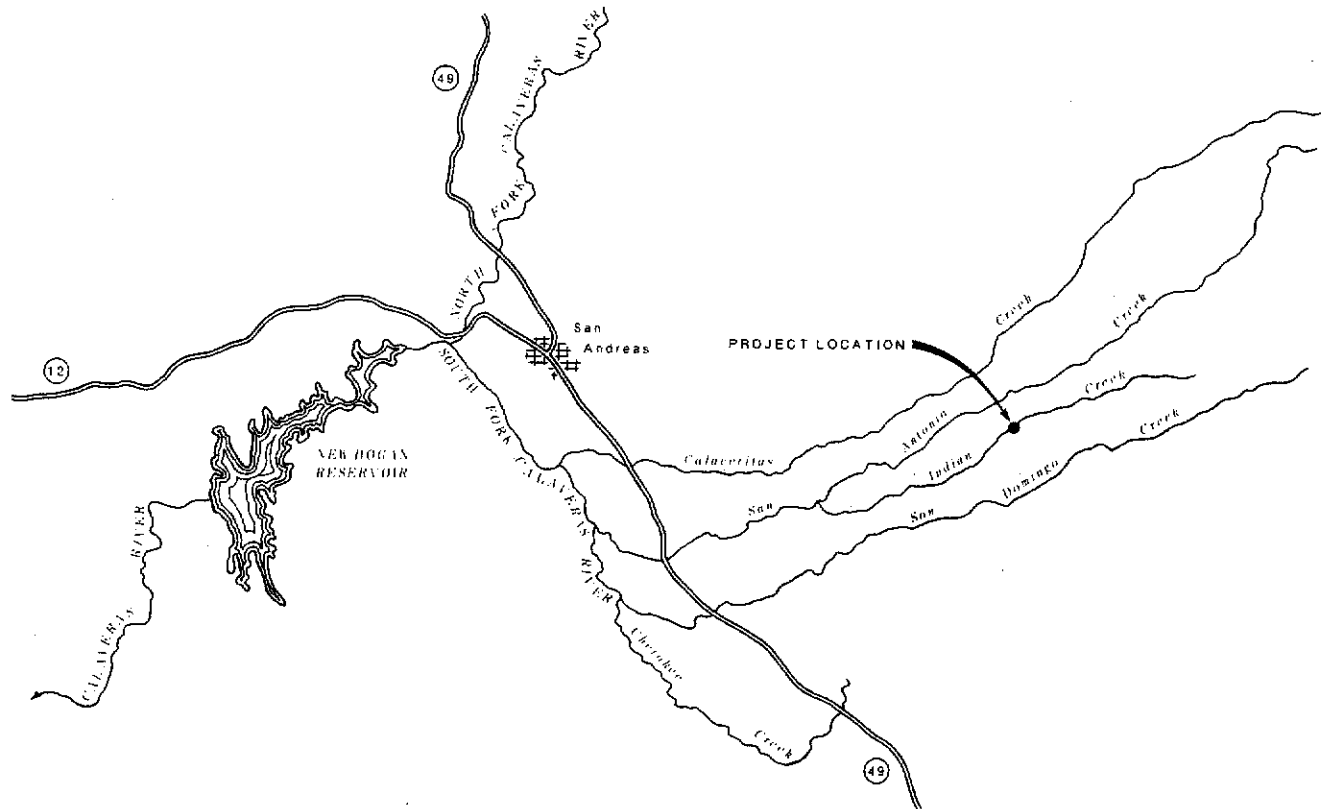


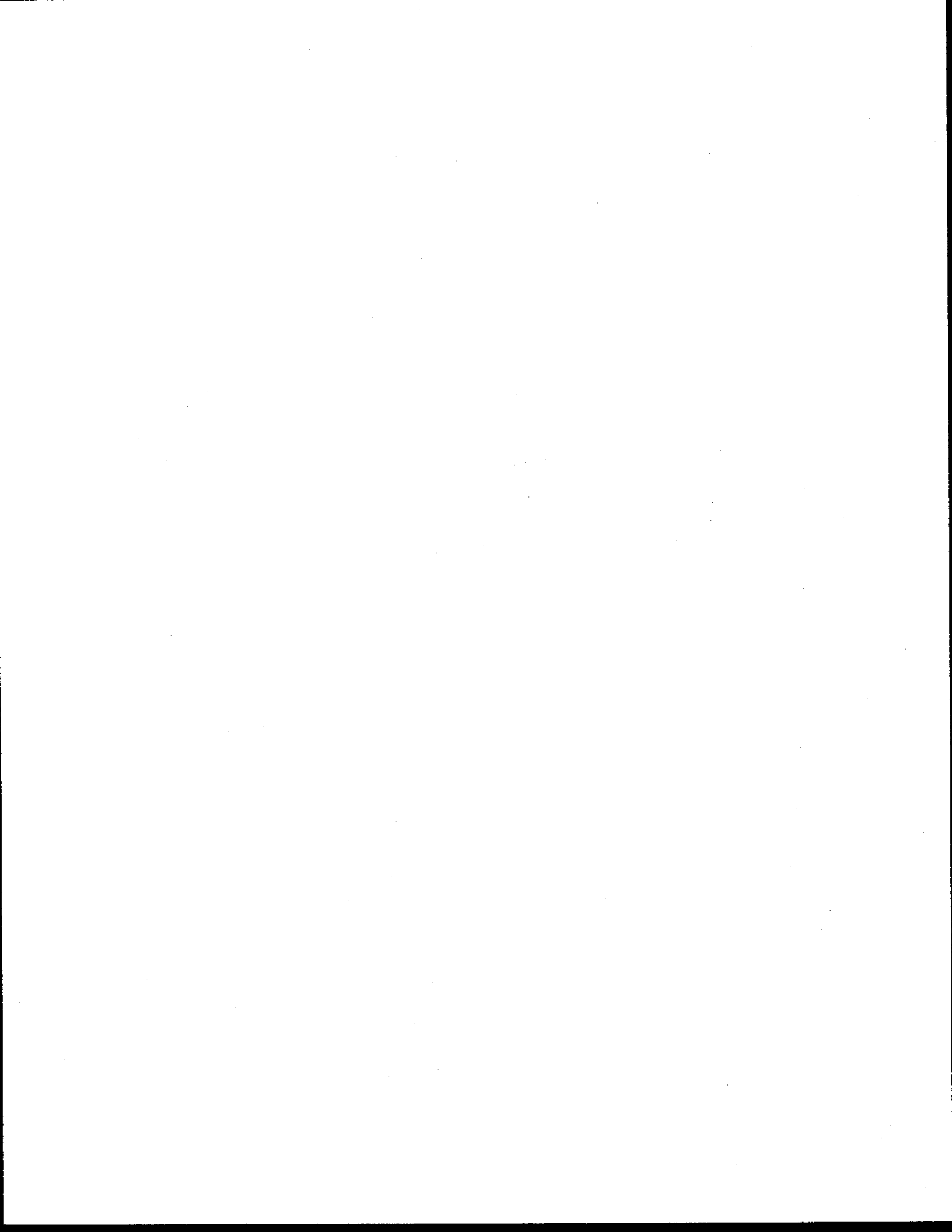
**INDIAN CREEK
APPLICATION 5648C-14 AND 5648C-15**

