

Water Right Hearing Regarding Proposed Revocation of Auburn Dam Project Permits

Permits 16209, 16210, 16211, and 16212 (Applications 18721, 18723, 21636, and 21637)

Opening Statement and Witness Testimony for

Friends of the River, Save the American River Association, Defenders of Wildlife

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July 21 & 22, 2008

Before the State Water Resources Control Board

We welcome this hearing, in part because it offers the opportunity to open large numbers of dusty storage boxes full of yellowing documents and take an interesting trip down memory lane.

The purpose of our testimony is to summarize the key elements of the rich history behind the Reclamation and the Congress's unwillingness or inability to reauthorize the Auburn-Folsom South Project, resume construction, and comply with Board orders concerning Reclamation's permits. These impediments have shaped the history of the project, one that started with broad support, and now commands neither the interest or effective support of Reclamation, multiple Federal administrations, its potential cost-sharing partners, resource agencies, or the Congress and the political constituencies that influence it. This makes the prospects for compliance by Reclamation with Board orders and diligence requirements unlikely for the indefinite future.

Project Conception

Auburn dam and its related features were first officially recommended by the Federal Administration (John Fitzgerald Kennedy's) for authorization to the Congress in 1961. Vigorously championed by the Department of the Interior, and with the support or coordination with the State of California, Corps of Engineers, and the Bureau of the Budget, the multipurpose dam project was envisioned to produce electricity, recreation, and flood-control benefits, as well as irrigating more than 400,000 acres of land in Sacramento and San Joaquin Counties to be served by a 3,500 cfs canal diverting waters from the American River at Lake Natoma.¹

¹ House Document #305, 87th Congress, 2nd Session, letters from the Secretary of the Interior, Deputy Director of the Bureau of the Budget, Acting Commissioner, Bureau of Reclamation, pp. III–XIII. (January 18, 1962) (Exhibit 2)

Authorization for the redesigned project would have to wait until the Administration of Lyndon Baines Johnson in 1965. By then the Reclamation had redesigned the project, now envisioning a 2,500,000 acre-foot reservoir, water supply contracts within Placer and El Dorado counties, a canal delivering 852,000 acre feet annually (390,000 acre feet from Auburn dam) to farms and cities south of the American River, and generating 613 million kilowatt hours of energy annually. The initial 3,500 cfs canal capacity would rise to 7,000 cfs to carry the combined flows of the American River and Sacramento River diversions for the potential East Side Division of the Central Valley Project as well as for the Auburn Folsom South Unit. With a calculated benefit to cost ratio of 3.6 to 1, the project was expected to deliver irrigation water at \$2.75 per acre foot, consistent with then current policies and Reclamation law that irrigation water-service contracts should be based on an irrigator's ability to pay.²

California Senator Tom Kuchel engineered the final compromise to achieve final passage by assuring Arizona Senator Carl Hayden (who had served Arizona in the House and Senate since statehood) of California's support for the authorization of the Central Arizona Project to deliver Colorado River water to Arizona's farms and cities.³

Praise was effusive for the passage of the Auburn-Folsom South legislation. Governor Edmund G. Pat Brown called the Congressional approval a milestone in California's development and a monument to interstate cooperation.⁴ Department of Water Resources (DWR) Director William E. Warne stated:

Its adoption today is a great victory for the conservationists and all those interested in the long range development of our state. Governor Brown has placed Auburn Dam-Folsom South Canal at the top of every priority list. His negotiations on the Colorado river helped clear away the last block. All the water leaders of the state rejoice that this achievement has been realized.⁵

And from Visalia, James F. Sorenson, manager of the Central Valley East Side Project Association, noted:

The authorization of Auburn Folsom South, with its additional capacity someday to serve the east side of the great San Joaquin Valley, is a great source of satisfaction and

² House Document #295, 89th Congress, 1st Session, Mr. Rogers of Texas, from the Committee on Interior and Insular Affairs, May 6, 1965, pp. 1–10. (Exhibit 3)

³ Auburn Journal, Section C, Thursday, August 26, 1965. (Exhibit 6, pp. 1 & 4)

⁴ Auburn Journal, Section C, Thursday, August 26, 1965. (Exhibit 6, p. 2)

