

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
OCTOBER 20, 2020**

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION GRANTING A PETITION BY MADERA IRRIGATION DISTRICT FOR THE STATUTORY ADJUDICATION OF WATER RIGHTS IN THE FRESNO RIVER WATERSHED

DISCUSSION

On October 18, 2018, the State Water Resources Control Board (State Water Board or Board) Division of Water Rights (Division) received a [petition](#) from Madera Irrigation District (District) seeking to initiate a statutory adjudication of the water rights to the Fresno River and its tributaries (Petition). The statutory adjudication is intended to resolve ongoing conflicts over water rights, water use, and water allocations within the watershed. At its September 17, 2019 Board Meeting the Board adopted [Resolution No. 2019-0049](#), postponing action on the petition and giving the District and riparian landowners (parties, collectively) approximately eight additional months, until May 2020, to negotiate a settlement and management framework for the lower Fresno River that would resolve existing and future conflicts over the diversion and use of water. Board Resolution No. 2019-0049 outlined eight requirements that any management framework would need to address in order to meet the issues raised in the Petition. Resolution No. 2019-0049 also identified seven milestones the Board would use to assess progress towards a successful negotiated settlement. In May 2020 the parties' negotiation timeframe was extended to October 2020, in part due to the COVID-19 public health crisis.

In Resolution No. 2019-0049, the Board directed State Water Board staff (staff) to examine all water rights, including water right claims, along the Fresno River below Hidden Dam and make the results of the investigation publicly available to aid the parties in their negotiations. Staff released the results of this [Desktop Investigation](#) of water rights and claims on the lower Fresno River based on currently available public information on December 4, 2019, and the [Fresno River Investigation Geodatabase](#), an interactive online mapping tool showing the investigation results, on July 24, 2020.

Board Resolution No. 2019-0049 also directed staff to investigate available funding sources for facilitation services to mediate negotiations and assist the parties in making substantial progress towards a successful settlement. In September 2019 staff

arranged for a Board-funded facilitator, Kearns & West, who submitted a Final Report on the Mediation¹ to the Board on August 7, 2020.

While parties have made progress in some areas, they have not met most of the required elements described in Board Resolution No. 2019-0049 (see evaluation in the attached Staff Report) and there is presently no agreement on water right quantities, water accounting, or administration matters that would address the issues raised in the Petition. Additionally, some parties declined to endorse the Final Report on Mediation, including the District, which renewed its request for the Board to conduct a statutory adjudication. Other parties expressed concern that negotiations did not meaningfully resolve the conflicts regarding the Fresno River stream system and further discussions would not be productive without both the District's and the Board's involvement. Parties endorsing the report requested an additional six months of time to negotiate, though they acknowledged that the resolution of all outstanding issues would ultimately take longer.

In a statutory adjudication, the rights to water in a stream system are determined through a State Water Board proceeding and court decree (Wat. Code, §§ 2500-2900). Upon being petitioned by a claimant to water of a stream system, the Board determines whether the relevant facts and conditions are such that the public interest and necessity will be served by a determination of the water rights involved, and, if so, grants the petition and makes arrangements to proceed with the adjudication. More information on statutory adjudications can be found in the [Fact Sheet](#) and the Board's [project website](#).

The long history of conflicts over water diversion and use in the Fresno River watershed, the uncertainty over relative priority of rights to the Fresno River and storage deliveries, the unsuccessful previous mediation processes, and the present status of parties' negotiations suggest that a statutory adjudication of the Fresno River stream system would not only serve the public interest and necessity but may in fact be necessary to achieve certainty over water rights and develop a realistic and successful system for water allocation in the watershed. The attached Staff Report further outlines this analysis of public interest. A statutory adjudication would also provide an opportunity for the State Water Board to evaluate public trust resources and the flows necessary to protect those resources and meet applicable water quality standards in the Fresno River stream system.

POLICY ISSUE

Should the State Water Board grant the pending petition for statutory adjudication and order staff to make the arrangements to proceed with a determination of the rights to the various claimants to the waters of the Fresno River stream system?

¹ Instructions for viewing the Report on Mediation can be found on the Fresno River Adjudication website:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/fresno_riv_adjud/

FISCAL IMPACT

State Water Board staff work associated with or resulting from this action will be conducted with existing and future budgeted resources. No additional resources are proposed at this time. A statutory adjudication requires the Board to absorb the costs of staff time initially, but the Board receives payment by collecting proof of claim fees from water right claimants (Wat. Code, §§ 1528, 2850) and the remaining costs of conducting an adjudication are apportioned equitably among parties to the adjudication and recovered following the adoption of a final order of determination (Wat. Code, §§ 2851-2868). The State Water Board may also require interim payments from parties during the adjudication (Wat. Code, § 2865). The Board may, at its discretion, exclude claims to minor quantities of water which would have no material effect on the rights of other claimants from adjudication proceedings and cost recovery (Wat. Code, § 2502).

REGIONAL BOARD IMPACT

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) will be consulted regarding water quality issues associated with this matter. At this time, it is not anticipated that such consultation will result in a significant impact to the Central Valley Water Board.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution, granting the petition for statutory adjudication and ordering staff to make the arrangements to proceed with a determination of the rights to the various claimants to the waters of the Fresno River stream system.