Decision 1603



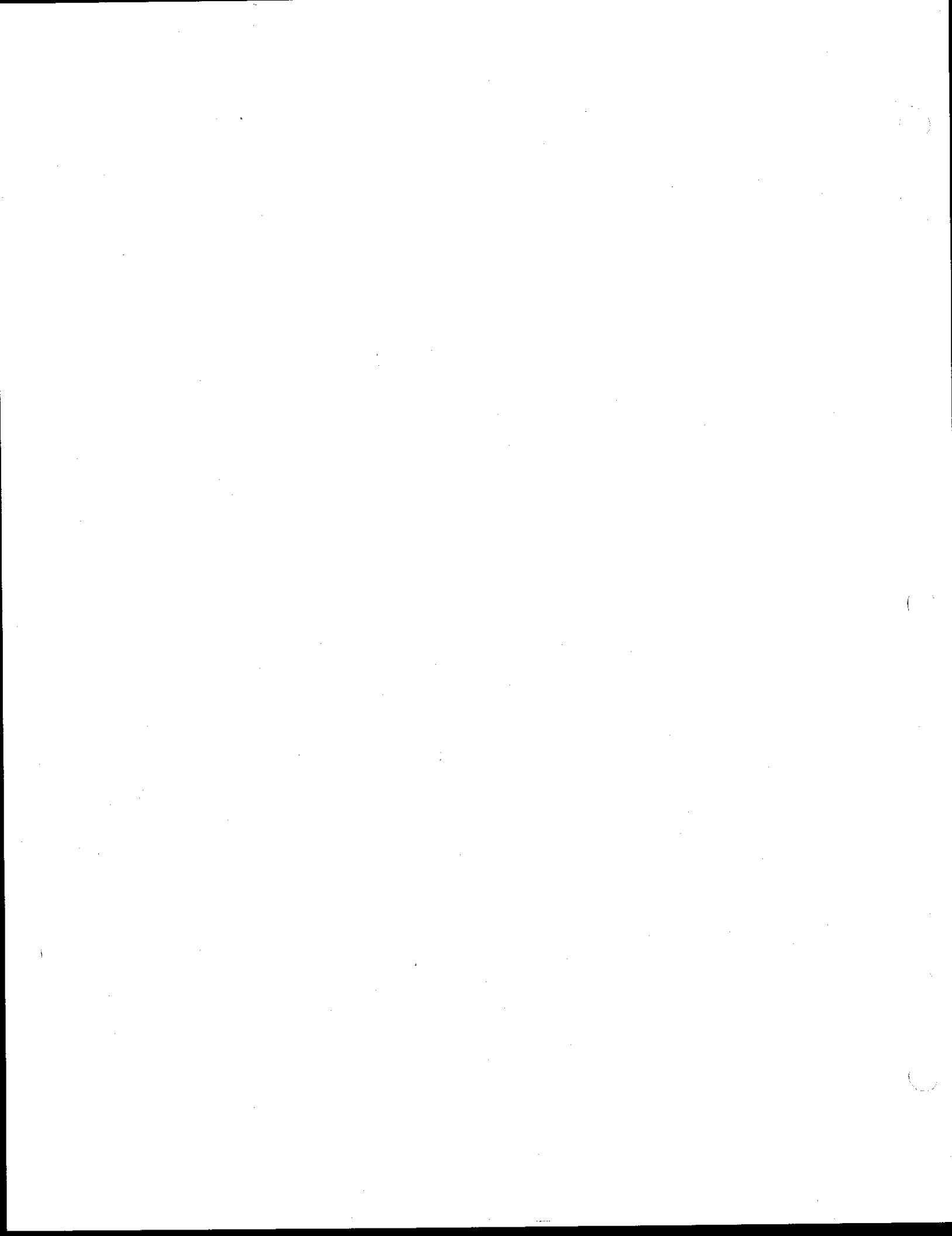
OCTOBER 1984

STATE WATER RESOURCES CONTROL BOARD



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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Petitions
for Partial Assignment of
Application 5648C and Proposed
Completed Applications 5648C-14
and 5648C-15

CHATOM CO., LTD.,

Petitioner,

U. S. BUREAU OF RECLAMATION,

Interested Party.

DECISION 1603

SOURCE: Indian Creek Tributary
to San Antonio Creek and
the South Fork of the
Calaveras River

COUNTY: Calaveras

DECISION ASSIGNING PORTIONS OF
APPLICATION 5648C AND APPROVING PROPOSED
COMPLETED APPLICATIONS 5648C-14 AND 5648C-15

BY VICE-CHAIRMAN NOTEWARE:

1.0 INTRODUCTION

The State Water Resources Control Board (Board) having held a hearing on April 3, 1984 to consider whether a portion of Application 5648-C should be assigned and whether proposed completed Applications 5648C-14 and 5648-C should be approved; the petitioner for assignment having appeared and presented testimony; the U. S. Bureau of Reclamation (Bureau) having appeared as an interested party; the evidence having been received and duly considered, the Board finds as follows:

2.0 SUBSTANCE OF APPLICATIONS AND PETITIONS

2.1 State Filing

Application 5648 was filed on behalf of the State of California on July 30, 1927 for potential projects on the Mokelumne, Stanislaus and Calaveras Rivers. The Calaveras portion of the application is for a permit to appropriate year-round 800 cubic feet per second (cfs) of water by direct diversion and 100,000 acre-feet annually (afa) year-round to storage in Section 31, T4N, R11E, MDB&M for irrigation and domestic uses. The place of use is 310,000 acres within T1S, R10E to 12E inclusive and T1N to 6N inclusive, R9E to 15E inclusive. The Calaveras River portion of Application 5648 has been denominated as Application 5648-C, to facilitate record keeping.

