

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Declaration)
of Fully Appropriated Stream)
Systems in California.)
_____)

ORDER: WR 90-2

SOURCES: Various Stream
Systems, Statewide

COUNTIES: All Counties except
Imperial, San Benito,
and San Francisco

ORDER ON PETITION FOR RECONSIDERATION
OF ORDER WR 89-25, MODIFYING AND AFFIRMING
ORDER WR 89-25 AS MODIFIED

BY THE BOARD:

1.0 INTRODUCTION

Acting pursuant to Water Code Sections 1205 through 1207, the Board on November 16, 1989, adopted Order WR 89-25, entitled "Order Adopting Declaration of Fully Appropriated Stream Systems and Specifying Conditions for Acceptance of Applications and Registrations". That order declared various stream systems, statewide, fully appropriated either year-round or during specified months, based upon previous water right decisions which determined that no water remains available for appropriation.

1.1 Adoption of the Declaration has several consequences. One consequence is that the Board is precluded from

accepting any application to appropriate water from a specified stream system, except where the proposed appropriation is consistent with conditions contained in the Declaration. A second consequence is that initiation of a water right pursuant to the Water Rights Permitting Reform Act of 1988 (Water Code § 1228 et seq.) -- that is, by registering small use domestic appropriations -- is precluded, except where the proposed appropriation is consistent with conditions contained in the Declaration.

- 1.2 Order WR 89-25 also implements a procedure (see Paragraph 7.0, Order WR 89-25) for disposition of applications to appropriate water from the specified stream systems, which applications are pending on the effective date of the Declaration. Pursuant to Water Code Section 1206(a), the Board is authorized, but not required, to cancel such pending applications where inconsistent with conditions contained in the Declaration.
- 1.3 Order WR 89-25 contains findings and determinations regarding availability of water for appropriation from stream systems upon which a proceeding pursuant to Water Code Section 2500 (a statutory adjudication) has been conducted. (See Paragraph 6, Order WR 89-25.) In

summary, these provisions preclude acceptance for filing of applications to appropriate water from such stream systems, except under specified conditions. These provisions also preclude registration of small use domestic appropriations which propose in whole or in part appropriation other than by collection to storage during the wet season. For all such adjudicated stream systems, Order WR 89-25 defines the wet season as that period from December 1 of each year through March 31 of each succeeding year. That definition of the wet season means that the dry season, that is, the season of unavailability of water for appropriation, is the period April 1 through November 30 of each year.

- 1.4 In Paragraph 3.21.1 of Order WR 89-25, the Board made special findings with respect to the San Gregorio Creek Stream System, San Mateo County. The Board noted that statutory adjudication proceedings are still pending on the San Gregorio Creek Stream System.¹ Nevertheless, the Board found that, although further proceedings might result in adjustment of individual water rights, it was highly unlikely that anything in the final

¹ Following issuance of its Order of Determination in the San Gregorio Creek Adjudication on April 20, 1989, the Board granted reconsideration. Reconsideration is still pending.

decree entered in that adjudication would contravene the general findings regarding availability of water in adjudicated areas contained in Section 6 of Order WR 89-25. Accordingly, the Board ordered that the San Gregorio Creek Stream System be included in the Declaration upon the conditions provided in Section 6.

2.0 PETITION FOR RECONSIDERATION

On December 18, 1989, the Peter Folger Trust, Peter M. Folger, and the Cuesta La Honda Guild jointly filed a timely petition for reconsideration of Order WR 89-25. Petitioners are users of water within the San Gregorio Creek Stream System and holders of pending applications to appropriate water within that Stream System. Pursuant to 23 California Code of Regulations Section 768, petitioners allege as causes for reconsideration irregularity in the proceedings, that the order is not supported by substantial evidence, and error in law. Petitioners ask that the San Gregorio Creek Stream System be deleted from the Declaration adopted by Order WR 89-25. Alternatively, petitioners ask that the season of unavailability of water within the San Gregorio Creek Stream System (April 1 through November 30 of each year), made generally applicable to all statutorily adjudicated stream systems by Order WR 89-25, be changed to July 1 through October 1 of each year.

