current professional resume. I have over 48 years experience in the general practice of civil engineering and water right related matters.

Beginning in 1960 I was employed by Clinton Henning, Consulting Engineer who was then the engineer for Stockton and East San Joaquin Water Conservation District (SEWD). In that capacity I participated in the ongoing efforts to obtain a secure water supply for the district. In the early 1960s SEWD was successful in obtaining enabling legislation for a district wide pump tax and I along with Tom Shephard who was then employed by the Neumiller law firm were given the joint responsibility of implementing this legislation. In addition I had the responsibility for preparing the first engineers report on groundwater conditions and supplemental water requirements required by the pump tax bill. Since 1981 I have been a consulting engineer for the County for water matters including its pending water right applications. I am currently the District Engineer for Woodbridge Irrigation District within San Joaquin County.

Due to my many years providing professional engineering services to entities within San Joaquin County I am familiar with the County's efforts to obtain supplemental water supply from the American River and the County's reliance on the U.S. Bureau of Reclamation (Bureau) to provide such American River water to the County through the Folsom South Canal. In addition, in preparation for this hearing I have recently reviewed many of the historic documents related to the American River diversion at Auburn and the Folsom South Canal.

I. County's Reliance on American River Water

In significant part, the County's current lack of adequate surface water supply stems from the interplay between several state and federal actions, which collectively directed the County to pursue the American River as the most economically viable source of surface water upon completion of the Folsom South Canal. However, the Folsom South Canal extension into San Joaquin County was never constructed, thus precluding San Joaquin County from receiving American River water as the State and the Federal Bureau of Reclamation intended. Meanwhile valuable opportunities for other water supplies were lost.

The many State and Federal decisions clearly indicate that the County was intended to receive its needed supplemental surface water supply from the American River. The County was clearly an intended beneficiary of the Bureau's American River permits for diversion at Auburn Dam which are at issue in the pending revocation hearing. The County respectfully requests that the Bureau's Auburn Dam American River water right permits for diversion not be revoked by the State Water Board. The County requests a reasonable period of three years to work with the Bureau and other interested beneficiaries to prepare and present to the State Water Board a viable water supply project to utilize the permitted water right which was intended to serve San Joaquin County.

The County is currently pursuing a water right application diversion of American River water for beneficial use within San Joaquin County (Application 29657). This project will utilize the Freeport Regional Water Project as a diversion and conveyance of American River water at Freeport to San Joaquin County. The County believes there is an opportunity to develop and deliver a meaningful project to utilize the priority water rights held by the Bureau to benefit San Joaquin County, one of the intended recipients, of the Bureau's American River water rights at Auburn. This would provide San Joaquin County a longer diversion period and higher priority water than its current pending American River application 29657. This priority water was to serve San Joaquin County as determined by the State Water Board in 1970 in Decision 1356.

II. State and Federal Decisions Providing San Joaquin County with American River Water

The following is a summary of the many State and Federal decisions that have directed the County to the American River and promised the County supplemental water supplies from the American River.

1. 1955 Bulletin 11 San Joaquin County Investigation.

Bulletin No. 11 by the Division of Water Resources of the Department of Public Works under the direction of the State Water Resources Board entitled, "San Joaquin County Investigation," dated April, 1954 contained an inventory of the underground and surface water resources of the valley floor lands of San Joaquin County lying east of the Delta, and estimates of present and probably ultimate water utilization, estimates of present and probably ultimate supplemental water requirements, and preliminary plans and cost estimates for water development.

Bulletin 11 identified how San Joaquin County's water needs would be served and includes a description of the Folsom South Canal extending southward to provide a water supply of approximately 303,000 acre feet annually to San Joaquin County from the American River. Bulletin No. 11 indicates that this water and canal would meet the "probable ultimate supplemental water requirement of the San Joaquin Area." [SJC-12, p. 4-7.] At this time the source of the American River supply to the County was to be from the Folsom Dam and Reservoir. Bulletin 11 states as follows:

"The probable ultimate supplemental water requirement of the San Joaquin Area could be met under a plan which will provide regulatory storage on the American River, by construction of Folsom Dam and Reservoir about 2 1/2 miles upstream from the town of Folsom and about one-half mile below the confluence of the North and South Forks of the river. A portion of the regulated water supply so made available could be conveyed to the San Joaquin Area by gravity conduit, or could be released to the Sacramento-San Joaquin Delta for pumped diversion to the San Joaquin Area as described in the preceding section in the case of the Feather River water." [SJC-12, p. 4-7.]