2.2 Applications and Petitions for Partial Assignment of Application 5648-C

Petitions for partial assignment of Application 5648-C and the proposed completed applications required to accompany such petitions were filed by Chatom Company, Ltd., on February 4, 1982 and September 2, 1982. In each petition, the applicant seeks to appropriate 14 acre-feet per annum (afa) to be diverted to offstream storage from November 1 through April 1 from Indian Creek, tributary to San Antonio Creek thence the South Fork Calaveras River. The point of diversion specified in both petitions is located within the NE1/4 of the SW1/4 of Section 34, T4N, R13E, MDB&M.

In the first petition, water collected to storage is to be used for frost protection and irrigation of 50 acres of vineyard located as follows:

2 acres within SE1/4 of NW1/4, Section 34, T4N, R13E, MDB&M
25 acres within NE1/4 of SW1/4, Section 34, T4N, R13E, MDB&M
23 acres within NW1/4 of SE1/4, Section 34, T4N, R13E, MDB&M

In the second petition, water collected to storage is to be used for frost protection and irrigation of 35 acres of vineyard located as follows:

2 acres within SW1/4 of NW1/4, Section 34, T4N, R13E, MDB&M
20 acres within NW1/4 of SW1/4, Section 34, T4N, R13E, MDB&M
12 acres within NE1/4 of SE1/4, Section 33, T4N, R13E, MDB&M
1 acre within SE1/4 of NE1/4, Section 33, T4N, R13E, MDB&M

3.0 INTERESTED PARTY

3.1 Position of U. S. Bureau of Reclamation

The U. S. Bureau of Reclamation appeared at the hearing as an interested party. The Bureau's position is that the partial assignment of Application 5648-C should not grant the recipient a higher priority right than the Bureau's right under permitted Application 18812, unless the right of Calaveras County Water District under Application 11792 is reduced by the amount of water covered by the partial assignment. (RT, p. 44, line 10 - p. 45, line 13.) The Bureau's position is based upon the contention that development of the entire quantity of water covered by Application 11792 would result in essentially full appropriation of the watershed. Therefore, if any additional water rights are to be granted, the Bureau requests

that the quantity of water specified in the permit issued on Application 11792 should be reduced by the amount of water specified in the new permits.

3.2 New Hogan Dam and Water Right

New Hogan Dam and Reservoir constructed at the proposed point of diversion and storage for Application 5648-C is operated under permitted Application 18812. The Bureau is authorized to appropriate 200 cfs by direct diversion from November 1 to May 1 and divert 325,000 afa to storage from November 1 to May 1. The place of use is partially coincident with the western portion of the place of use for Application 5648-C. The reservoir is a unit of the Central Valley Project (Water Code Section 11100 et seq.) and is subject to the requirement that the watershed of origin not be deprived of the prior right to all the water reasonably required to supply the beneficial needs of the watershed. (Water Code Sections 11128 and 11460.) Project water is delivered to the watershed of origin and places immediately adjacent thereto. (D-1179, p. 25; T, p. 27, 21-26.)

4.0 PROJECT DESCRIPTION AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

4.1 Project Description

The first petition for assignment requests the right to divert 14 acre feet per annum to offstream storage to be used for frost protection and irrigation of 50 acres located as described in Section 2.2 above. The petitioner proposes to pump water from the point of diversion on Indian Creek to an existing (constructed in 1981) 14 acre-foot

capacity offstream reservoir formed by a 30-foot high dam. Water will be pumped to the reservoir through 700 feet of 16-inch PVC pipe.

The second petition for assignment requests the right to divert 14 acre feet per annum to offstream storage to be used for frost protection and irrigation of 35 acres located as described in Section 2.2 above. The petitioner proposes to construct a second 14 acre-foot capacity offstream reservoir formed by a 40-foot high dam. Water would be pumped to the second reservoir through 700 feet of 12-inch PVC pipe from the same point of diversion as used for the first reservoir.

4.2 CEQA Compliance

The Board is the lead agency for purposes of complying with the California Environmental Quality Act. (Public Resources Code, Section 21000 et seq.). The proposed projects will have no significant environmental effect and are exempt from preparation of environmental documents in accordance with Title 14, Cal.Admin.Code, Section 15304.