2.1

Petitioners allege that the Board's Notice of Public Hearing in this proceeding, dated December 21, 1988, did not include the San Gregorio Creek Stream System as a candidate stream for inclusion in the fully appropriated Declaration. Although several streams tributary to San Gregorio Creek were named in the Notice -- and specifically identified therein as tributaries to San Gregorio Creek -- petitioners are correct that San Gregorio Creek itself was not included. However, as pointed out in Paragraph 3.21.1 of Order WR 89-25, a participant in the hearing in this matter held on March 14, 1989, made a presentation opposing inclusion of San Gregorio Creek and its tributaries in the Declaration. Thus, as Paragraph 3.21.1 and the supporting record demonstrate, the issue was timely presented and considered by the Board prior to adopting Order WR 89-25. The record does not show, however, that the hearing participant specifically represented petitioners herein. Accordingly, for the foregoing cause and for the cause alleged in petitioners' third point, we find that the petition raises substantial issues related to the causes for reconsideration set out in 23 California Code of Regulations Section 768. We grant reconsideration for the purpose of addressing on the merits petitioners'

third point relating to substantial evidence to support the season of unavailability of water in the San Gregorio Creek Stream System and to make appropriate modifications to Order WR 89-25. Pursuant to 23 California Code of Regulations Section 770(a)(2), we reconsider Order WR 89-25 upon review of the records, including the hearing transcript, and material submitted in support of the Petition. The instant Order shall comprise the Board's final action on the Petition.

2.2 Petitioners' second point is that the San Gregorio Creek Stream System Adjudication only determines existing rights and does not purport to determine when water is available for appropriation. Moreover, petitioners note that the Adjudication is not yet final, in that the Board has under submission petitions for reconsideration of the Final Order of Determination and the Superior Court has not yet entered a decree. These points are addressed at some length in Order WR 89-25, and the Board declines to reconsider them here.

2.3 Petitioners' final point is that the Declaration's general determination of the season of unavailability of water for appropriation in statutorily adjudicated stream systems is not supported by substantial evidence

in the case of the San Gregorio Creek Stream System. In support of this point, petitioners note that the Board's 1984 "Report on San Gregorio Creek Stream System Adjudication" (see Water Code § 2600) found the season of unavailability of water for appropriation to be June 1 through October 1. Petitioners further allege that hydrologic evidence of record in the adjudication proceeding and in the proceedings on petitioner Cuesta La Honda Guild's applications support the more limited season of unavailability urged by petitioners, that is, July 1 through October 1. Having reviewed the record, we conclude that petitioners' point is, in part, meritorious. The Board finds that the hydrologic data of record supports the finding of the season of unavailability of water made by the 1984 Report on San Gregorio Creek Stream System cited by petitioners. We find, however, that the existing data of record does not support a finding that water is available for appropriation in that System during the month of June, and therefore the season of unavailability of water should include June.

2.4 It appears that the remaining difference between petitioners and the Board is the question whether water is available in the San Gregorio Creek Stream System during the month of June. In this connection we note

that petitioners, as well as others interested in the San Gregorio Creek Stream System water supply, either as holders of pending applications or as potential applicants, will have the opportunity to make further showings with respect to this question. (See Paragraphs 7 and 12, Order WR 89-25.) Finally, as was emphasized in Paragraph 11 of Order WR 89-25, the Declaration adopted in this proceeding does not affect existing rights, regardless of their doctrinal basis.

3.0 CLARIFICATION OF ORDER WR 89-25

The Board's review of the record of this proceeding following the filing of the Petition for Reconsideration indicates that Order WR 89-25 should be further clarified in the following respects.

3.1 Scope of the Term "Stream System".

Paragraph 2 of Order WR 89-25, entitled "General Finding", incorporates by reference Exhibit A to Order WR 89-25 and declares that the stream systems identified therein are fully appropriated during the seasons specified therein. Exhibit A, however, does not use the term "stream system". Instead, Exhibit A lists streams -- including tributaries -- by name, grouped by counties in alphabetical order. In some cases inter-county streams are identified in more than

one county grouping; in other cases they are not. For the purposes of the Declaration adopted by Order WR 89-25, "stream system" should mean a named stream, but limited to its reach within the county or counties under which it is identified. In Paragraph 12 of Order WR 89-25, the Board provided for revocation or revision of the Declaration. Section 12.1 of that Order requires the Chief, Division of Water Rights, to report to the Board with respect to revoking or revising the Declaration. In connection with his responsibility to make such reports, the Chief may recommend revisions which identify stream systems by reach without regard to county boundaries. Further, the findings in Section 3.25.5.3 of Order WR 89-25, regarding upstream sources which contribute to identified stream systems, are confirmed.

