

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

see 80-7  
80-9

In the Matter of Permitted  
Applications 11792, 12910, 12911,  
12912, 13091, 13092, 13093, 18727,  
18728, 19148, and 19149 )  
CALAVERAS COUNTY WATER DISTRICT, )  
Permittee )  
SIERRA CLUB, ET AL. )  
Petitioners )

ORDER: WR 80- 21  
SOURCES: Stanislaus River and  
Tributaries  
COUNTIES: Tuolumne, Calaveras,  
Stanislaus, and San  
Joaquin

ORDER AMENDING AND AFFIRMING  
AS AMENDED ORDERS  
WR 80-7 AND WR 80-9

BY THE BOARD:

The petition for reconsideration of Order WR 80-7 having been filed; the Board having adopted Order WR 80-9 granting the petition and amending Order WR 80-7; the supplemental petition for reconsideration of Order WR 80-7 and petition for reconsideration of WR 80-9 having been filed; the permittee having replied to the petition, and the Board having reviewed the record as supplemented; finds as follows:

1. The petitions and supplemental petition were filed jointly on behalf of the following protestants: the Sierra Club, Friends of the River, Concerned Citizens of Calaveras County, Wilderness Society and Dale Meyer.

2. In 1965, Decision 1226 was adopted approving the issuance of permits for Applications 11792, 12910, 12911, 12912, 13091, 13092, 13093, 18727, 18728, 19148, and 19149 to the Calaveras County Water District (permittee). The permits authorized the permittee to divert and store water for hydroelectric project and water supply projects on the North Fork of the Stanislaus River. The permittee desires to construct the hydroelectric project to obtain funds to construct water supply projects for domestic, agricultural and other uses.

3. The development of hydroelectric power project on the North Fork of the Stanislaus River is subject to federal approval. Several efforts have been made to develop a project that would be approved by the Federal Power Commission or its successor the Federal Energy Regulatory Commission. To date, no facilities have been constructed for putting water to use under the permits issued by the Board.

4. Commencing in 1977, or earlier, the permittee began to develop its most recent proposal for putting water to use under the water right permits. This proposal called for changes in the points of diversion, rediversion, storage, place of use and purpose of use of water provided in the existing permits. The Board was petitioned to amend the permits and on August 22, 1978, the Board provided notice of the petitioned changes.

5. Orders WR 80-7 and 80-9 were adopted following six days of hearing held in 1979 in response to the protests received on the petitioned changes.

6. In summary, Order WR 80-7:

- a. Approved the petitioned changes for the hydroelectric project in permitted Applications 12911, 13093, 18727 and 19148 (Provision 3);
- b. Amended permitted Application 13092, to delete powerhouses not present in the amended proposal (Provision 1);
- c. Approved petitioned changes for features of the water supply projects integral to the hydroelectric project in permitted Applications 11792, 18728, and 19149 (Provision 4)
- d. Granted time extensions for constructing the hydroelectric project in permitted Applications 12911, 13092, 13093, 18727 and 19148 (Provision 2);

- e. Granted time extensions for constructing the features of water supply project integral to the hydroelectric project for permitted Applications 11792 (as it pertains to the North Fork of the Stanislaus River), 12910, 12912, 13091, 18728, and 19149 (Provision 2);
- f. Required that environmental documents be prepared for those aspects of permitted Applications 11792, 12910, 12912, 13091, 18728 and 19149 for water supply projects not integral to the hydroelectric project. (Provision 10)
- g. Adopted measures to protect aquatic life (Provisions 7, 9, a and d);
- h. Required the establishment of a swimming area at Colliersville Afterbay or other suitable locations (Provisions 9, b);
- i. Required that the Colliersville Afterbay be located so not to interfere with the raft embarkment area on the North Fork of the Stanislaus River (Provision 9, c); and
- j. Provided that the foregoing actions should not become effective until the supplemental environmental impact report (SEIR) was determined, finally, by a court of competent jurisdiction to comply with Division 13, Section 2100, et seq., Public Resources Code (Provision 11).

7. Order WR 80-9, accepted the petition for reconsideration of Order WR-80-7 and, following the making of the final determination on the adequacy of the SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR) adopted specific dates for commencing and completing construction and for applying water to the proposed use for permitted Applications 12911, 13092, 13093, 18727, and 19148 (Provision 2).

Request for Hearing

8. The petition and supplemental petition for reconsideration were based, in part, on allegations that there is new and relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing, [Title 23, Cal Adm Code, Section 737.1(c)]. When new evidence is available the petitioner is required to state, generally, the nature of the new evidence and the facts to be proved [Section 737.2 (b)]. The petitioner submitted exhibits of the new evidence that it asks the Board to consider at the requested hearing. Following is the list of the petitioner's exhibits submitted for the Board's consideration.

Petitioners Exhibits

Title/Source

- A. Table 8-1. Economic Comparison of Proposed Project and Reasonable Alternatives (FERC staff), Draft EIS.
- B. Amendment No. 2 to Memorandum of Understanding between the Calaveras County Water District and the Northern California Power Association.
- C. Notice, Judgment and Findings of Fact and Conclusions of Law of the Superior Court of Calaveras County in the Matter of the Concerned Citizens of Calaveras County v. Calaveras County Water District No. 9504.
- D. Dismissal of appeal in the above matter by the Third Appellate District.
- E. Interim Population Projections, 1980-1985, Baseline E-150 (Revision), Department of Finance, January 1980.
- F. Complaint of Violation (Section 764).
- F.a. Response by Division of Water Rights to Complaint.
- F.b. Letter from M. H. Remy to Steve Felte, May 30, 1980.
- G. Excerpts from California Energy Commission 1979 Biennial Report.

9. In replying to the petition and supplemental petition the permittee also advanced materials for the Boards consideration. These are (1) the letter dated June 16, 1980, to the permittee from the Northern California Power Association and (2) the contract dated July 6, 1965 between Pacific Gas and Electric and the permittee.

10. While these materials are dated subsequent to the hearings held by the Board, in our view, they add no information of sufficient probative value beyond that already found in the record on this matter to require that additional hearings be held. The permittee has commented, in its reply, on those materials offered by the petitioner. The permittees' new submittals were directly in response to the petitioners' submittals.

11. The California Energy Commission staff was requested to comment on the petitioners' Exhibit 7.a. entitled "Table 8-1. Economic Comparison of Proposed Project and Reasonable Project Alternatives (FERC staff), Draft EIS." The Commission's response, titled "Calaveras Hydroelectric Project", dated September 16, 1980 and signed by Dale Nielsen, and the entire California Energy Commission 1979 Biennial Report (rather than the fragment offered in the petitioner's Exhibit G) were circulated to the petitioners and permittee for comment.