⁵ Auburn Journal, Section C, Thursday, August 26, 1965. (Exhibit 6, p. 3)

gratification to all of us. You can be sure we will recommend a sizable appropriation for fiscal year 1966–67 to start this great project.⁶

Water Rights

Reclamation applied for storage and diversion rights for the Auburn unit in 1959⁷ and received its permits in 1971 following the 1970 SWRCB Decision 1356 (*stipulation to facts*). D. 1356 found that “substantial quantities of unappropriated water will be available for diversion as proposed in the applications except during the month of July.” (*D. 1356 p. 3*) Deliveries before 1976 outside of Placer, Sacramento, and San Joaquin counties were not permitted to allow Reclamation to enter into water-service contracts in these counties. (*D. 1356 p. 16*) The Board also concluded that “there is a reasonable possibility that the water will be used as proposed by the Bureau for the East Side Division...”⁸

Taking up the reservation of jurisdiction in D. 1356, in 1972 the Board adopted D. 1400 to establish minimum flows for a wide range of purposes in the American River below Auburn dam. D. 1400 described the consumptive uses approved in D. 1356 as for storage of 2,500,000 acre feet annually between November 1 and July 1, and direct diversion during the same period of 1,000 cfs to be used in the Folsom South and proposed East Side Project service areas, as well as CVP service areas (such as the San Luis Unit) that could be served by releases into the Sacramento River. (*D.1400, p. 4, 7*)

The inappropriateness of issuing water rights for applicants with no definite plans to construct and operate a project was a key issue in Reclamation’s success in gaining its earlier Folsom Dam permits against competing applicants:

The record is also abundantly clear in regard to the applications by California Water Service Company, City of Stockton, North San Joaquin Water Conservation District, and Stockton and East San Joaquin Water Conservation District that the applicants have no immediate plan or purpose to proceed promptly with construction and/or with the application to beneficial use of the water sought. In such cases the Board has little choice in the action to be taken since it is a settled principle that an application to

⁶ Auburn Journal, Section C, Thursday, August 26, 1965. (Exhibit 6, p. 4)

⁷ House Document #305, 87th Congress, 2nd Session, January 18, 1962, p. 18. (Exhibit 7)

⁸ Reclamation’s East Side Canal connection to the Folsom South Canal paralleling the Delta-Mendota Canal along the east side of the Central Valley was never constructed. The New Melones Unit was the only major part of the East Side Division of the CVP that was constructed. According to Reclamation’s history posted on its website, “the battle over construction of New Melones Dam was a signal at the end of the era of large dam construction.” (Exhibit 8)

appropriate is not a proper instrument to make a reservation of water for a development at an indefinite and uncertain time in the future. (*D. 893, p. 54*)

Construction Experience and Unexpected Problems

Construction of the Auburn dam was initiated in 1967 and major construction halted in 1975 after a 5.7 magnitude earthquake occurred near Oroville Dam, an earthquake thought to have been induced by seasonal filling and unfilling of the reservoir.⁹ Seismic investigations at the Auburn site followed and parameters for seismic safety design were adopted by outgoing Secretary of the Interior Cecil Andrus in July 1979 — criteria that were felt to underestimate seismic risks at the site by some of the participants in the evaluation.¹⁰ A concrete gravity dam was selected to replace the previous double thin-arch design that was considered to be vulnerable to failure.

Construction of the Folsom South Canal was initiated in 1968. A post-construction start environmental impact statement on the Auburn-Folsom South Unit in November 1972 and a supplement in July 1974 with an amendment in September 1974 were prepared by Reclamation. In response to a lawsuit (*NRDC v. Stamm*) filed on December 15, 1972 by the Natural Resources Defense Council, Save the American River Association, and the Environmental Defense Fund, a ruling from the Federal District Court that the 1972 EIS was inadequate was obtained on April 15, 1974. However, with the completion of the supplemental EIS, plaintiffs withdrew their objection to the adequacy of the EIS as it concerned Auburn Dam. The court then approved an agreement between Reclamation and the plaintiffs that no construction of the Folsom South Canal beyond reach 2 (the 27-mile reach to Rancho Seco), or new water-service contracts from the Folsom South Canal, would be undertaken until 60 days notice had been given to the parties and the court, which retained jurisdiction.

Thus, by the middle of the 1970s, project construction was at a standstill.