2. Decision 858 Denying A Permanent Water Right to North San Joaquin Pursuant to Application 12842 for Mokelumne River Water.

In Decision 858, issued on July 3, 1956, the State Engineer found that North San Joaquin Water Conservation District ("North San Joaquin") should receive water from the American River through the Folsom South Canal and that this course would be cheaper and more dependable than Mokelumne River water which flows through North San Joaquin. As a result of these findings, North San Joaquin was granted only a temporary permit to use water from the Mokelumne River and denied a requested permanent right, in favor of East Bay Municipal Utility District's ("EBMUD") water right application which was junior to North San Joaquin's and which exported water out of the Mokelumne River basin to the EBMUD service area.

To support the State Engineer's Decision to deny North San Joaquin a permanent water right from the Mokelumne River which flows through the District the Decision provides at page 51 as follows:

“Studies of the U.S. Bureau of Reclamation, the Division of Water Resource and the State Water Resources Board are sufficiently advanced to indicate with a degree of certainty that from the physical and engineering standpoints, there are not obstacles to prevent water from other sources being made available within the next few years to areas within the Mokelumne River Basin or to the East Bay Municipal Utility District.” [SJC-13, p. 51.]

The referenced other available sources of water was the American River.

The State Engineer, the predecessor of the State Water Board, relied upon the Bureau's plans to serve San Joaquin County with American River water. Decision 858 continues at page 51 by stating:

“A report on the feasibility of water supply development entitled “Folsom South Unit” dated April 1956, recently released by the U.S. Bureau of Reclamation outlines general plans for serving about 200,000 acres of land in Sacramento County and for future extensions to include about 300,000 acres in San Joaquin County from a main canal which would carry water from the American River at Folsom southerly to a point 63 miles southeast of Stockton.” . . . “These studies indicate that the location of the Main Canal of the Folsom South Unit would be located such that practically all of the North San Joaquin Water Conservation District **could be served from this source at less cost than be developing supplies from the Mokelumne River.**” (Emphasis added.) [SJC-13.]

The State Engineer in D 858 concludes as follows: “The evidence presented at the hearing indicates that for its ultimate requirements **North San Joaquin District can obtain a cheaper and more dependable supply from other sources.**” [SJC- 13, p. 73.] One of these other sources was the American River. North San Joaquin was granted a temporary use of surplus waters of East Bay over the interim period and directed that it would ultimately obtain water from its requirements from other sources.

This decision in 1956 was the first State Water Board decision that pointed the County to the American River for its ultimate surface water supply needs and denied San Joaquin County water from other available sources.

3. Decision 893 denied four San Joaquin County entities a water right permit from the American River

In the 1950s, four entities within San Joaquin County consisting of North San Joaquin, Stockton and East San Joaquin Water Conservation District (now Stockton East Water District “SEWD”), the City of Stockton, and the California Water Service Company, filed to appropriate water from the American River. In Decision 893, adopted on March 18, 1958, the then State Water Rights Board at the request of the Bureau of Reclamation denied those permits. This was due in part to the Bureau’s then already existing use and control of the Folsom Dam and Reservoir on the American River.

The Board in granting the permits to the Bureau of Reclamation for the Folsom Project, conditioned the permit to allow time for parties desiring water within Placer, Sacramento, and San Joaquin Counties to negotiate a water supply contract. In Decision 893 at page 51 and 52, the Bureau Applications were eligible for approval provided “that deliveries outside of Placer, Sacramento, and San Joaquin Counties are sufficiently restricted to ensure the satisfaction of such demands as developed within those counties.” [SJC-14, p. 52.]

Decision 893 sets forth several excerpts from the hearing transcript to describe the “intentions of the applicant United States with respect to” Applications 13370 and 13371 for its Folsom applications. The Bureau’s testimony at the hearing related to the delivery of water from the Folsom project through contract. Decision 893 states at page 32 quoting from the hearing transcript of Bureau witnesses as follows:

There are about 500,000 acres of land south of the American River in Sacramento and San Joaquin Counties that are in need of an additional water supply to offset present overdrafts on ground water and to provide opportunity for development of additional irrigable lands (R.T. 1/7/57, p.14). A report on the feasibility of a water supply development for this area is contained in a publication by the United States Bureau of Reclamation entitled "Folsom South Unit, Central Valley Project, California", dated April, 1956 (SWRB Exh. 24). That report concludes that in Sacramento County 27,000 acres were irrigated in 1946, that 54,000 acres were irrigated in 1953 and that ultimately 149,500 acres may be irrigated in 1953 and that ultimately 149,500 acres may be irrigated in any one year with a diversion from the American River of 440,000 acre-feet per year.