12. Accordingly, the petitioners' request for a hearing is denied. The issues raised by the petitioners will be resolved on the basis of the existing record as supplemented by the additional materials submitted with the petition, supplemental petition, reply and the comments described in the preceding paragraph.

13. Numerous issues have been raised by the petitioners concerning the appropriateness of the orders adopted by the Board. After consideration of the issues raised we conclude that, with minor corrections, the orders are appropriate as adopted. The following paragraphs will examine and respond to the issues raised by the petitioners.

Scope of Project and CEQA

14. The petitioners contend that "the key question before the Board" is whether it was inappropriate for the Board to consider and approve the petitioned changes for the hydroelectric project and features of the water supply projects integral to the hydroelectric project<sup>1/</sup> separate and apart from detailed plans and environmental documents for all eleven permits originally issued to the permittee for the hydroelectric project and water supply projects (S.P., p. 2).<sup>2/</sup> It appears that the petitioners have two bases for making this contention. First, the petitioners seem to believe that Board Order WR 75-1 constrains the Board from considering anything less than all the detailed plans and environmental documents for putting water to use under permits for the hydroelectric project<sup>3/</sup> and all water supply projects at one time (P., p.6).<sup>4/</sup> Second, the petitioners contend that the Board cannot properly determine that the petitioned permit changes for the hydroelectric project are in the public interest absent detailed plans and environmental documents for putting water to use under the permits for all the water supply projects. (SP, p. 2, et. seq.).

15. With regard to the first basis, Order 75-1 provided in part:

"2. That the time for commencement of construction ... should be extended for a further hearing when the draft environmental impact statement is complete, but not later than September 1, 1975. The purpose of this hearing will be to consider whether further time should be allowed for formulation of the details of a definitive project.

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<sup>1/</sup> Whenever reference is made to the Board having approved petitioned changes in permits for the hydroelectric project, it should be understood that the Board also approved features of water supply projects integral to the hydroelectric project.

<sup>2/</sup> "(S.P.)" refers to the Supplemental Petition.

<sup>3/</sup> We consider here, also, the protestants contention that the Board must consider permitted Applications 12912A and 11792A when making a decision regarding the proposed permit changes for the hydroelectric project. (S.P., pp 7, 8 & 9).

<sup>4/</sup> "(P)" refers to the initial Petition for Reconsideration.

"3. That the permittee should be placed on notice that if additional time for formulation of details of a definitive project is allowed, as a result of the hearing under paragraph two next above, the Board may later amend the permits to conform with the definitive project and with current conditions. Because the permits were issued nearly 10 years ago, and because there has been neither substantial financial commitment nor commencement of construction as provided in the permits, further hearing, fully noticed with opportunity for protestants to be heard, will be held regarding the definitive project prior to amendment of the permits. Amendments may include conditions to protect the environment based on the current laws and knowledge regarding the environment, conditions to protect vested rights and the public interest, and new quantity limitations consistent with the project formulated although the availability of unappropriated water will not be an issue." (Emphasis added).

16. One of the obvious purposes of the preceding provisions was to put the permittee on notice that the Board would reexamine the environmental impact of the proposed project in light of the California Environmental Quality Act (Public Resources Code, Sections 21,000 et seq., CEQA), the public interest and changed conditions. It should be noted that the permittee's proposed project was initially approved before the adoption of CEQA. Nothing in the foregoing provisions precludes the Board from separately considering the petitioned changes for the hydroelectric project. Because the development of the hydroelectric project is a condition precedent, in a financial sense, to the construction of the water supply projects, there is good reason for the permittee to concern itself only with the hydroelectric project at this time. The future of the water supply projects are speculative unless the hydroelectric project can be built. It would be unreasonable to require the permittee to expend considerable time and expense in preparing detailed plans and environmental documents for speculative water supply projects. Finally, the local electorate must approve the indebtedness needed to finance the cost of the water supply projects over and above the funds made available by constructing the hydroelectric project. The Board was not precluded from

adopting Orders WR 80-7 and 80-9 by the provisions of Order WR 75-1.

17. The second basis was the contention that the Board could not properly determine that the petitioned permit changes for the hydroelectric project were in the public interest without considering the detailed plans and environmental documents for all the water supply projects. We reject this view for the same reasons set forth in the preceding paragraph. We are mindful that the original permits were issued because it was judged that the permittee's proposed hydroelectric project and water supply projects would more fully develop water resources, provide the widest benefits, and best conserve the public interest (Decisions 1114 and 1226). The permittee still proposes to construct water supply projects from the funds that will result from the hydroelectric project. The Board considered the relationship between the hydroelectric project and water supply projects when approving the petitioned changes for the proposed hydroelectric project. (Order WR 80-7, p. 22, 23 and 24).

18. The petitioners contend that the Board has not properly complied with CEQA. Numerous issues are raised under this general subject. Those issues will be discussed in the following paragraphs.

19. It is contended that the Board failed to consider the entire project as required by CEQA (Public Resources Code, Title 14, Section 15037). This contention is closely related to the preceding contentions. The permittee prepared a SEIR for the proposed hydroelectric project. Certain water supply features are integral to the hydroelectric project. The permittee petitioned the Board to amend four permits for hydroelectric power generation and three permits for water supply projects. The amendments conform the permits to the revised plan for the hydroelectric project. For the reasons stated in paragraphs 16 and 17 of this order, the Board approved the petitioned changes.

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<sup>5/</sup> The fact that when the Board provided notice for the hearings on the petitioned changes it indicated it would receive comment on all the permits does not preclude the Board from adopting an order which is primarily concerned with the hydroelectric project.



20. At the time the Board adopted Order WR 80-7 the adequacy of the SEIR was being litigated in the Concerned Citizens of Calaveras County, et al. v. Calaveras County Water District, Case No. 2504, Superior Court of Calaveras County. The judgment of the Superior Court was on appeal before the Third Appellate District Court of Appeal. Among the issues being litigated was the issue of whether the proposed hydroelectric project was a discrete project separate and apart from the water supply projects (see Order WR 80-7, pp. 14 and 15).

21. Section 21167.3 of CEQA provides:

"If an action ... alleging that an environmental impact report does not comply with the provisions of this division is commenced... responsible agencies shall assume that the environmental impact report for a project does comply with the provisions of this division and shall issue a conditional approval or disapproval of such project ... A conditional approval shall constitute permission to proceed with a project when and only when such action or proceeding results in a final determination that the environmental impact report does comply with the provisions of this division." (Emphasis added).

The Board's approval of the petitioned permit changes (and other related approvals) was subject to the conditional approval required by this section (Order WR 80-7, Provision 11).