White House Attention to Federal Water Projects

The principle of meaningful repayment and cost-sharing policies in Reclamation projects dates back to the Reclamation Act itself. And the tug and pull between those policies and the desire of project beneficiaries to reduce their financial burdens helped to shape much of the history of the

⁹ “Earthquakes and Lake Levels at Oroville, California,” Toppazada and Morrison, *California Geology*, June 1982. (Exhibit 9)

¹⁰ One of the many histories of Auburn seismicity controversies is the 62-page *Earthquake Safety at Auburn Dam, Seismic Safety at Auburn Dam, An Evaluation of Geotechnical Studies*, Anthony A. Finnerty, Ph.D., Department of Geology, University of California at Davis, January 29, 1990.

Reclamation program and the CVP itself. But during the Carter and Reagan administrations, these issues became a major part of the national debate.

The Hit List:

President Carter started off the discussion with a campaign paper maintaining that the “federal government’s dam building era is coming to an end. Most beneficial projects have been built.” In February 1977, he informed Congress of his plans to delete a number of projects from the appropriations bill because of environmental, economic, or safety problems. Auburn dam was on his final, April 18, 1977, list. The following year Carter announced a policy-reform initiative to ensure that projects were better environmentally and that non-federal interests assumed greater responsibility for construction costs of federal water projects. Congressional opposition to the hit list was intense, and Carter’s efforts to influence appropriations bills through most of his Presidency were mostly unsuccessful, but given the construction halt at the Auburn-Folsom Unit, of little immediate consequence to Reclamation’s Auburn program. But the tumult caused by Carter did have another effect: federal water project authorizations were becoming increasingly difficult to authorize and fund — and the regular authorizing vehicle for Corps of Engineers projects, the Water Resources Development Acts (the WRDAs), were no longer getting through Congress.¹¹

The Reagan Budget Reformers:

By the time that Ronald Reagan arrived in office in January 1981, Reclamation believed that it had a design for Auburn dam that it could build.¹² But Reagan’s people were in many ways more disciplined and effective with Congress than Carter had ever been, and soon Reclamation’s efforts to resume construction of Auburn dam became enmeshed in the new realities of Federal water-project financing reforms being implemented by the Reagan team, as well as changing environmental priorities of the country.¹³

Reclamation’s regional staff began to implement the new policy direction. On April 8, 1982, Reclamation Mid-Pacific Regional Director Mike Catino chaired an important meeting on non-federal financial participation in the Auburn-Folsom South Unit. His remarks hint at the significance of the Reagan reforms — and his public optimism that Reclamation and its partners could rise to the challenge:

¹¹ A federal agency perspective on the Reagan reform years is the 216-page Reshaping National Water Politics: The Emergence of the Water Resources Development Act of 1986, IWR, Policy Study 91-PS-1, U.S. Army Corps of Engineers Institute for Water Resources, Martin Reuss, Office of History, Headquarters, USACE, October 1991.

¹² Remarks by Machael A. Catino, Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation to Meeting on Non-Federal Financial participation Auburn-Folsom South Unit, CVP Auburn, California, April 8, 1982, p. 7. (Exhibit 10)

¹³ Non-Federal Funding Urged for Auburn Dam, Thorne Gray, Sacramento Bee, January 19, 1982. (Exhibit 11)

I am pleased that you have taken the time to meet with us today to explore this clearly non-traditional concept. To my best knowledge, this is the first such public meeting to address this subject on a project of this magnitude. If, by working together, we can come up with a positive, workable proposal, I am optimistic that we will overcome one of the last major obstacles to construction of this needed project.

...As you know, this Administration is advocating partnership arrangements in water projects both as a device to incorporate more local control over governmental activities and as a means to reduce Federal expenditures.

...Let me set the stage by saying that the present Administration is seeking the participation of non-Federal interests in projects such as the Auburn-Folsom South Unit. At the present time, we have no established guidelines as to format or extent of possible partnership.

...In summary, the reauthorization proposal will be timed to coincide with finalization of the supplemental environmental impact statement and our current Lower American River alternatives study. These documents will contain our proposal to meet the water needs of the Folsom South Canal service area and the flow regimen of the Lower American River. With all of these requirements in place, we should be in an excellent position to move to the new Congress for hearings on reauthorization some time after January 1983.

