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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2019-

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

WHEREAS:

1. 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) in an effort to resolve ongoing conflicts over water rights, water use, and water allocations within the Fresno River Watershed;
2. A statutory adjudication is a proceeding by which the rights to water in a stream system are determined through a Board proceeding and court decree (Wat. Code, §§ 2500-2868);
3. State law requires the Board to recover expenses incurred in performing an adjudication from participating parties through fees and other cost recovery equitably apportioned among the parties to the proceeding (Wat. Code, §§ 2850-2868);
4. The Board may grant, deny, or conditionally postpone action on the pending Petition after evaluating whether an adjudication would serve the public interest and necessity (Cal. Code Regs., tit. 23, § 946);
5. A comprehensive statutory adjudication of the Fresno River Watershed would evaluate and determine all claims of right to water in the Fresno River and its tributaries, from the upper watershed to the confluence with the San Joaquin River, encompassing approximately 300 claims that are currently documented with the Division;
6. The regulation of Fresno River flows below Hidden Dam/Hensley Lake has been a source of conflict over water allocation and use in the watershed since the dam was constructed. The United States Bureau of Reclamation (Reclamation) holds the right to store water behind Hidden Dam, and the District contracts with the Reclamation to receive the full benefit of this stored water and operates the release of water from Hidden Dam for water supply purposes;
7. The Board has issued several decisions affecting the operations of Hidden Dam, including [Decision 1407](#) and [Order WR 73-13](#) (issuing a permit to Reclamation to store water at Hidden Dam and finding that the Fresno River was fully appropriated from May 1 through November 30), [Order WR 99-001](#) (requiring Reclamation to release sufficient flows from Hidden Dam to satisfy certain

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downstream riparian landowners), and the issuance of [License 13836](#) for Hidden Dam in 2011 (finding that Reclamation had perfected its right to store and use water from the Fresno River). However, the Board's previous actions were limited in scope to Reclamation's water rights and did not fully resolve uncertainties about riparian and senior appropriative rights to the Fresno River and timing of deliveries to satisfy senior entitlements;

8. Board staff has conducted outreach to stakeholders in the Fresno River Watershed regarding the Petition, including meeting with representatives from the District, riparian landowners, Reclamation, and the California Department of Fish and Wildlife;
9. On July 16, 2019, Board staff mailed a [letter](#), [fact sheet](#), and [Notice of Opportunity for Public Comment and Notice of Public Board Meeting](#) to approximately 130 currently known water right holders or claimants in the Fresno River Watershed. Approximately 90 of these parties are located upstream of Hidden Dam;
10. Riparian landowners along the lower Fresno River have requested that the Board postpone action on the pending Petition and allow water users an opportunity to pursue a negotiated solution to resolve the longstanding conflicts in the watershed and avoid the need for a comprehensive adjudication; and
11. The Board recognizes that, in some circumstances, a properly structured negotiated agreement can effectively resolve water rights disputes.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Postpones action on the Petition to allow the District and riparian landowners along the lower Fresno River to negotiate an agreement for the administration of water rights in the Fresno River that will resolve existing and future conflicts over the diversion and use of water;
2. Directs the parties to return to the Board in May 2020, or as the Board's schedule allows, to report on progress towards developing an agreement for administration of water rights on the mainstem of the Fresno River;
3. Directs staff to begin a desktop investigation of claims of right to divert and use water along the mainstem of the Fresno River between Hidden Dam and the San Joaquin River and make the results of the investigation publicly available;
4. Directs staff to work with the Board's Office of Research, Planning, and Performance to investigate funding for facilitation services that may be available to parties negotiating an agreement for the administration of water rights on the mainstem of the Fresno River;

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5. Will evaluate in May 2020, or as the Board's schedule allows, whether to further postpone action on the Petition or to grant or deny the Petition, based in part on the parties' demonstrated progress towards a negotiated agreement that meets the following criteria:
 - a. Inclusion and consent of a substantial number of water users and riparian landowners in the watershed, including, at a minimum, consent by all water right claimants named in the Petition, Madera Irrigation District, and Reclamation;
 - b. Procedures for administration and enforcement of the terms of the agreement;
 - c. Protocol for water rights accounting that meets, at a minimum, the state's legal requirements for the measurement and reporting of water diversion and use;
 - d. Clear rules for water allocation during various hydrologic conditions, from wet to critically dry;
 - e. Protocol for changes in location or capacity of points of diversion, changes in place of use, and new points of diversion and places of use;
 - f. Consideration of flows to protect public trust resources and meet water quality standards;
 - g. Identification of a party or entity (i.e., a watermaster or equivalent) who will oversee and have authority to enforce water allocations on the Fresno River, including any flows to protect public trust resources, and a mechanism to fund that role; and
 - h. Protocol for ensuring longevity of the negotiated solution and contingency plans for modification of the agreement's terms in the future.
6. Directs staff to evaluate, on an ongoing basis, the parties' progress towards developing an agreement. In assessing whether to grant additional time or make a recommendation to the Board to deny or grant the District's Petition, progress will be evaluated in part based on achievement of the following milestones:
 - a. Identification of a mediator or committee who will take a primary role in drafting a proposed settlement and agreement on the allocation of any associated costs;
 - b. Exchange of data and information by a substantial number of water right claimants, demonstrating the nature of their water right entitlements (e.g., riparian acreages, documentation of the priority date and quantity of pre-1914 water right claims);

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- c. Quantification of the location, capacity, and source of existing points of diversion;
- d. Substantial agreement regarding the location and quantity of riparian acreage in the watershed; and
- e. Substantial progress in developing or identifying:
 - i. A comprehensive system of water accounting and agreement as to measurement and reporting protocols;
 - ii. Protocols for senior right holders to submit a “call” on the river; and
 - iii. Potential physical solutions for storage and delivery of replacement water in exchange for forbearance in the exercise of senior rights.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 17, 2019.

Jeanine Townsend
Clerk to the Board