22. Subsequent to the adoption of Order WR 80-7, the Appellate Court dismissed the appeal from judgment. The Superior Court's findings of fact in support of its judgment included the following findings:

"8. The hydroelectric project is an independent project. It is not part of a larger undertaking, is not a necessary precedent for action on a larger project, and its construction will not commit respondent to carry out a larger project with significant environmental effects.

"9. To the extent feasible, and to the extent information was reasonably available, the SEIR discussed the cumulative impacts of (a) other projects being studied by respondent, including the water supply projects. (b) other projects existent and planned in the region.

"10. To the extent feasible, and to the extent information was reasonably available, the SEIR discussed the growth-inducting impacts of the hydroelectric project and of possible future water supply projects.

"12. To the extent feasible, and to the extent that information was reasonably available, the SEIR discussed the significant environmental impacts of the Collierville Afterbay."

23. Whether the hydroelectric project was a discrete project for purposes of CEQA was an issue raised during the course of the hearings held to consider the protests raised against the petitioned permit changes. Recognizing the limitation placed on the Board by Section 21167.3, Order WR 80-7 stated:

"In accordance with the foregoing provision, the Board is directed to assume that the SEIR for the hydroelectric project complies with the requirements of CEQA." (Order WR 80-7, p. 15.)

The petitioners take exception to this finding. Inasmuch as the issue of whether the hydroelectric project is discrete is now final within the meaning of Section 21167.3, we do not believe further discussion of this issue is warranted.

24. The petitioners raise a closely allied contention that the permit changes sought from the Board by the permittee evidence the intent to construct a substantially different project than the project described in the SEIR and that the Board is required to prepare supplemental environmental documents (P, p. 6).

25. CEQA requires a responsible agency to prepare additional environmental documents when (1) the lead agency cannot be compelled to prepare additional environmental documents, and (2) the following circumstances are present:

- "(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." (Public Resources Code, Section 21166)

26. The following is the general project described in the SEIR:

"The proposed project calls for the enlargement of Spicer Meadow Dam and Reservoir, presently owned by the Pacific Gas and Electric Company (PG&E), plus the construction of three diversion dams, three tunnels, two power plants and an afterbay. The overall plan will provide approximately 192,000 acre-feet of storage and 205 megawatts of capacity.

"The existing Spicer Meadow Reservoir constructed in 1929 will be enlarged from approximately 4,060 acre-feet storage capacity to 189,000 acre-feet storage capacity for the conservation and regulation of Highland Creek flows. The existing dam now owned by PG&E will be inundated.

"The North Fork Diversion Dam, located at the confluence of Silver and Duck Creeks, will divert flows through a tunnel into Spicer Meadow Reservoir for storage. Controlled releases (about 300 cfs) from Spicer Meadow Reservoir will flow through a 5.2 megawatt power plant and thence down the existing stream channels to McKay's Point where it will again be diverted into the Collierville Tunnel and Penstock located on the north side of the river to a power installation at Clark Flat approximately one mile below the confluence of the North and Middle Forks. The power plant will have an installed capacity of 200 megawatts with a maximum static head of 2,270 feet. Flows in Beaver Creek will also be diverted to McKay's Point for rediversion into the Collierville Tunnel.

"The project plan includes the purchase from PG&E of portions of the Utica Project (project works under Federal Energy Regulatory Commission licenses issued to PG&M as Project Nos. 2019 and 2699) for integration into the proposed new development. The diversion dam and tunnel on Beaver Creek within the Calaveras Big Trees State Park will be taken out of service. The major portion of the Utica Ditch will also be taken out of service. Water will be released out of the Collierville Tunnel to the Ditch near Darby Knob (start of penstock) for transmission to the Murphys-Angels power plants and to the communities of Murphys and Angels Camp."

27. The permittee petitioned the Board to change permitted Applications 12911, 13093, 18727, and 19148 for the proposed hydroelectric project. A summary description for each of these proposed permit changes follows:

Description of Proposed Changes to  
Permitted Application 12911

To add McKay's Point Diversion Dam as a point of diversion described as follows: S63 E, 2,000 feet from NW corner of Section 2, T4N, R15E, MDB&M, being within NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 2.

To add McKay's Point Diversion Dam as point of rediversion.

To change the distribution of storage under Permit 15016 by deleting Ganns and Big Trees Reservoirs and redistributing their storage to reservoir as follows:

- a. 32,000 afa from Ganns to Spicer Meadows
- b. 18,300 afa from Big Trees to Spicer Meadows
- c. 200 afa from Big Trees to McKay's Point
- d. 2000 afa from Squaw Hollow to McKay's Point Diversion Dam

Therefore, the appropriated water under this permit will be collected and stored in the amounts and locations specified as follows:

- a. 2,200 afa at McKay's Point
- b. 76,300 afa at Spicer Meadows

To change the place of use to the following:

- a. Collierville Power House within SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 6, T3N, R15E, MDB&M.
- b. New Spicer Meadows Power House within SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 9, T6N, R18E, MDB&M.

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Descriptions of Proposed Changes to  
Permitted Application 13093

To change the purpose of use to power.

To add North Fork diversion, on North Fork Stanislaus River, as a point of diversion described as follows: 1500 feet west from the SE corner of Section 20, T6N, R18E, MDB&M, being within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of said Section 20.

To delete Big Trees Reservoir.

To change the distribution of storage under Permit 15020 by redistributing Big Trees Reservoir 35,000 acre-feet storage as follows:

- a. 26,700 afa to Spicer Meadow
- b. 350 afa to North Fork Diversion Dam
- c. 7,950 afa to be deleted from permit

Therefore, the water to be appropriated under the permit will be collected and stored in the amounts and locations described as follows:

- a. 49,700 afa at Spicer Meadow
- b. 350 afa at North Fork Diversion Dam

To change the place of use to the following:

- a. Collierville Power House within SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 6, T3N, R15E, MDB&M.
- b. New Spicer Meadow Power House within SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 9, T6N, R18E, MDB&M.

To add McKay's Point Diversion Dam as a point of rediversion.

Description of Proposed Changes to  
Permitted Application 19727

To change the distribution of storage by deleting Big Trees Reservoir and redistributing that storage as follows:

- a. 25 afa to be stored at Beaver Creek Diversion Dam.
- b. Delete 12,800 afa on-stream storage at Big Trees Reservoir.
- c. Delete 13,075 afa off-stream storage at Big Trees Reservoir.

To change the points of diversion and rediversion by deleting Big Trees and Squaw Hollow Reservoirs and by adding McKay's Point Diversion Dam which is described as follows: S63°E, 2,000 feet from NW corner of Section 2, T4N, R15E, MDB&M, being within NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 2.