3.2 Scope of Review of Pending Applications.

Paragraph 7 of Order WR 89-25, entitled "Findings Regarding Disposition of Applications Pending on the Effective Date of the Declaration", requires the Chief, Division of Water Rights, to review all applications to appropriate water from a stream system declared to be fully appropriated, which applications are pending on the date of adoption of the Declaration. The Chief is further required to give notice to the applicants of

potential cancellation of such applications. (See Paragraph 1.2 of this Order, above.) The Board excluded "state filings" from the scope of review of pending applications. Considerations of fairness and efficiency indicate that certain other categories of pending applications should be excluded from the review process and thereby not be made subject to cancellation pursuant to Water Code Section 1206(a).

- 3.2.1 Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., which have been noticed for hearing should not be reviewed. Such applications should continue to be processed normally.
- 3.2.2 Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., upon which the parties have stipulated to proceeding in lieu of hearing pursuant to 23 California Code of Regulations Section 760(a) should not be reviewed. Such applications should continue to be processed normally.
- 3.3.2 Protested minor applications, within the meaning of Water Code Section 1345 et seq., with respect to which the Division of Water Rights has, in the judgment of

the Chief, substantially commenced a field investigation should not be reviewed. Such applications should continue to be processed normally.

ORDER

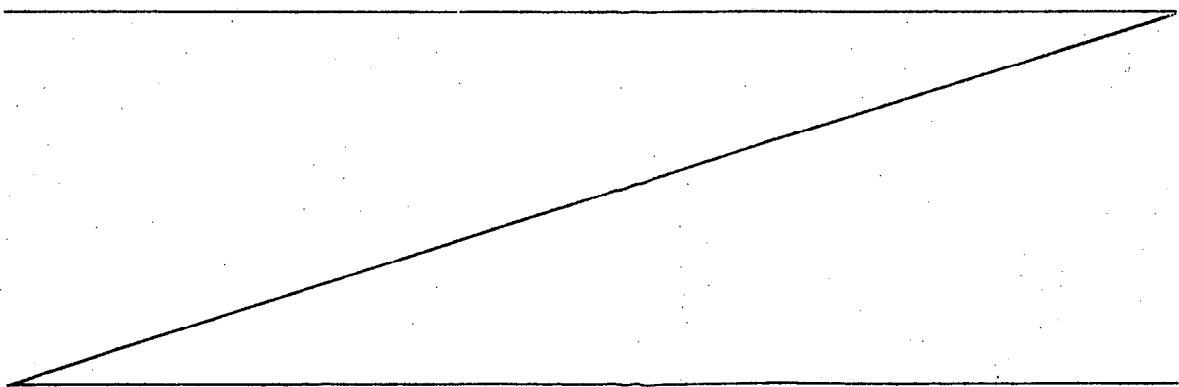
Based upon the foregoing findings, it is hereby ORDERED that:

1. The Petition for Reconsideration of Order WR 89-25 is granted for the purpose of making the following modifications in Order WR 89-25, and is in all other respects denied.
2. The season of unavailability of water for appropriation within the San Gregorio Creek Stream System, as shown in the Declaration adopted by Order WR 89-25, is modified to the period of June 1 through October 1 of each year.
3. The term "stream system", as used in Paragraph 2 of Order WR 89-25, shall mean a stream named in said Declaration limited to its reach within the county or counties under which it is identified therein.
4. The review of pending applications ordered to be conducted by the Chief, Division of Water Rights, shall exclude the following categories of applications:
 - a. Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq.,

which have been noticed for hearing shall not be reviewed. Such applications shall continue to be processed normally.

- b. Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., upon which the parties have stipulated to proceeding in lieu of hearing pursuant to 23 California Code of Regulations Section 760(a) should not be reviewed. Such applications should continue to be processed normally.