5.0 APPLICABLE LAW

The Legislature authorized the filing of any application to appropriate water which "...is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state." These applications have priority over applications subsequently filed. (Water Code Section 10500.) Such

applications are held by this Board, and any portion of an application may be assigned or released from priority when "...the release or assignment is for a purpose of development not in conflict with such general or coordinated plan or with water quality objectives established pursuant to law." (Water Code Section 10504.) Release of the priority or assignment of any state-held application is prohibited, however, when the county in which the water originates would be deprived of water necessary for development. (Water Code Section 10505.) The point of diversion and place of storage in applications may be changed provided (a) the proposed change does not initiate a new right and (b) no injury will occur to another lawful user of water. (23 Cal.Admin.Code 738.)

6.0 BOARD POLICY RESPECTING PETITIONS FOR PARTIAL ASSIGNMENT OF APPLICATION 5648-C

6.1 Prior Board Policy

The past policy of the Board regarding petitions for partial assignment of Application 5648-C is reviewed in detail in Decision 1601 adopted on July 19, 1984. Decision 1601 approved a partial assignment of Application 5648-C and the issuance of a permit for diversion of up to 10 acre-feet per annum to be diverted to storage and used for irrigation. For the reasons explained in Decision 1601, the quantity of water assigned under the partial assignment of Application 5648-C was deducted from the quantity of water which Calaveras County Water District may divert under their permit issued on Application 11792.

6.2 Policy Regarding Petitions for Assignment Filed by Chatom Co., Ltd.

As noted in Decision 1601, the Board will follow the policy adopted in that decision with respect to the current petitions for assignment filed by Chatom Co., Ltd., which were pending when Decision 1601 was adopted.¹ Deduction of the quantity of water requested in these petitions for assignment from the quantity of water covered by permitted Application 11792 satisfies the concern of the U. S. Bureau of Reclamation. In addition, the permits issued to the petitioner will be junior in priority to all appropriative rights acquired on applications filed between June 30, 1927 and February 4, 1982 for projects located in Calaveras County, to the extent that the appropriated water is used within Calaveras County. This condition is appropriate because there is no equitable or overriding public benefit to be served by asserting the priority of the state-held application over county of origin applications filed after 1927, the year of filing of Application 5648.

7.0 FINDINGS REQUIRED BY WATER CODE SECTIONS 10504 AND 10505

7.1 County of Origin Protection and Non-conflict

The proposed place of use is within Calaveras County, the county in which the water originates. Consequently, the project will not deprive the county of origin of water necessary for development (Water Code Section 10505) nor is the purpose of development in conflict with

¹ The procedure for processing future applications for appropriation of water in the Calaveras River watershed above New Hogan Dam is discussed in Decision 1601 and is summarized in Attachment 1 to this decision.

any general or coordinated plan to supply water under Application 5648-C (Water Code Section 10504).

7.2 Compliance with Water Quality Objectives

The Board may assign any portion of a state filing for a purpose of development not in conflict with established water quality objectives. (Water Code Section 10504.) Standard permit condition 100 will assure compliance with water quality objectives. Condition 100 requires the applicant to file a Report of Waste Discharge with the appropriate California Regional Water Quality Control Board and to comply with any Waste Discharge Requirements issued to protect water quality.

8.0 CHANGE IN POINT OF DIVERSION AND PLACE OF USE

The applicant's proposed point of diversion is located on a tributary to the Calaveras River upstream from the point of diversion proposed in Application 5648-C. A point of diversion and place of storage may be changed provided the proposed change does not initiate a new right and no injury will occur to another lawful user of water (23 Cal. Admin. Code 738). The partial assignments will not result in the initiation of a new right nor will a lawful user of water be injured.

9.0 ORDER

IT IS HEREBY ORDERED that Application 5648-C held in the name of the State Water Resources Control Board be partially assigned and that