To change the point of diversion by deleting Upper and Lower Beaver Creek Diversions and by adding New Beaver Creek Diversion described as follows: S20°E, 1,000 feet from NW corner of Section 1, T4N, R15E, MDB&M, being within NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 1.

To delete Big Trees Power House and include only Collierville Power House in the place of use under this permit. Collierville Power House is located within SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 6, T3N, R15E, MDB&M.

Description of Proposed Changes to  
Permitted Application 19148

To change the point of diversion from Upper Beaver Creek Diversion Dam to New Beaver Creek Diversion described as follows: S20°E, 1,000 feet from NW corner of Section 1, T4N, R15E, MDB&M, being within NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 1.

To delete 27,200 afa storage at Big Trees Reservoir.

Water therefore appropriated under this permit will be as follows:

- a. 340 cfs by direct diversion at Beaver Creek Diversion.
- b. 600 cfs by direct diversion and 52,000 afa to off-stream storage at Spicer Meadow at a maximum rate of 1,000 cfs from North Fork Stanislaus River at North Fork Diversion.
- c. 52,000 afa by diversion to storage at Spicer Meadow.

To change the place of use to include Collierville Power House under this permit located within SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 6, T3N, R15E, MDB&M, and New Spicer Meadows Power House within SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 9, T6N, R18E, MDB&M.

To change the points of rediversion by deleting Ganns Dam, Big Trees Dam, and Squaw Hollow Dam as points of rediversion and adding McKay's Point Diversion Dam as a point of rediversion under this permit.

28. The changes clearly fall within the general description of the project set forth in paragraph 26 and are discussed in the SEIR. When examining the petitioned changes for permitted Applications 12911, 13093, 18727, and 19148, we find no support for the petitioner's contention.

29. The permittee also petitioned the Board to change permitted Applications 11792, 18728, and 19149 for features of the water supply projects integral to the hydroelectric project. A summary description for each of these proposed permit changes follows:

Description of Proposed Changes to  
Permitted Application 11792

To change the purposes of use to municipal and irrigation.

To add a point of diversion (at McKay's Point Diversion Dam) described as follows: S63°E, 2000 feet from NW corner of Section 2, T4N, R15E, MDB&M, being within NE¼ of NW¼ of said Section 2.

To change the distribution of storage by deleting Ganns and Big Trees Reservoirs from this permit and redistributing that storage to reservoirs as follows:

- a. 32,000 afa from Ganns to Spicer Meadows
- b. 200 afa from Big Trees to McKay's Point
- c. 24,300 afa from Big Trees to Spicer Meadows
- d. 2,000 afa from Squaw Hollow to McKay's Point Diversion Dam

Therefore, the water to be appropriated under permit will be collected and stored in the following amounts and locations:

- a. 2,200 afa at McKay's Point
- b. 76,300 afa at Spicer Meadows

Change the points of rediversion under this permit to the following points:

- a. McKay's Point Diversion Dam
- b. Ramsey Diversion Dam

Description of Proposed Changes to  
Permitted Application 18728

To change the distribution of storage under Permit 15022 and to delete portions of the permitted amounts as follows:

- a. To redistribute 8,700 afa of the Big Trees Reservoir storage to Spicer Meadows Reservoir and 400 afa storage from Big Trees to Ramsey Diversion Dam.
- b. To delete Big Trees, Jesus Maria, and Littlejohns Reservoirs.

To change the points of diversion as follows:

- a. To change the point of diversion from the Upper and Lower Beaver Creek Diversions to the Beaver Creek Diversion Dam which is described as follows: S20°E, 1,000 feet from NW corner of Section 1, T4N, R13E, MDB&M, being within NW¼ of NW¼ of said Section 1.
- b. To delete Big Trees Dam as a point of diversion, and to add McKay's Point Diversion Dam and Ramsey Diversion Dam as points of diversion and rediversion under this permit. Ramsey Diversion is described as follows: N68° 22'W, 2100 feet from NW corner of Section 23, T6N, R16E, MDB&M.

To delete the following points of diversion to off-stream storage: Squaw Hollow, and Tulloch Reservoirs. Also delete the Goodwin Dam as point of diversion.

Description of Proposed Changes to  
Permitted Application 19149

To change the point of diversion from the Lower Beaver Creek Diversion to the New Beaver Creek Diversion described as follows: S20°E, 1,000 feet from NW corner of Section 1, T4N, R15E, MDB&M, being within NW¼ of Section 1.

To change the point of diversion from Big Trees Reservoir to Spicer Meadow Reservoir located as follows: N 1225 feet, E 1700 feet to NE corner of Section 9, T6N, R18E, MDB&M, being within NE¼ of NE¼ of said Section 9.

To delete the Goodwin Dam and Squaw Hollow Dam points of diversion and rediversion and add McKay's Point Diversion Dam and Ramsey Diversion Dam as points of diversion and rediversion.

To change the distribution of storage by redistributing:

- a. 350 afa from Big Trees to North Fork Diversion.
- b. 41,850 afa from Big Trees Reservoir to Spicer Meadow Reservoir.

Therefore water under permit will be diverted and stored at the following locations and amounts:

- a. 25 cfs by direct diversion at McKay's Point.
- b. 340 cfs by direct diversion at Beaver Creek Diversion.
- c. 350 afa by storage at North Fork Diversion.
- d. 41,850 afa by storage at Spicer Meadows.
- e. 37,000 afa by off-stream storage at a maximum rate of diversion of 1,000 cfs from North Fork Stanislaus River to Spicer Meadow.

30. A few proposed changes in the permits for water supply projects are not integral to the hydroelectric project. These changes principally include the proposal that the Ramsey Diversion Dam be added as a point of diversion, rediversion and storage in permitted Application 11792 and 18728. Further, during the hearing on April 17, 1979 the staff of the Board requested the permittee to amend the petitions for changing permitted Applications 11792, 18728 and 19145. As it turned out, these changes were beyond the scope of the changes sought in the hydroelectric project by the permittee, were not addressed in the SEIR and, accordingly, were not approved by Order WR 80-7. The permittee's SEIR indicates that "(b)efore any individual water-related project is constructed, a detailed environmental report will be prepared for the project" (SEIR, Vol I, II-25, CCWID, Exhibit 4). By water-related project the permittee means a water supply project. The Ramsey Diversion Dam is part of a water supply project.

31. The remaining changes described in permitted Applications 11792, 18728 and 19149 fall within the general description of the project set forth in paragraph 26 and are discussed in the SEIR. With the exceptions noted regarding permitted Applications 11792 and 18728, the petitioned changes conform the proposed physical features of the proposed water supply project to the physical features of the proposed hydroelectric project. The permittee is committed to prepare environmental documents before constructing the water supply project. We conclude that the petitioned changes to the permitted applications do not evidence an intent to construct a substantially different project than the project described in the SEIR.

