



permits issued to the United States which in any way would affect the operation of the Central Valley Project. This is the same position as maintained throughout the course of the hearing and is set forth in the brief submitted by the Bureau. This contention was considered in arriving at Decision D 990, and it was determined that the Board did have the power to impose the terms and conditions specified. The Bureau has not presented any new arguments in support of its position.

The Board is urged by the Sacramento River and Delta Water Association, Glenn-Colusa Irrigation District et al., Delta Water Users Association, and the San Joaquin County Flood Control and Water Conservation District to reconsider the provisions contained in Paragraph 23 of the Order and extend or make provision for extending the time in which parties within the watershed of the Sacramento River and in the Delta shall be preferred over Project users in the export area with regard to entering into contracts with the United States for water supplies from the Central Valley Project. Their arguments are based on the following contentions: (1) the watershed protection statutes do not provide for any time limit; (2) the time allowed may not be adequate to complete negotiations in view of the number of water users involved even though negotiations are undertaken in good faith; (3) Paragraph 23 of the Order will permit the Bureau to export stored water without limitation because the Bureau may refuse to enter into contracts and allow the

three- and ten-year periods to lapse; (4) a solution of the salinity problem, over which the Board reserved jurisdiction (Paragraph 25), must be reached before the Delta water users will be able to determine whether or not they will need supplemental water; and (5) the Delta water users will not know within three years whether they should contract with the State of California or the Federal Government for stored water. These arguments are discussed in that sequence.

(1) In the discussion of watershed protection in Decision D 990 the Board, acting pursuant to Sections 1253 and 1257 of the Water Code, has determined that a limitation upon the time allowed for water users within the Sacramento River Basin and Delta to be preferred in contracting for stored water from the Central Valley Project will best develop, conserve, and utilize in the public interest the water sought to be appropriated. This limitation in no way restricts or limits the effect of Water Code Section 11460.

With respect to contentions (2), (3), and (4) above, Table 4, page 34, of Decision D 990 shows that the ultimate Project requirements will be 8,022,000 acre-feet annually. This figure is consistent with the "Agreement between the United States of America and the Department of Water Resources of the State of California for the Coordinated Operation of the Federal Central Valley Project and the State Feather River and Delta Diversion Projects." These

ultimate requirements include 2,500,000 acre-feet per annum for firming up local rights in the Sacramento River Basin and Delta, 740,000 acre-feet per annum to be delivered through Project canals for use within the Sacramento River Basin, and 2,424,000 acre-feet per annum for export. USBR Exhibit 164, "Central Valley Project Operations Study, Shasta Reservoir Operation," indicates that these quantities of water can be supplied by the Project, and that, in addition, 735,000 acre-feet per annum for irrigation and 540,000 acre-feet per annum for municipal and industrial purposes will be available for use anywhere within the service area. Export of any of the water which will be required and which is presently earmarked for use in the Sacramento Valley and Delta would be physically impossible in the absence of additional conduits. To date, none has even been authorized for Federal construction. Also required would be permission of the Board to add new points of diversion and to expand the Project service area. Thus, with the coordinated operation of Trinity, Folsom, and Shasta Reservoirs, the United States will continue to have substantial quantities of water available for contract, both locally and for export, for at least several years beyond the initial three-year period specified in the Board's Order. The suggestion made by some of the petitioners that the Bureau may intentionally wait out the expiration of the specified time limits in order to gain a more favorable bargaining position or to be relieved of any watershed restrictions to enable unlimited export is not justified by

the facts and is most unrealistic.

In light of the present stage of negotiations between the Bureau and the parties currently using water along the Sacramento River and in the Delta, and in view of the length of time that negotiations or related studies have been under way, the specified periods as contained in Paragraph 23 of the Decision were deemed a reasonable time within which preferential consideration should be given to the local water users. It was not intended that upon the expiration of those periods the water users would be foreclosed from a water supply but rather that they would merely be on a par with the export users in contracting for water. None of the arguments of the petitioners are sufficiently convincing to warrant modification of this original position.

With respect to contention (5), the State and Federal Governments plan to use the Delta as a common pool, and they have an agreement which, in effect, divides up the unappropriated water supply and provides that neither will infringe on the other's service area. Under such circumstances, it is not anticipated that they will be competing for water users along a common reach of the conveyance systems.

