

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 85-96

DIRECTION TO BOARD STAFF TO GIVE NOTICE OF
THREATENED VIOLATIONS OF FISHERY FLOW RELEASE REQUIREMENTS
AND TO MEET WITH INTERESTED PARTIES

WHEREAS:

1. Nevada Irrigation District (NID), Placer County Water Agency (PCWA), Sacramento Municipal Utility District (SMUD), Yuba County Water Agency (YCWA), and Turlock and Modesto Irrigation Districts (T&MID) hold water right permits and licenses issued by the State which authorize diversion of water subject to the terms and conditions of the permits and licenses.
2. The California Sportfishing Protection Alliance (SPA) filed a complaint dated June 13, 1984 alleging that NID, PCWA, SMUD, YCWA and T&MID have "willfully, knowingly and consistently violated the minimum streamflow requirements" for the projects authorized by the water right permits and licenses identified in the complaint for a collective total of 23,342 days between 1962 and 1982.
3. The water right permits and licenses of NID, PCWA, SMUD, and YCWA which are listed on Attachment 1 specify minimum flow release requirements for each of the various reservoirs in order to protect fishery resources and other instream uses.
4. The water right permits and licenses of T&MID do not specify minimum fishery flow release requirements. The fishery flow release requirement applicable to the New Don Pedro Reservoir was specified by the Federal Energy Regulatory Commission and is not enforceable as a specific condition of the water right license.
5. Board staff has investigated the facts alleged in the SPA complaint and has reviewed applicable streamflow records of the United States Geological Survey (USGS) for water years 1973-1982.
6. The USGS records for water years 1973-1982 report many days of lower downstream flows for each of the projects operated by NID, PCWA, SMUD, and YCWA than is required by the terms and conditions of the applicable water right permit or license.
7. The Board staff investigation concluded that there are significant questions regarding the accuracy of measurement during low flow periods at most of the USGS gaging stations located below the projects referred to in the SPA complaint.
8. NID, PCWA, and SMUD have previously reduced minimum flow releases on a temporary basis based on agreements with other agencies, but without the approval of this Board.

9. Evaluation of the USGS records indicates that, in many instances, inadequate minimum flow may have occurred due to obstructions or blockages of the minimum flow release structures or due to delays in increasing the water releases in accordance with the schedule specified in the applicable water right permit or license.
10. Diversion of water under a water right permit or license is authorized subject to the permittee or licensee complying with the specified terms and conditions.
11. Compliance with permit and license terms and conditions governing minimum flow release requirements is essential to the protection of California's fishery resources.
12. The Board has continuing authority to ensure that conditions of water right permits and licenses are complied with, that the public trust uses of the State's waters are protected, and that the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water are prevented.
13. Despite accuracy limitations of USGS gages at low flows, the number of days of reported insufficient flow downstream from projects operated by NID, PCWA, SMUD and YCWA establishes that future violations of minimum flow release requirements are likely if improvements are not made in project operating procedures which were in effect during the period of time covered by the complaint.
14. In order to promote compliance with minimum flow release requirements specified in their water right permits and licenses, each agency or district should adopt and follow a plan of compliance which clearly describes the following:
 - a. The point(s) of fishery flow release(s).
 - b. The required amount of release(s) as set forth in the water right permit or license. (Steamflow releases specified in permits and licenses shall be considered absolute minimums unless otherwise provided by the Board.)
 - c. The point(s) of measurement of the fishery flow release(s).
 - d. The method of measurement. (If approved by the Board, the method chosen normally will be considered sufficiently accurate for enforcement purposes and should, therefore, be chosen carefully.)
 - e. Reporting procedures.
 - f. Contingency release plans which will be implemented in the event of plugged or damaged equipment or any other circumstance which would prevent normal releases of fishery maintenance flows.

- g. A schedule for implementing any changes identified in the plan as expeditiously as possible.
15. Representatives of NID, PCWA, SMUD, YCWA, the complainant, and other interested parties have expressed an interest in improving methods of project operation to ensure that minimum flow release requirements are complied with as required by law.

THEREFORE, BE IT RESOLVED:

1. In accordance with the authority delegated in Board Resolution No. 85-34, the Chief of the Division of Water Rights shall give written notice of threatened violations of the minimum fishery flow release requirements specified in the terms and conditions of the water right permits and licenses shown on Attachment 1 to this resolution. Said notice shall be provided pursuant to Water Code Section 1834 and shall include a statement of facts and information as required by law.
2. The written notice shall be accompanied by a proposed order specifying the measures necessary to establish and verify compliance with minimum flow release requirements as provided in the applicable permits and licenses. These measures shall include preparation of a plan of compliance which clearly identifies the following:
 - a. The point(s) of fishery flow release(s).
 - b. The required amount of release(s) as set forth in the water right permit or license. (Steamflow releases specified in permits and licenses shall be considered absolute minimums unless otherwise provided by the Board.)
 - c. The point(s) of measurement of the fishery flow release(s).
 - d. The method of measurement. (If approved by the Board, the method chosen normally will be considered sufficiently accurate for enforcement purposes and should, therefore, be chosen carefully.)
 - e. Reporting procedures.
 - f. Contingency release plans which will be implemented in the event of plugged or damaged equipment or any other circumstance which would prevent normal releases of fishery maintenance flows.
 - g. A schedule for implementing any changes identified in the plan as expeditiously as possible.

The proposed order shall direct each agency or district to submit its proposed plan of compliance to the Chief of the Division of Water Rights by April 1, 1986 for review and approval. If the plan is not acceptable to the Chief of the Division of Water Rights, the respective agency or district shall be notified of necessary modifications. If the agency or district does not agree to the requested modifications within 30 days, the

matter shall be referred to the Board for hearing and further order. In the event an agency or district requests a hearing on the proposed plan of compliance, the preliminary cease and desist order shall not be made final until after said hearing. If the Chief of the Division of Water Rights approves the plan as submitted or as modified, the plan shall be implemented in accordance with the schedule specified in the plan.

3. Board staff is directed to meet with representatives of each of the agencies and districts cited in the complaint, the complainant, and other interested parties to discuss methods for maintaining compliance with the fishery flow release requirements specified in the applicable water right permits and licenses. If no requirement is specified, the level of flow which is appropriate for protection of the fishery shall be discussed, and staff shall prepare recommendations to the Board.
4. Staff shall report to the Board at the May 1986 Board workshop on the following matters:
 - a. The proposed plans of compliance submitted in accordance with this resolution.
 - b. A recommendation of what action, if any, by the Board is needed to provide for appropriate minimum flow releases under water right permits and licenses of Turlock and Modesto Irrigation Districts.
 - c. Recommended plans for promoting and maintaining compliance with minimum flow release requirements specified in water right permits and licenses not subject to the complaint.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control 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 December 19, 1985.



Raymond Walsh
Interim Executive Director