- c. Protested minor applications, within the meaning of Water Code Section 1345 et seq., with respect to which the Division of Water Rights has, in the judgment of the Chief, substantially commenced a field investigation should not be reviewed. Such applications should continue to be processed normally.



5. The instant Order shall comprise the Board's final action on the Petition for Reconsideration; and Order WR 89-25, except as ordered modified herein, is affirmed.

CERTIFICATION

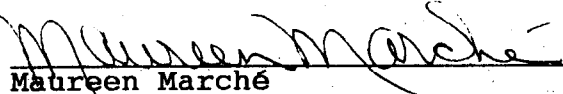
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 15, 1990.

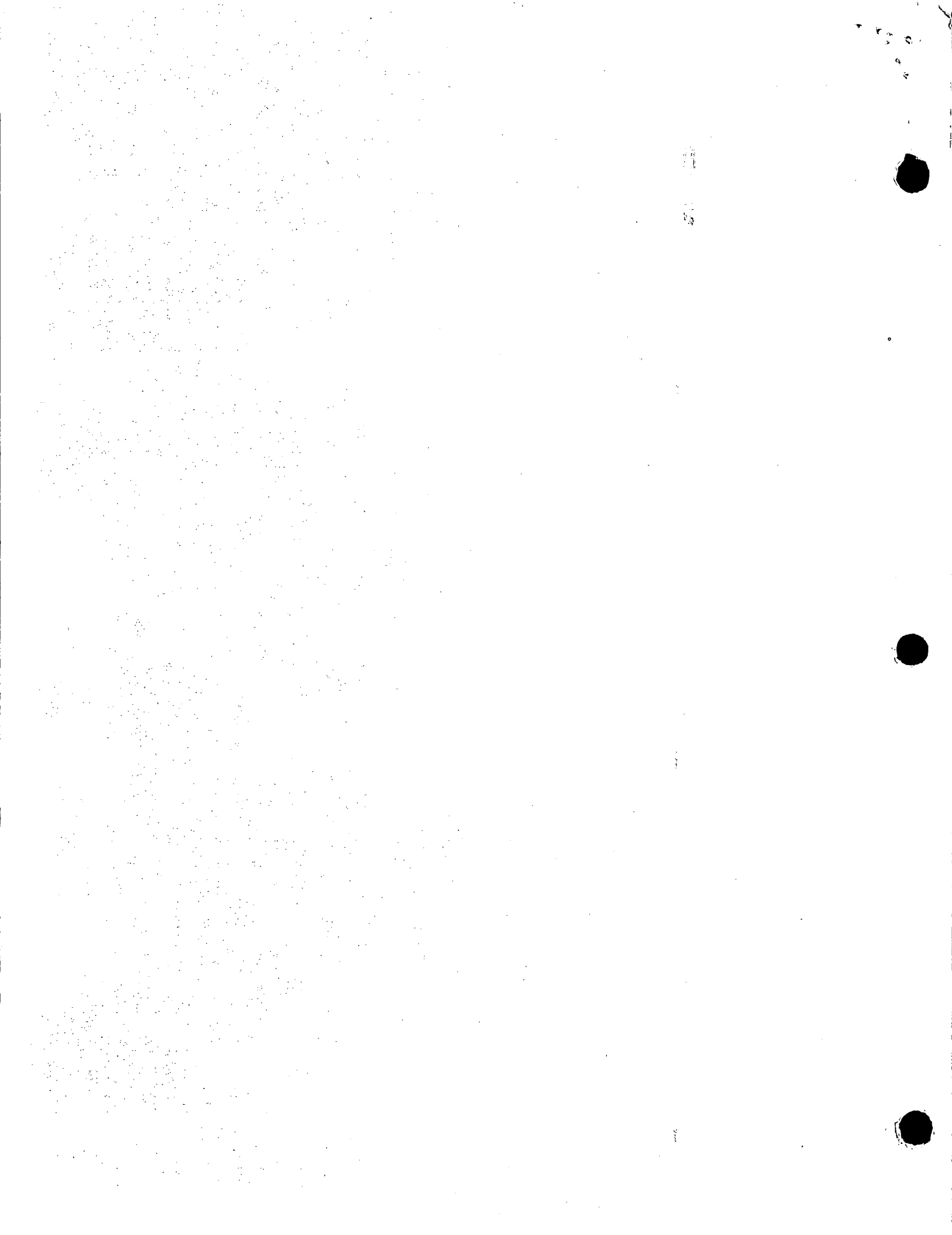
AYE: W. Don Maughan
 Darlene E. Ruiz
 Edwin H. Finster