32. When adopting Order WR 80-7 the Board approved only the petitioned changes for features of the water supply projects integral to the hydroelectric project (Provision 4). On their face, these approved changes could be construed by the permittee as approval to proceed with the water supply projects



covered by permitted Applications 18728 and 19149. However, Order WR 80-7 approved only the petitioned changes in the permitted water supply projects to the extent that the construction of the hydroelectric project will make those same physical changes. The approved changes in the water supply permits will have no environmental impact beyond that which results from the construction of the hydroelectric project. We take this opportunity to point out WR 80-7 requires the permittee to prepare environmental documents before commencing construction of the features of water supply projects not integral to the hydroelectric project (Provision 10). This requirement continues the Board's intent stated in Order WR 75-1.

33. The petitioners contend that the Board failed to comply with CEQA when the petitioned permit changes for the proposed hydroelectric project were approved because the SEIR identified a project alternative that would be less damaging to the wildlife habitat at Gabbot Meadow.

34. The proposed project includes an enlarged Spicer Meadow Reservoir on Highland Creek. Construction of the reservoir will inundate about 160 acres of Gabbot Meadow. The meadow is a fawning area for about two percent of the Railroad Flat deer herd. The SEIR identifies the loss of 160 acres as a significant environmental effect. The permittee has adopted mitigation measures for this impact by committing resources to develop similar habitat at other locations. The SEIR identifies at least one economically feasible project alternative to the proposed project. The alternative project is not as economically attractive. The record does not disclose whether a power purchaser would be forthcoming if this project were proposed. The alternative project would also adversely affect Gabbot Meadow but not to this same extent.

35. CEQA does not preclude the Board from approving a project having an adverse impact on the environment (Society for California Archaeology v. Butte County, 135 California Reporter 679, Laurel Hills Homeowner's Association v. City of Los Angeles, 147 Cal. Rptr. 842). CEQA does require the Board to consider how adverse impacts may be avoided or mitigated pursuant to Public Resources Code, Section 21081.

36. Section 21081 provides:

"21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects thereof unless such public agency makes one, or more, of the following findings:

- a. Changes or alterations have been required in, or incorporated into, such project which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.
- b. Such changes or alterations are within the responsibility and jurisdiction of another public agency and such changes have been adopted by such other agency, or can and should be adopted by such other agency.
- c. Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report."

37. When adopting Order WR 80-7 the Board made the following finding:

"1. The District has agreed, in accordance with plans and specifications prepared by the California Department of Fish and Game in cooperation with the U. S. Forest Service and the U. S. Fish and Wildlife Service, to rehabilitate 40 acres of meadow within the Railroad Flat deer herd boundary, construct 160 acres of new wet meadow habitat within the Railroad Flat deer herd boundary, and to provide up to \$20,000 annually to maintain these meadows for a period of 20 years following construction of the North Fork Project."

38. Cal. Adm. Code, Title 14, Section 15089 provides in part:

"(a) CEQA requires the decision maker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project. Where agencies have taken action resulting in environmental damage without explaining the reasons which supported the decision, courts have invalidated the action.

(b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but are not mitigated, the agency must state in writing the reasons to support its action based on the final EIR and/or other information in the record."

39. When adopting Order WR 80-7, the Board made the following finding:

"The Board finds that there is no certainty that the loss of the wildlife habitat at Gabbot Meadows will be fully mitigated. It is concluded, however, that the need for additional electrical power and the funds that will be made available for the development of future water supply projects (as a consequence of construction of the hydroelectric plant) outweighs any unmitigated effects on wildlife habitat at Gabbot Meadows."

40. In view of the recitals set forth in paragraphs 35 through 39 we reject the protestant's contention that the Board failed to comply with CEQA when approving petitioned permit changes that would adversely affect Gabbot Meadow.

41. The petitioners contend that Order WR 80-7 allows the destruction of swimming at Board's Crossing without determining the feasibility of mitigation measures (SP, p. 17).

42. The SEIR does not identify the loss or reduction of swimming at Board's Crossing as a significant environmental impact. During the course of the Board's hearings, the petitioners did not concern themselves with the loss or reduction of swimming at Board's Crossing. There is no reason that the Board should have made specific findings concerning swimming at Board's Crossing.

43. During the hearings, the petitioners were concerned that higher flows and increased velocity would discourage swimming at Calaveras Big Trees State Park. The SEIR did not identify this as an adverse environmental effect. Order WR 80-7, however, identifies the proposed hydroelectric project's impact on swimming under the heading of "Other Environmental Effects", that is, effects not identified by the SEIR as being significant. The Order states in part:

"Testimony was presented during the hearings held by the Board that:

\* \* \* \*

3. Releases from the proposed impoundments will result in higher and cooler flows during those months during the summer when it is possible, normally, to swim in the river.

"Provision number 9 of this Order will mitigate effects number 1 and 2."

The last sentence in the preceding quotation should also have included effect number 3. <sup>6/</sup>Provision 9 of the Order provides in part:

- "b. The permittee shall establish a swimming beach, access and parking at the Collierville Afterbay or some other suitable location on the river."

44. The petitioners further contend that the Board decided the question of flows in the river in favor of fishing enhancement without any consideration of other possible compatible recreation uses. (S.P., p. 17)

45. When considering the record upon which Order WR 80-7 is based, the Board was presented with many competing demands. The U. S. Fish and Wildlife Service sought greater flows and the protestant lower flows in the river than the Order ultimately adopted. These competing demands were considered by the Board. We conclude that the Board acted properly concerning the issue of swimming in the Stanislaus River.

46. The petitioners contend that the Board failed to "determine the adequacy of the SEIR" as it stated it would on page 17 of Order WR 80-7. The protestants are correct. As indicated in earlier discussion, Public Resources Code, Section 21167.3 requires the Board to assume that the SEIR is adequate (see p. 9, supra). The statement on page 17 should have read as follows:

"The Board will review determine the adequacy of the SEIR later in the order."

The Board did review the SEIR on pages 18 and 19 of the order.

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<sup>6/</sup> The sentence should be amended as follows: "Provision number 9 of this order will mitigate effects 1 and, 2 and 3."

47. The petitioners contend that the conditions imposed on the permittee's hydroelectric project by provision 9, b. and c., of Order WR 80-7 should be tested for feasibility within the framework of a subsequent EIR in order to assure that the measures are implementable (SP, pp. 19 & 20).