...And now it's your turn. Who wants to be first?¹⁴

Mike received some statements of interest, but nothing substantive ever materialized from Reclamation's efforts.¹⁵ Reclamation was not prepared to request reauthorization in January 1983, nor was Congress prepared to reauthorize the project. Three years later, Secretary of the Interior Donald Hodel was telling the Congress that he saw little future for Auburn dam.¹⁶

Congressman Vic Fazio's May 19, 1986 letter to the American River Authority's Robert Dorr contained an insightful analysis of Reclamation's failure to bring the project back. Fazio, who would go on to spend the next decade championing an Auburn dam that could be converted or

¹⁴ Remarks by Machael A. Catino, Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation to Meeting on Non-Federal Financial participation Auburn-Folsom South Unit, CVP Auburn, California, April 8, 1982. (Exhibit 10)

¹⁵ Auburn Dam Project Experiences Rebirth, Reed Fujii, Auburn Journal, April 9, 1982; Utilities Willing to Help Pay for Auburn Dam, Paul Barnes, Sacramento Union, April 9, 1982; Department of the Interior News Release, August 6, 1982 (Exhibit 11); FOIA cover letter from Reclamation to Friends of the River, February 9, 1983 (Exhibit 12).

¹⁶ Letter from Representative Vic Fazio, 4th District, California, to Robert E. Dorr, Chairman, American River Authority, May 19, 1986. (Exhibit 13)

expanded to multipurpose uses was a veteran Congressman in the House leadership (he would retire as minority whip). His analysis is wide-ranging and multi-faceted, but he believed that in the final analysis, “there are no longer buyers [for Auburn dam] on the terms that the government would demand.” Fazio also noted Hodel’s remarks, “ ‘Given disinterest on the part of potential beneficiaries,’ he said, ‘there was little need for the Bureau to drag itself through another bitter environmental and economic controversy.’ ”¹⁷

Who’s on First — Which Auburn Dam Are You Talking About?

In February of 1986, Reclamation’s 190-foot-high Auburn dam coffer dam was washed away by floodwaters and Sacramento endured nerve-wracking high water along the American River. Later that year, Congress and the Reagan administration finally reached agreement on cost-sharing procedures and formulas for the Corps of Engineers civil-works program, establishing greater certainty and financial resources for the Corps of Engineers floodwater management programs. But the reforms still offered a substantial Federal subsidy for the flood-control components of Corps projects, 75%, still leaving the Corps with a product to market.¹⁸ These two events, one natural and one political, brought a different focus to the efforts to construct a new Auburn dam, and put Reclamation in competition with a new Federal player for its dam site.

In Congressional testimony in November 1987, DWR Director Dave Kennedy summed up the new realities facing the Bureau:

The Corps’ studies show that 200-year or higher levels of protection can be achieved in a practical manner only by construction of an Auburn. In his May visit to Sacramento, Secretary of the Interior Hodel cited the unlikelihood of early federal financing of the authorized Auburn Dam project. That fact, plus the redirection of the Bureau of Reclamation announced last month, make it clear that the prospects for completion of Auburn Dam under the original plan are growing exceedingly dim. The emphasis on Auburn Dam has now shifted primarily to its potential to provide flood protection. The principal question is whether a single-purpose flood control project or a multipurpose project should be developed.¹⁹

¹⁷ Letter from Representative Vic Fazio, 4th District, California, to Robert E. Dorr, Chairman, American River Authority, May 19, 1986. (Exhibit 31)

¹⁸ Water and power features of Corps projects had to be paid for by non-Federal beneficiaries (and, for Reclamation projects, fully incorporated in rates), features that were unappealing to traditional Federal water and power project beneficiaries. In WRDA 1996, the flood-control cost share for flood-control features was changed once again, to 65% Federal, 35 non-Federal, diminishing market demand for Federal flood-control projects slightly.