NO: None

ABSENT: Eliseo M. Samaniego

ABSTAIN: John Caffrey


Maureen Marché
Administrative Assistant
to the Board



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Declaration
of Fully Appropriated Stream
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) ORDER: WR 90-2

) SOURCES: Various Stream
) Systems, Statewide

) COUNTIES: All Counties except
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1.1 Adoption of the Declaration has several consequences. One consequence is that the Board is precluded from

accepting any application to appropriate water from a specified stream system, except where the proposed appropriation is consistent with conditions contained in the Declaration. A second consequence is that initiation of a water right pursuant to the Water Rights Permitting Reform Act of 1988 (Water Code § 1228 et seq.) -- that is, by registering small use domestic appropriations -- is precluded, except where the proposed appropriation is consistent with conditions contained in the Declaration.

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summary, these provisions preclude acceptance for filing of applications to appropriate water from such stream systems, except under specified conditions. These provisions also preclude registration of small use domestic appropriations which propose in whole or in part appropriation other than by collection to storage during the wet season. For all such adjudicated stream systems, Order WR 89-25 defines the wet season as that period from December 1 of each year through March 31 of each succeeding year. That definition of the wet season means that the dry season, that is, the season of unavailability of water for appropriation, is the period April 1 through November 30 of each year.

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decree entered in that adjudication would contravene the general findings regarding availability of water in adjudicated areas contained in Section 6 of Order WR 89-25. Accordingly, the Board ordered that the San Gregorio Creek Stream System be included in the Declaration upon the conditions provided in Section 6.

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third point relating to substantial evidence to support the season of unavailability of water in the San Gregorio Creek Stream System and to make appropriate modifications to Order WR 89-25. Pursuant to 23 California Code of Regulations Section 770(a)(2), we reconsider Order WR 89-25 upon review of the records, including the hearing transcript, and material submitted in support of the Petition. The instant Order shall comprise the Board's final action on the Petition.

2.2 Petitioners' second point is that the San Gregorio Creek Stream System Adjudication only determines existing rights and does not purport to determine when water is available for appropriation. Moreover, petitioners note that the Adjudication is not yet final, in that the Board has under submission petitions for reconsideration of the Final Order of Determination and the Superior Court has not yet entered a decree. These points are addressed at some length in Order WR 89-25, and the Board declines to reconsider them here.

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in the case of the San Gregorio Creek Stream System. In support of this point, petitioners note that the Board's 1984 "Report on San Gregorio Creek Stream System Adjudication" (see Water Code § 2600) found the season of unavailability of water for appropriation to be June 1 through October 1. Petitioners further allege that hydrologic evidence of record in the adjudication proceeding and in the proceedings on petitioner Cuesta La Honda Guild's applications support the more limited season of unavailability urged by petitioners, that is, July 1 through October 1. Having reviewed the record, we conclude that petitioners' point is, in part, meritorious. The Board finds that the hydrologic data of record supports the finding of the season of unavailability of water made by the 1984 Report on San Gregorio Creek Stream System cited by petitioners. We find, however, that the existing data of record does not support a finding that water is available for appropriation in that System during the month of June, and therefore the season of unavailability of water should include June.

2.4 It appears that the remaining difference between petitioners and the Board is the question whether water is available in the San Gregorio Creek Stream System during the month of June. In this connection we note

that petitioners, as well as others interested in the San Gregorio Creek Stream System water supply, either as holders of pending applications or as potential applicants, will have the opportunity to make further showings with respect to this question. (See Paragraphs 7 and 12, Order WR 89-25.) Finally, as was emphasized in Paragraph 11 of Order WR 89-25, the Declaration adopted in this proceeding does not affect existing rights, regardless of their doctrinal basis.

3.0 **CLARIFICATION OF ORDER WR 89-25**

The Board's review of the record of this proceeding following the filing of the Petition for Reconsideration indicates that Order WR 89-25 should be further clarified in the following respects.