48. Provision 9, b. and c. provide as follows:

- "b. The permittee shall establish a swimming beach, access and parking at the Colliersville Afterbay or some other suitable location on the river.
- c. The Colliersville Afterbay shall be located and operated in such manner as to not interfere or degrade the current soft embankment area on North Fork Stanislaus River located immediately below PG&E's Stanislaus Powerplant Afterbay."

49. The problems which provision 9, b. and c. seek to remedy are not identified as significant environmental effects in the SEIR. CEQA requires that a responsible agency accept and consider an EIR or SEIR when the lead agency cannot be compelled to prepare additional environmental documents unless the following circumstances are present:

- "(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available."  
(Public Resources Code, Section 21166)

In our view, neither are substantial changes proposed in the project, nor have the circumstances under which the project is being undertaken substantially changed. Certainly the information leading to the adoption of provision 9, b. and c., could have been made available to the lead agency before it adopted the SEIR. Circumstances are not present that would permit the Board to prepare an SEIR.

50. As previously noted, Order WR 80-7 discussed the location of the afterbay and the loss or reduction in swimming under the heading of "Other Environmental Effects" because such effects were not identified as significant within the SEIR. Provisions 9.b. and c. were adopted under the Board's authority to condition permits in the public interest (Water Code Section 1253) and are a condition of the Board's approval of the petitioned permit changes. The permittee must either implement Provisions 9.b. and c. or advise the Board why it is not possible to do so. The permittee did not petition the Board to reconsider Provisions b. and c. of Order WR 80-7; therefore, those requirements of the order should stand.

51. The petitioners contend that before granting time extensions for putting water to use under the permits for the water supply projects, an SEIR covering the hydroelectric project and all the water supply projects must be prepared and considered by the Board (SP, pp. 17 through 24).

52. This contention is a variation of the contention discussed in paragraphs 16 and 17. For the same reasons set forth therein, we reject the contention that an SEIR must be prepared covering the hydroelectric project and the water supply project before any actions may be taken on the permits for water supply projects.

53. The petitioners also contend that an EIR must be prepared to adopt a time schedule requiring preparation of an EIR (SP, p. 23). Requiring preparation of an environmental document prior to project construction does not constitute approval to construct a project. In this case the Board was confronted with an anomaly between the policies and requirements of CEQA and permits issued for water supply projects before the advent of CEQA. The Board should act on these permits to provide specific dates to test the permittee's diligence in putting the water to use under the permit.

54. When approving the issuance of new permits, the Board has final environmental documents to consider. By final environmental documents, we mean a properly adopted initial study and negative declaration or EIR or documents that may not be challenged due to statutory time limitations (Public Resources Code, Sections 21166, et seq.). In such cases the permit will include times for commencing and ending construction of the facilities needed to put water to use and for completing use of the water.

55. In this instance the permits were issued prior to CEQA. After CEQA was enacted, additional actions on the permits could constitute a nonexempt project within the meaning of CEQA and require preparation of environmental documents. The permittee is the most appropriate agency to prepare environmental documents. CEQA guidelines provide:

"Where two or more public agencies are involved with a project, which agency shall be the Lead Agency shall be determined by the following principles:

- (a) If the project is to be carried out by a public agency, the Lead Agency shall be the public agency which proposes to carry out the project." (Title 14, Cal Adm Code, Section 15065)

The obvious solution is to require the permittee to prepare environmental documents. The permittee's willingness to spend the time and expense to prepare such documents is certainly one measure of diligence toward putting water to use under permit. We believe the adoption of time schedule for preparing EIRs within Order WR 80-7 was appropriate and proper.

56. This concludes our discussion of the CEQA issues. Since the petitioners have made other contentions concerning the time extension adopted for the permits for the water supply projects, we will next consider those contentions.

Other Contentions

57. The petitioners contend that the permits for all the water supply projects should be revoked for want of diligence by the permittee (SP, pp. 4, 5, 22, and 23). Holders of permits to appropriate water must proceed with due diligence to construct the necessary facilities to place water in use (Water Code, Section 1396). For good cause shown, the Board may extend the time for commencing construction (Water Code, Section 1398). The permittee has been granted time extensions by prior orders of the Board. The most recent time extension was adopted on February 14, 1978 in Order WR 78-2.

58. That the permittee is making a major effort to construct the hydroelectric project is beyond dispute. Construction of the hydroelectric project will make funds available to the permittee for the construction of the permitted water supply projects (Order WR 80-7, p. 23). We note that by constructing the hydroelectric project, the permittee will also construct features of permitted water supply projects integral to the hydroelectric project. We affirm the view expressed in Order WR 80-7, pages 24 and 25, that the permittee is acting diligently with regard to these water right permits.

59. The petitioners contend that granting time extensions for all the permitted water supply projects is not in the public interest (SP, p. 23).

60. The permittee is attempting to develop funds for the construction of the water supply projects via the hydroelectric project. The permittee's service area has an immediate and long-term need for additional water and the permittee proposes to provide that water by constructing water supply projects (Order WR 80-7, p. 22). Under such circumstances, and considering all the facts of this particular situation, we conclude that the public interest is advanced by providing the permittee time to develop the water under its permits.



61. The petitioners contend they have been denied procedural due process because allegedly, they were not put on notice that the hearings regarding this matter could lead to an order providing additional time to develop all the permitted water supply projects. The petitions allege that the permittee did not file a request for time extensions on forms provided by the Board or pay the required fee (Title 23, Cal. Adm. Code, Section 778). Further, that separate notice was not provided under Cal. Adm. Code, Section 778.5. The Board's records show that the permittee requested time extensions, and paid the fees, in 1972, shortly after the time within which to commence construction expired.

62. The petitioners assume an unduly narrow reading of the scope of the noticed hearings. The first notice was issued on March 1, 1979. The title page of the notice made specific reference to permitted Applications 11792, 12911, 13093, 18727, 18728, 19148, and 19149. Permitted Applications 11792, 18728, and 19149 are for water supply projects integral to the hydroelectric project. On March 6, 1979 a second notice was issued clarifying the scope of the hearing. It indicated that the Board would receive evidence within the scope of the issues indicated by Order WR 75-1 which provided:

- "2. That the time for commencement of construction ... should be extended for a further hearing when the draft environmental impact statement is complete, but not later than September 1, 1975. The purpose of this hearing will be to consider whether further time should be allowed for formulation of the details of a definitive project.
3. That the permittee should be placed on notice that if additional time for formulation of details of a definitive project is allowed, as a result of the hearing under paragraph two next above, the Board may later amend the permits to conform with the definitive project and with current conditions. Because the permits were issued nearly 10 years ago, and because there has been neither substantial financial commitment nor commencement of construction as provided in the permits, further hearing, fully noticed with opportunity for protestants to be heard, will be held regarding the definitive project prior to amendment of the permits. Amendments may include conditions to protect the environment based on the current laws and knowledge regarding the environment, conditions to protect vested rights and the public interest, and new quantity limitations consistent with the project formulated although the availability of unappropriated water will not be an issue." (emphasis added)

Among other matters this Order indicates a clear intent to scrutinize every aspect of the terms contained in the permits issued and to conform them to current conditions. The Board has not specifically addressed the 1972 time extension requests by establishing new construction dates in its prior orders (75-1, 76-11 and 78-2). The question of new time schedules is plainly a matter the Board intended to address during the 1979 proceeding.