Reconnaissance studies by the United States in San Joaquin County have considered diversion of about 378,000 acre-feet per year from the American River to supplement present overdraft and to provide for ultimate needs of an area of about 300,000 acres (R.T. 1/7/57, p. 17). [SJC-14, p.32-33.]

Furthermore D 893 indicates that the Bureau testified at the hearing that it had received requests for water service or for studies in connection therewith from the following San Joaquin County entities: City of Stockton, North San Joaquin Water Conservation District, San Joaquin County Board of Supervisors, City of Lodi and Stockton and East San Joaquin Water Conservation District. [SJC -14, p. 33.]

Condition 14 of the permits to the Bureau issued pursuant to Decision 893 provided that deliveries of water "shall not be made beyond the westerly or southerly boundaries thereof, except on a temporary basis, until the needs of those counties, present or prospective, are fully met provided, however, that agreements in accordance with Federal Reclamation laws between permittee and parties desiring such service within said counties are executed by July 1, 1968." [SJC-14, p.72.]

San Joaquin County was clearly one of the intended beneficiaries of the Bureau's American River Folsom Project water rights permits. San Joaquin County interests did diligently negotiate for contracts, approved those contracts, and signed them, but they were not approved at the Federal level by the Bureau of Reclamation, as is discussed in more detail below.

4. June 1960 Bureau of Reclamation report entitled “Folsom South Unit”

The January 1960 Bureau of Reclamation Report on the Feasibility of Water Supply Development for the Auburn Unit, Central Valley Project, California identified the needs for supplemental water within San Joaquin County and service to the County through the Folsom South Canal. Page 9 of this document provided as follows: “Auburn unit could provide the water required to meet the anticipated future needs of the city of Stockton and the other areas for many years.” The letter of transmittal for this Report by the Bureau of Reclamation states as follows:

“This water supply would halt the existing overdraft of ground water, make available a firm water supply for lands presently unirrigated and reduce the threat of underground saline water intrusion. Supplemental municipal and industrial water would be made available for the city of Stockton and other local and/or bay area.” [SJC-15.]

The works included a main canal extending southward from Lake Natoma to Lone Tree Creek in San Joaquin County, a distance of 67.5 miles.

Again, this report directed San Joaquin County to rely on a water supply from the American River.

5. Congressional Authorization of Auburn Dam to Serve San Joaquin County

Congress authorized the Department of Interior to construct, operate and maintain the Auburn-Folsom unit, American River diversion, Central Valley project, California, under Federal reclamation law in Public Law 89-161 on September 2, 1965. The Congressionally authorized project included the “Folsom South Canal and such related structures, including pumping plants, regulating reservoirs, floodways, channels, levees and other appurtenant works for the delivery of water as the Secretary determines will best serve the needs of Sacramento and San Joaquin Counties.” [SJC-16, p. 616.] This Congressional authorization clearly specified

that the American River diversion at Auburn was authorized to serve the needs of San Joaquin County.

6. Decision 1356 approves water rights to Bureau for Auburn Dam

Decision 1356 was issued by the State Water Board on February 5, 1970 [SJC-17] and was amended by order dated December 17, 1970 [SJC-18]. Decision 1356 approves water right permits to the Bureau for American River diversion at Auburn Dam and Reservoir. The original condition 19 referred to deliveries for use within Placer, Sacramento and San Joaquin Counties and provided these counties a period until 1975 to enter into contracts with the Bureau. [SJC-17, p. 16.] Condition 19 was later removed by reconsideration due to a request by Contra Costa County Water District (CCCWD).

CCCWD's reconsideration request alleged D 1356 improperly applied the watershed protection provisions of the Central Valley Project Act (Water Code Secs. 11460-11463 and 11428). CCCWD alleged that the "law accords a preferential right to the entire watershed of the American River and adjacent areas which can be conveniently supplied with water therefrom whereas the condition [19] limits such right to only a portion of that area. CCCWD further contends that the provision is invalid because the preference under the law is timeless and the condition purports to impose a time limit without statutory sanction." [SJC-18, p. 3.]