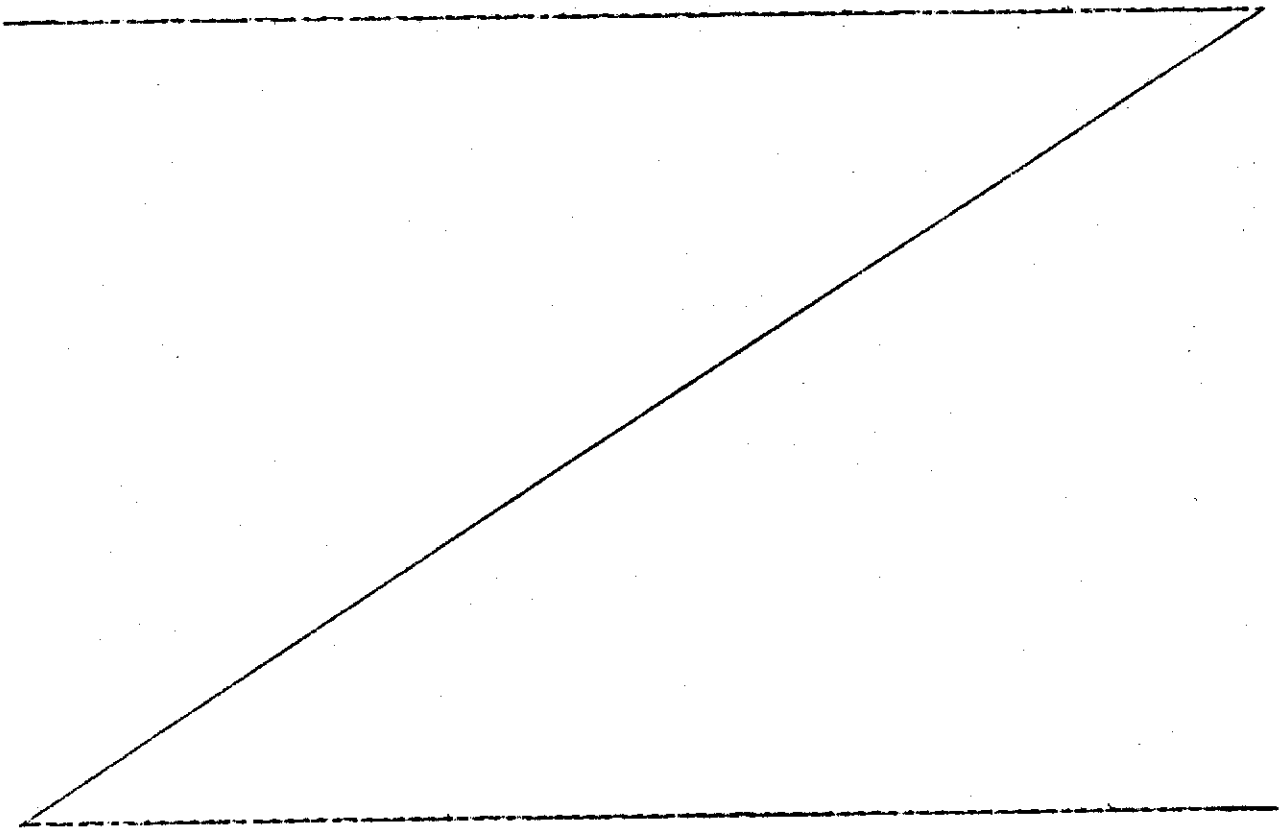
proposed completed Applications 5648C-14 and 5648C-15 be approved and permits issued to the applicant, subject to vested rights. The permits shall contain standard permit terms 6, 10, 11, 12 & 13² in addition to the following special terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 14 acre-feet per annum to be collected from November 1 of each year through April 1 of the succeeding year. The combined maximum rate of diversion to offstream storage under this permit and any other permit authorizing diversion by permittee at the same point of diversion shall not exceed 2 cubic feet per second.
2. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.
3. Construction work shall be completed by December 1, 1987.
4. Complete application of the water to the authorized use shall be made by December 1, 1988.
5. This permit is junior in priority to and subject to rights evidenced by permits and licenses for all projects located in Calaveras County for applications filed before [February 4, 1982 (for permit issued on Application 5648C-14) or September 2, 1982 (for permit issued on

² The Board keeps a list of standard permit terms. Copies of these terms are available upon request.

Application 5648C-15)] to the extent the appropriated water is used within Calaveras County.

6. The combined amount diverted under all permits issued pursuant to Application 5648C and Permit 15012 shall not exceed the amount allowed under Permit 15012.
7. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.



8. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).

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 the decision duly and regularly adopted at a meeting of the State Water Resources Control Board held October 18, 1984.