3.1 **Scope of the Term "Stream System"**.

Paragraph 2 of Order WR 89-25, entitled "General Finding", incorporates by reference Exhibit A to Order WR 89-25 and declares that the stream systems identified therein are fully appropriated during the seasons specified therein. Exhibit A, however, does not use the term "stream system". Instead, Exhibit A lists streams -- including tributaries -- by name, grouped by counties in alphabetical order. In some cases inter-county streams are identified in more than

one county grouping; in other cases they are not. For the purposes of the Declaration adopted by Order WR 89-25, "stream system" should mean a named stream, but limited to its reach within the county or counties under which it is identified. In Paragraph 12 of Order WR 89-25, the Board provided for revocation or revision of the Declaration. Section 12.1 of that Order requires the Chief, Division of Water Rights, to report to the Board with respect to revoking or revising the Declaration. In connection with his responsibility to make such reports, the Chief may recommend revisions which identify stream systems by reach without regard to county boundaries. Further, the findings in Section 3.25.5.3 of Order WR 89-25, regarding upstream sources which contribute to identified stream systems, are confirmed.

3.2

Scope of Review of Pending Applications.

Paragraph 7 of Order WR 89-25, entitled "Findings Regarding Disposition of Applications Pending on the Effective Date of the Declaration", requires the Chief, Division of Water Rights, to review all applications to appropriate water from a stream system declared to be fully appropriated, which applications are pending on the date of adoption of the Declaration. The Chief is further required to give notice to the applicants of

potential cancellation of such applications. (See Paragraph 1.2 of this Order, above.) The Board excluded "state filings" from the scope of review of pending applications. Considerations of fairness and efficiency indicate that certain other categories of pending applications should be excluded from the review process and thereby not be made subject to cancellation pursuant to Water Code Section 1206(a).

- 3.2.1 Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., which have been noticed for hearing should not be reviewed. Such applications should continue to be processed normally.
- 3.2.2 Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., upon which the parties have stipulated to proceeding in lieu of hearing pursuant to 23 California Code of Regulations Section 760(a) should not be reviewed. Such applications should continue to be processed normally.
- 3.3.2 Protested minor applications, within the meaning of Water Code Section 1345 et seq., with respect to which the Division of Water Rights has, in the judgment of

the Chief, substantially commenced a field investigation should not be reviewed. Such applications should continue to be processed normally.

ORDER

Based upon the foregoing findings, it is hereby ORDERED that:

1. The Petition for Reconsideration of Order WR 89-25 is granted for the purpose of making the following modifications in Order WR 89-25, and is in all other respects denied.
2. The season of unavailability of water for appropriation within the San Gregorio Creek Stream System, as shown in the Declaration adopted by Order WR 89-25, is modified to the period of June 1 through October 1 of each year.
3. The term "stream system", as used in Paragraph 2 of Order WR 89-25, shall mean a stream named in said Declaration limited to its reach within the county or counties under which it is identified therein.
4. The review of pending applications ordered to be conducted by the Chief, Division of Water Rights, shall exclude the following categories of applications:
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which have been noticed for hearing shall not be reviewed. Such applications shall continue to be processed normally.

- b. Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., upon which the parties have stipulated to proceeding in lieu of hearing pursuant to 23 California Code of Regulations Section 760(a) should not be reviewed. Such applications should continue to be processed normally.

- c. Protested minor applications, within the meaning of Water Code Section 1345 et seq., with respect to which the Division of Water Rights has, in the judgment of the Chief, substantially commenced a field investigation should not be reviewed. Such applications should continue to be processed normally.

5. The instant Order shall comprise the Board's final action on the Petition for Reconsideration; and Order WR 89--25, except as ordered modified herein, is affirmed.

CERTIFICATION

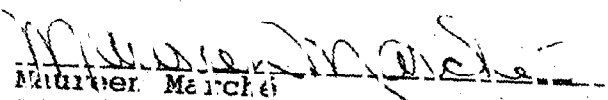
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 15, 1990.

AYE: W. Don Haughan
Darlene H. Ruiz
Edwin H. Finster

NO: None

ABSENT: Elisso M. Samaniego

ABSTAIN: John Caffrey


Marlene Marché
Administrative Assistant
to the Board