The State Water Board responded that "Condition 19 in Decision 1356 was not an effort by the Board to define the area which is entitled to protection under Water Code Section 11460." Rather it was based on a "similar term in Decision D 893 and was responsive to a request by the counties by Placer, Sacramento and San Joaquin." [SJC-18, p. 3.] The State Water Board continued as follows: "The condition reflected a determination by the State Water Rights Board, based upon the evidence in that proceeding, that giving to the three counties a preferential right

to contract with the United States within a limited period of time for sufficient water to meet their future requirements was in the public interest and was an exercise of the Board's authority under Water Code Sections 1253, 1255 and 1257 (see page 52 of Decision D 893)." [SJC-18, p. 3.]

In its December 17, 1970 Decision the State Water Board reviewed the prior 1958 Decision 893 regarding the Bureau's Folsom Project permits for American River water stating as follows:

Some of the applications had earlier priorities than the applications of the United States. However, the project works were owned and operated by the Federal Government, and, obviously, permits to those agencies would have been meaningless in view of the patent necessity of contracting for a water supply of water from the federal facilities. The service area which those applicants desired to supply could be supplied equally well by contract with the Federal Government rather than pursuant to independent permits. Permits were therefore issued to the United States to appropriate sufficient American River water to supply those who were then seeking permits and who were naturally dependent on that source, and availability of water to such applicants was to be assured, for a reasonable period, by the terms imposed in the United States' permits. [SJC-18, p. 4.]

The State Water Board states further as follows:

The counties referred to in the condition [Placer, Sacramento, and San Joaquin Counties] are clearly within the area entitled to benefits of the Watershed Protection law and, if necessary, can assert their rights independently of any terms in the Bureau's permits. Furthermore, the federal law which authorized the Auburn Project includes the three counties as beneficiaries of the project which are to receive water from project facilities (P.L. 89-161). [SJC-18, p. 6.]

The State Water Board's December 17, 1970 decision modified D 1356 by deleting condition 19; however, the modification decision makes it clear that San Joaquin County remains an intended beneficiary of the Bureau water rights permits and that delivery to San Joaquin County of American River water is entitled to protection afforded under the watershed protection statutes of Water Code section 11460.

7. Negotiations with Bureau for American River Water

In 1967 and 1971, the Bureau of Reclamation furnished draft contracts to San Joaquin County and districts within the County to deliver, in part, American River water through the proposed Folsom South Canal to San Joaquin County. [SJC- 19, 3/15-1971 Draft Contract between the United States of America and San Joaquin County Flood Control and Water Conservation District.] Negotiations regarding these contracts resulted in the Stockton East Water District, the Central San Joaquin Water Conservation District and the North San Joaquin Water Conservation District all approving separate contracts for execution. See San Joaquin County Board of Supervisors Resolution RF-72-32 Resolution Endorsing in Principle Proposed Contract between the United States of America and the Stockton East Water District for Water Service from the Folsom South Canal dated April 11, 1972. [SJC-20.]

Each of the contracts was approved by the regional office of the Bureau of Reclamation. Although the contracts were sent to Washington for approval, none were executed by the United States. The contracts were not executed, due to a combination of circumstances and changing policies; not because San Joaquin County did not need the water, nor was it because County entities did not diligently pursue the contracts.

III. Water supplies to serve County from sources other than the American have been limited

Although, the County was to be served by American River water, the County and the water entities within the County pursued other water sources as well. However, due to the assumption that the County would receive its ultimate water supply from the American River the County was also denied a dependable water supply from other sources.

For example in 1956 in Decision 858, North San Joaquin was denied a permanent water right for Mokelumne River water and granted only a temporary water right based upon the permanent right provided to EBMUD.

Also, the County entities have been denied a permanent right for Stanislaus River water again due to the assumption that the County would ultimately be served from the American River. The County has expended substantial efforts and resources to secure a reliable source of water from the Stanislaus River. However, due to changes in State and Federal decisions and policies, supplemental water is speculative at best. The following is a review of the State Water Board and Bureau actions related to serving San Joaquin County with Stanislaus River water.

In 1973 at the State Board hearings on Applications 14858, 14859, 19303 and 1904, for Stanislaus River water (which led to Decision 1422 that same year), the Bureau of Reclamation testified that the portion of San Joaquin County north of the Calaveras River would be served by the Folsom South Canal. As a result of State Board Decision 1422 issued in 1973, the Bureau of Reclamation received conditional permits for Stanislaus River water to be diverted at New Melones Dam and Reservoir. In order to receive State permission to appropriate the water from these permits the Bureau was to demonstrate “firm commitments” within the permitted four county service area, which included San Joaquin County. In part, to demonstrate such commitments, the Bureau of Reclamation entered into contracts with both Stockton East Water District and Central San Joaquin Water Conservation District in 1983 for a 155,000 acre-foot annual Stanislaus River water supply.