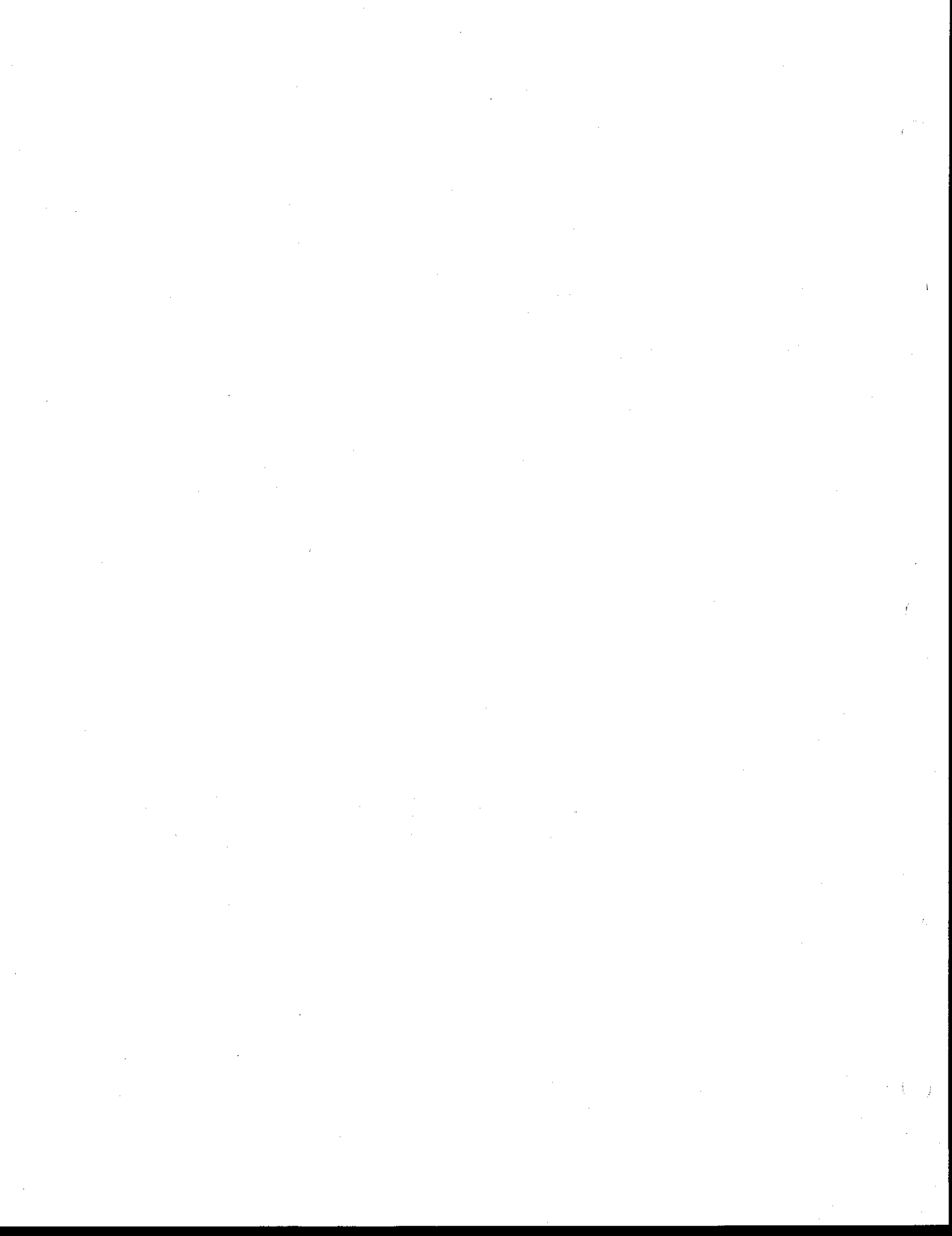
Aye: Carole A. Onorato
Warren D. Noteware
Kenneth W. Willis
Darlene E. Ruiz
Edwin H. "Ted" Finster

No:

Absent:

Abstain:


Michael A. Campos
Executive Director



ATTACHMENT 1

Information Regarding New Applications
to Appropriate Water in the
Calaveras River Watershed Above New Hogan Reservoir

As explained in Decision 1601, the Board's past procedure for assigning portions of state filing 5648-C to persons planning development of relatively small projects is cumbersome and does not utilize state filings in the manner intended by the Legislature. Therefore, persons who want to obtain future water rights for small projects proposed in the watershed above New Hogan Reservoir should file regular applications rather than petitions for partial assignment of Application 5648-C. Approval of any future petitions for assignment or partial assignment of Application 5648-C will be limited to those petitions for projects intended to fulfill the purposes for which Application 5648-C was filed. The quantity of water covered by any permits issued on new applications or petitions for assignment of Application 5648-C will be deducted from the quantity of water authorized for diversion by the permit ~~used~~ *issued* on Calaveras County Water District Application 11792.