The Sacramento River and Delta Water Association, the Delta Water Users Association, and the San Joaquin County Flood Control and Water Conservation District urge the Board to add an additional condition under permits issued pursuant to Applications 5625, 9365, and 10588 to

subordinate the use of water for power purposes to the use of water downstream for consumptive uses. None of these petitioners during the hearing or in their subsequent briefs suggested such subordination. Sacramento River and Delta Water Association argues that while water cannot be stored during April, May, and June for irrigation and municipal uses outside the watershed and Delta until water users in the watershed and Delta are satisfied, regardless of priority of right, the same protection is not afforded to the local users insofar as the power filings are concerned. Actually, this argument relates only to Applications 5625 and 9365, as Application 10588 is for direct diversion only.

The Central Valley Project is a conservation project with power generation being secondary. The major portion of the Bureau's case during the hearing was based upon USBR Exhibit 164 "Central Valley Project Operations Study, Shasta Reservoir Operation," and it was upon this operation study that the quantities of water granted under the applications were determined. This operation study shows that the Project will be operated primarily for conservation, and it would be highly conjectural to assume that the Bureau will operate in any manner substantially at variance with this study. Theoretically, in the absence of permit terms subordinating the applications to higher uses, the Bureau could operate in the manner suggested by the petitioners, but in doing so, the Bureau would be precluded from asserting any right to export water except pursuant to

its consumptive use permits which are subject to appropriations by others for use in the Sacramento Valley and Delta. It follows that as soon as the water was used through Shasta and Keswick power plants it would become subject to appropriation by water users within the watershed and Delta to the extent that the supply was surplus to the local needs of the Project. Therefore, trying to circumvent the restrictions of Paragraph 22 by virtue of the power applications would, in fact, operate to the benefit rather than the injury of the water users to the extent that stored water would be released for power purposes during July, August, and September, the season when the Sacramento River would have its lowest flow under pre-Project conditions. Accordingly, the probability of the Bureau claiming immunity from Paragraph 22 by virtue of its power filings is too remote to warrant serious consideration.

The Board is urged by the Sacramento River and Delta Water Association to supersede Paragraph 25 of the Order and require the Bureau to maintain sufficient outflow from the Delta into Suisun Bay to prevent water containing in excess of 1,000 parts of chloride ions per million parts of water from encroaching beyond a point 0.6 mile west of Antioch. It is also urged that such a provision should allow for modifications when the Bureau, in cooperation with the State of California, has arrived at a practical plan for the equitable apportionment of costs associated with salinity control among those benefitted. In effect, such a provision

would require a specific degree of salinity control to be maintained during the negotiation period. The Delta Water Users Association and the San Joaquin County Flood Control and Water Conservation District urge that the Bureau be required to maintain the same degree of salinity control as currently provided by the Bureau. The Contra Costa County Water Agency also urges a specific degree of salinity control for the three-year negotiation period. The degree of salinity control urged by the Agency is the same as it presented throughout the course of the hearing. In arriving at the conclusions which are the basis for Paragraph 25 of the Order, these points were considered by the Board. After careful consideration of all the evidence, the Board determined that "there is no impending emergency requiring imposition of specific permit terms relative to salinity control at this time." The petitioners have not submitted any arguments which would alter these conclusions.

The Sacramento River and Delta Water Association urges the Board to add an additional term and condition to provide that "there is excluded from the permitted appropriation any water diverted by a Delta Upland diverter during July, August, and September, within the quantity of a pre-1927 priority, even if such water had been previously stored by the permittee, to the extent that such water would have been present in delta channel storage if the permittee did not divert, directly or to storage, during April, May, or June." The petitioner is fearful that water available to the Delta

Upland users under pre-Project conditions by virtue of storage which occurred naturally in the Delta channels will now be appropriated under these permits for use elsewhere. This natural phenomenon does present a unique problem in determining the extent of vested rights within the Delta. However, this is a problem involved in the salinity control issue and the determination of vested rights. The Board has reserved jurisdiction to allow solution of these problems by negotiation, and it would be untimely to consider this question in advance of such negotiations.

The Board is urged by the Feather Water District to provide watershed protection for each individual watershed within the Sacramento River Basin. Feather Water District, although entering a formal appearance at the hearing, did not present any testimony during the proceedings, nor did the District submit a brief outlining its position at the close of the hearing. The position taken by the District now is untimely and may be denied on that ground alone. However, in analyzing the District's request, it is clear that the petition should also be denied on other grounds. The District argues that in imposing watershed protection provisions, the Board has not fully defined the intent of Water Code Section 11460. Our comments with respect to contention (1) on page 3 also answer this argument. Action by the Board does not prevent any party from exercising any right that may exist by virtue of Section 11460.

The Board, having considered the matters set forth in the petitions and now finding no cause for reconsidering its decision heretofore made, hereby denies each of the petitions.

Adopted as the Order of the State Water Rights Board at a meeting duly called and held in Sacramento, California, this 10th day of April, 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member