At the time of adopting the New Melones Basin Allocation in 1981, the Secretary of Interior noted that the provision of only a small amount of water to San Joaquin County from New Melones was acceptable, as water would be provided to Eastern San Joaquin County from

the American River through the Folsom South Canal. The September 1980 Stanislaus River Basin Alternatives and Water Allocation Special Report states on page 8 “should Folsom South Canal water become available for Central San Joaquin Water District, then its supply could be reallocated to other adjacent areas.” [SJC-21, p. 8.]

The 1983 San Joaquin County entity contracts with the Bureau of Reclamation are based on this assumption. All of Stockton East Water District’s contract water with the Bureau and a portion of the Central San Joaquin Water Conservation District’s contract water with the Bureau of Reclamation are for an “interim” water supply. In the 80s the Bureau continued to make decisions based on the assumption that the Folsom South Canal would deliver American River water to the County.

These County districts spent over 65 million dollars on infrastructure to deliver Stanislaus River water from New Melones. Despite the completion of these delivery facilities in 1993, the County districts have only received a small portion of their contracted Stanislaus River water. Instead, the Bureau of Reclamation continues to make discretionary releases from New Melones to meet CVPIA requirements, State Board imposed Delta flow and salinity standards, and for fish purposes that directly take water away from these County districts. The State Board’s Decision 1641 issued in 2000 indicates that these standards could be met from other sources; however, the Bureau of Reclamation continues to make the discretionary decision to meet these obligations from New Melones, thus depriving the County contractors of water.

IV. Further Litigation, Studies, Reports and Attempted Federal Authorization

In the 1980s and 1990s the Bureau continued efforts to develop the Auburn Dam water rights through reports, studies and attempted Congressional authorization. The County of San Joaquin was also engaged in these efforts. In addition, the Auburn Dam permits held by the

Bureau of Reclamation were subject to litigation and environmental hearings concerning the Auburn-Folsom South Unit. (See Stipulation of Facts, Paragraph 4.)

In 1991 the United States Army Corps of Engineers completed the American River Watershed Investigation Feasibility Report and EIS/EIR. In 1996 a Supplemental Information Report - the American River Watershed, California, Supplemental Information Report and Environmental Impact Statement/Environmental Impact Report (EIR/EIS) was prepared by the Bureau of Reclamation and the United States Army Corps of Engineers with the support of Sacramento County and San Joaquin County water interests. (See County of San Joaquin Board of Supervisors Board Order B- 91-1100 dated July 16, 1991 authorizing the County to sign the Local Cost Sharing Agreement for the American River Water Resources Investigation. [SJC-22.]) The purpose of the Bureau's feasibility study was to evaluate the potential to meet water, power, recreation and other resource needs in the American River Region. Throughout this time period and the various studies and attempted federal authorization, the County supported a multi-purpose dam at Auburn in order to provide supplemental water supplies to the County of San Joaquin.

Unfortunately the Bureau has not successfully developed a water storage and diversion project at Auburn. In addition, the reaches of the Folsom South Canal to San Joaquin County have not been built. Thus, San Joaquin County has been precluded from receiving water supply from the Bureau from the American River as was originally contemplated more than 50 years ago and for which over fifty years of federal and State decisions have been based upon.

V. Conclusion

The County was intentionally, or unintentionally, misled. All historical water right decisions regarding the County have pointed the County towards the American River for water

supply from the Bureau of Reclamation. The ultimate water supply requirement for the County was to be from the American River (Bulletin 11, 1954, [SJC-11, p. 4-7.]). This would provide “a cheaper and more dependable supply” than Mokelumne River water which flows through the County. (D 858, 1956, [SJC-12.].)

This ultimate water supply has not yet been developed. The County is respectfully requesting the State Water Board in its exercise of discretion in the public interest to not revoke the Bureau of Reclamation’s American River direct diversion permits at Auburn. The County is requesting a reasonable period of three years to negotiate with the Bureau to obtain an assignment of this water right and pursue a viable project to deliver this American River water to San Joaquin County, one of the intended beneficiaries of this priority permit water.