63. The petitioners raise a similar issue concerning changes made to permitted Application 13092 by Order WR 80-7, by contending that the changes to the permit were beyond the scope of the hearing (SP, p. 10).

64. Order WR 80-7, p. 25, provided:

"Order WR 75-1 placed the petitioner on notice that at the time the Board acts upon the definitive project, it may amend the permits to conform with any revisions to the project. With the exception of permitted Application 13092, the petitions for change, as amended during the hearings, seek to revise the permits to conform to the revised project. Permitted Application 13092 lists Collierville, Boards Crossing, Big Trees, and Sand Flat Powerhouses as places of use. This permit should be revised to list only Collierville and New Spicer Powerhouses as places of use."

We believe that our discussion in paragraph 62 sufficiently answers this contention.

65. The petitioners also contend that Order 75-1 constrains the Board from acting on permitted Applications 13092 until a federal environmental impact statement (EIS) is prepared, rather than a state SEIR.

66. Provision 2 states that "... the time for construction ... should be extended for a further hearing when the draft environmental impact statement is complete, but not later than September 1, 1975. Subsequent hearings were held on August 27, 1975 and resulted in further time extensions being adopted

on July 15, 1976 in Order WR 76-11. It was because additional time was still needed that Provision 3 of Order WR 75-1 became important. Further, for the purposes of CEQA, it is the preparation and considerations of state EIR or SEIR that is necessary for "responsible" state agency approval and not a Federal EIS. An EIS will contain much of the information that should be included in an EIR and may be used as a base document when preparing an EIR [Title 14, Cal. Adm. Code, Section 15063(a)]. We conclude that amendments to permitted application 13092 by Order WR 80-7 were proper.

67. The petitioners contend that the permittee has not proceeded with diligence to develop the hydroelectric project because the "election milestone" required by Order WR 78-2 has not been met (SP, p. 4, P., pp. 10 and 11). Order WR 78-2 extends the time set in Condition 4 of Order WR 76-11 to December 1, 1978. Condition 4 provided:

"4. That Permits ... should be revoked ... if the electors fail to approve bonds to finance the permittee's project prior to December 1, 1977, and that the permittee in accepting the time extension agrees to this condition."

The bonds for financing the project were approved by the electorate in November 1978. The petitioners contend that the project approved by the voters is not the project the permittees were required to submit to the voters, that is, the hydroelectric project and all the water supply projects.

68. This contention is a variation of the issues discussed in paragraphs 16 and 17. Our discussion therein is applicable to this contention. The purpose of the "election milestone" required by Order WR 76-11 was to determine if the permittee was going to be able to finance the permitted hydroelectric and water supply projects. That milestone was timely met and this contention is without merit.

69. The petitioners contend that the Board has failed to consider the need for more water for domestic use in the area of Ebbetts Pass than the permittee now plans to deliver (SP, p. 627).

70. This contention is fundamentally inconsistent with the contention discussed at paragraph 59. In that contention the petitioners seek the recession of the water right permits for the water supply permits, including the permit for the Ebbetts Pass area. While there is doubt concerning what the petitioner really wants, we will limit our response to the stated contention.

71. The petitioner erroneously believes that the permittee must serve the entire county with 13,000 acre-feet annually of permitted water from the upper Stanislaus River. In fact, the permittee holds additional rights to water on the Stanislaus River below the proposed Collierville Powerhouse and on the Mokelumne and Calaveras Rivers. The permittee does have the right to divert and use up to 13,000 afa at a location that can be used to provide water service to the Ebbetts Pass area. The volume of water could support substantial growth in the area. The permittee estimates that up to 42,000 people could be served by 13,000 afa. The petitioner's contention has no merit.

72. The petitioners contend that official notice was improperly taken of the trial court's judgment and findings of fact in the Concerned Citizens of Calaveras County v. Calaveras County Water District (P, p. 5).

73. As previously noted, Section 21167.3 of CEQA requires responsible agencies to assume that environmental documents are adequate if an action alleging that environmental documents do not comply with CEQA is commenced (see p. 9, supra).

74. Order WR 80-7 recognized the existence of the suit, that the subject of the suit related to the adequacy of the SEIR under CEQA, and that the issues being litigated paralleled the CEQA contentions before the Board (pp. 13, 14 and 15).

75. Our regulations provide that "... after submission of a matter for decision, official notice may be taken of such facts as may be judicially

noticed by the courts of this State". Evidence Code, Section 452(d) provides that the records of any court of this State may be judicially noticed. This contention is without merit.

76. The petitioners contend that there is not a demonstrated need for the power to be generated by the proposed hydroelectric project (SP, p. 13). This contention is indirectly raised by the petitioner's apparent belief that "funded conservation efforts" could obviate the need for additional power generating facilities. The Board was asked to take "notice of funded conservation efforts". By "funded conservation efforts", it is assumed that the petitioners are referring to the California Public Utility Commission efforts to encourage energy savings by regulation of the utilities over which it has jurisdiction. While the Board may take official notice after the hearing record is closed (Section 733(e)), notice may only be taken of such facts as may be judicially noticed by the courts of this state. Persons seeking notice must identify with particularity those matters for which notice is sought. That is, the Board and others should not have to guess what petitioner wants noticed. In this instance, the petitioners have not identified what they would have the Board notice. Official notice should not be taken of this subject.

77. Order WR 80-7 found that the record contained substantial evidence showing that there is a statewide need for more electric power. Inasmuch as the petitioners again raised the issues of (1) the need for the proposed project's energy and (2) the proposed project's economic feasibility, project specific comment (in contrast to the more general data found in the petitioner's supplemental Exhibit G) was solicited from the California Energy Commission. Response was made in a memorandum entitled "Calaveras Hydroelectric Project", dated September 16, 1980 and signed by Dale Nielsen. The permittee and the petitioners have commented on the memorandum. The permittee asserted that the memorandum

substantiated the need for the proposed project's energy and that the project is financially feasible. The petitioners stated that it also raised other energy related issues and that it believed that the project would displace an insignificant amount of oil. We conclude that the memorandum further substantiates the existing record and the conclusion reached in Order WR 80-7 that there is a need for the project's power.

78. The petitioners also contend, as previously noted, that the project may no longer be financially feasible. The petitioner's supplemental Exhibit A is the basis for this contention. Exhibit A is entitled "Table 8-1, Economic Comparison of Proposed Project and Reasonable Alternatives (FERC staff), Draft EIS". The aforementioned memo from the California Energy Commission also analyzed this information and stated:

"A comparison on a levelized basis of oil-fired and coal generation costs to the Calaveras Project cost, indicates the benefit cost ratio of the proposed project and hydro alternatives, when compared to oil or coal alternatives, range from 3.4 to 2.0. The attached table shows a comparison of the levelized cost of the proposed project and that of power generation in existing oil-fired units and in new coal-fired plants. The cost of power generated at existing oil-fired units will be 261 mills/kwh vs. 77 mills/kwh for the Calaveras Project. The levelized cost of power generated in a new coal-fired plant is projected to be 158 mills/kwh. These figures are computed in 1985 dollars. Our analysis has not included any assessment of the environmental, recreational, or water issues."

We conclude that the data offered by the petitioners affirms the project's feasibility.

Section 729 Motion

79. The petitioners have requested that the Board make findings in accordance with Title 23 Cal. Adm. Code, Section 729. This request was made initially, during the hearings held by the Board on this matter and is renewed in the

supplemental petition (p. 15) and "Response to Notice of October 1, 1980".

Order WR 80-7 failed to respond to this request.

80. The Section states, in part:

"In exercising its discretionary authority in the public interest respecting applications to appropriate water, including prescribing or modifying terms and conditions of permits, the board shall at the request of any party to the proceeding or by its own motion, to the extent applicable, identify and evaluate the benefits and detriments, including but not limited to, economic and environmental factors, of the various present and prospective beneficial uses of the waters involved and alternative means of satisfying or protecting such uses, and make findings with respect thereto...."

The history of this regulation indicates it was intended to be implemented in

conjunction with 23 Cal. Adm. Code, Section 763.5 which states, in part:

"Release of Stored Water. (a) In exercising its discretionary authority respecting applications to appropriate water, including prescribing or modifying permit terms and conditions, the board may require releases of water diverted and stored whenever such releases are determined by the board to be in the public interest.

\* \* \*

(c) Before requiring releases of water pursuant to subsection (a) of this section over the objection of the applicant or permittee, the board will hold a hearing and make findings with respect thereto. The hearing shall be limited to a consideration of (1) the basis of any recommendation of the Department of Fish and Game pursuant to Water Code Section 1243; (2) whether such releases are necessary to maintain or enhance beneficial uses or to meet water quality objectives in the relevant water quality control plan; (3) the probable effect of releases upon the applicant's proposed project; (4) evidence to assist in the preparation of dry and critical year relief provisions related to releases; and (5) any other issues which may be relevant to the appropriateness of a release requirement."

During the hearings held by the Board concerning this matter, evidence was received covering those subjects enumerated in Section 763.5(c). The Department of Fish & Game made specific recommendations for releases to enhance beneficial uses. Among other materials, the permittees planned use of permitted water for the hydroelectric project and water supply projects, SEIR and mitigation measures are all relevant to this inquiry. Having reviewed the record in relation to Section 729, we make the following findings.

81. The prospective benefits of the proposed hydroelectric project include:

- (a) The generation of 560 GWH of electrical energy per year.
- (b) Construction of the hydroelectric project will make funds available to construct water supply projects. These projects will provide about 47,000 acre-feet per year for irrigation, domestic and industrial uses in Calaveras County. Additional funds will be made available for constructing water supply projects in Tuolumne County.
- (c) Fishery enhancement by doubling the trout population in the 18 miles below the confluence of Highland Creek and the Stanislaus River and by increasing streamflow below McKay's Point during summer months from 3 cubic feet per second (cfs) to 16.5 cfs.
- (d) New recreational uses including a campground at Spicer Meadow Reservoir and a larger lake for recreation, and a swimming beach access and parking at the Collierville Afterbay or some other suitable location.

82. The detriments of the proposed hydroelectric project include the significant environmental effects identified in the SEIR and set forth on pages 18 and 19 of Order WR 80-7. Additional project detriments are set forth under "Other Environmental Effects" of page 21 of the Order. The petitioner has changed or altered the proposed project to mitigate the significant environmental effects in the manner set forth on pages 19 and 20 of the Order. Provision 9 of the Order requires additional measures to avoid or mitigate project detriments.

83. Project alternatives were considered in the SEIR. At least one other hydroelectric project alternative was identified as being economically



feasible to construct; that is, the Small Spicer/Utica Union project. The alternate project would provide less water storage, electric power, water for instream mitigation measures and revenues from power production (Table 8-1, Petitioner's Exhibit A). The alternative project would also not inundate as much of Gabbott Meadow as the proposed project. In balance, the proposed project realizes more benefits than the alternate project. It is concluded that Order WR 80-7 approved the appropriate project.

Errors or Omissions

84. We take this opportunity to note certain errors or omissions in Order WR 80-7.

- a. While Dale Myers is identified as a protestant in footnote 17 of the Order, her name is omitted from the identification of the protestants on pages 5 and 6 of the Order. Her name should be added thereto.
- b. The date the Board adopted Order WR 78-2 on page 25 should be amended to read February 14, 1978.
- c. The sentence commencing at the top of page 16 should be amended as follows:  
"Accordingly, at this time, the Board will not act on the petitions for change for the water supply projects to the extent the changes are not integral to the hydroelectric project."
- d. The first sentence of Provision 3 on page 27 should be amended as follows:  
"3. The petitioned changes for the hydroelectric project in permitted Applications 12911, 13093, 18727 and 19148 are approved ...."

Conclusion

85. After consideration of the foregoing contentions and requests, it is concluded that Order WR 80-7 should be amended as discussed in paragraphs 43, 46, and 84 and that the Order should be affirmed as amended.

Order

NOW THEREFORE, IT IS ORDERED THAT:

1. Order WR 80-7 is amended as discussed in paragraphs 43, 46 and 84.
2. Order WR 80-7 is affirmed as amended.

Dated: November 20, 1980

/s/ CARLA M. BARD  
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Carla M. Bard, Chairwoman

/s/ WILLIAM J. MILLER  
\_\_\_\_\_  
William J. Miller, Vice-Chairman

ABSENT  
\_\_\_\_\_  
L. L. Mitchell, Member

/s/ JILL B. DUNLAP  
\_\_\_\_\_  
Jill B. Dunlap, Member

/s/ F. K. ALJIBURY  
\_\_\_\_\_  
F. K. Aljibury, Member