¹⁹ Statement of the California Department of Water Resources Before Congressman Vic Fazio’s Fact Finding Hearing on Flood Threats Along the Lower American River, p. 2, November 6, 1987. (Exhibit 14)

Reclamation recognized this reality, and by July 20, 1987, it had prepared an Auburn Dam Alternative Study for its State/Federal Auburn Dam Task Force.²⁰ The study was accompanied by the following remarks from Reclamation's Regional Director, Dave Houston:

Ensuring adequate flood protection for the Sacramento metropolitan area is a critical issue facing the city's residents and civic leaders. The alternatives considered in this report are skewed toward providing that protection, as well as the locally desired instream flows in the Lower American River. (*p. 1 exhibit 15*)

But the new realities of cost-sharing continued to threaten the prospects for the dam. Dave Houston concluded his cover letter with the following warning:

Completion of an Auburn Dam depends in large measure on the willingness of non-Federal entities to share in the project costs. If the benefits commonly associated with preserving the flows in the Lower American River are accepted and cost-sharing participants come forward, then a financially feasible multipurpose project could be built. Otherwise, the costs of providing municipal and industrial water supplies and instream flows could make the project too costly for project beneficiaries, and the scope of the project reduced accordingly. (*p. 2*)

By February of 1988, Reclamation was losing ground. A Statement of Principles was developed and signed by Sacramento area elected officials (Congressional, legislative, and local government Democrats) to approach the area's floodwater management needs. They favored 1) a single-purpose flood-control dam built by the Army Corps of Engineers, enlargeable *if* water and power beneficiaries could be identified to pay the extra cost to make the dam suitable for retrofit, 2) sunk costs in Reclamation's dam to be assigned to costs of potential conversion to a multipurpose facility, if ever, 3) the Folsom South Canal deauthorized, 4) a National Recreation Area created from Reclamation's Auburn dam lands.²¹

It would not be easy to turn a dam authorized with such conditions into a Reclamation multipurpose dam, and Reclamation officials knew it. They needed to offer a viable multipurpose alternative to the approach being advanced by much of Sacramento's political leadership.

But in 1989, after an intense effort to sign up cost-sharing partners for the water and power features of the Auburn dam, Reclamation's efforts (centered on the American River Authority's

²⁰ Auburn Dam Report, Auburn Dam Alternative Study, excerpts, Bureau of Reclamation, July 20, 1987. (Exhibit 15)

²¹ Statement of Principles. (Exhibit 16)

proposals) effectively collapsed.²² The year began with the withdrawal of the Sacramento Municipal Utility District from serious negotiations, included an EPA veto of a major western dam, and concluded with the withdrawal of Central Valley Project Contractors Association from support for Reclamation's dam project.²³ The Sacramento Bee reported the CVP Contractors Association decision in dramatic fashion:

The latest effort to complete a large Auburn Dam suffered a severe blow Friday when the most likely customers for the water said they didn't want a drop from the expensive and controversial project.

The Central Valley Project Water Association, in a short letter to the U.S. Bureau of Reclamation, said it could not support a plan to build the long-stalled multipurpose dam.

One water official requesting anonymity said the rejection amounts to 'a bullet in the head' of the plan by Placer and El Dorado counties [the ARA] to resurrect the project.²⁴

Earlier that summer, Reclamation's regional director, Larry Hancock, discussed the situation facing Reclamation with the Sacramento Union and was cautious about Reclamation's prospects for reviving the Auburn dam. When asked about the absence of Auburn dam from his list of priorities as the new regional director, he replied:

'We would build a multipurpose facility if that's what's wanted. We are not promoting it or demoting it,' he said. 'From my perspective, the bureau should not be taking, and we are not taking, any position in terms of whether to build a multipurpose large dam.'

'The way we see the Auburn Dam issue now is that the local interests have to come to some type of agreement on what it is they want,' he said.

²² Federal Officials Eyeing ARA Plan Closely, Emily Darby, Auburn Journal, January 29, 1989; Auburn Dam Decision Won't be Soon, U.S. Says, Laura Mecoy, Michael Doyle, Sacramento Bee, February 23, 1989; ARA to Take Dam Plans Back to Washington, Gus Thomsen, Auburn Journal, April 4, 1989; Auburn Dam Puzzle Starting to Come Together, Rod Boyce, Sacramento Union, April 30, 1989; (Exhibit 17); Auburn Dam Project Briefing before Sacramento City and County Representatives, Larry Hancock, Acting Regional Director, Bureau of Reclamation, January 29, 1989 (Exhibit 18)

²³ SMUD Directors Snub Dam Deals, Anne Heller, Sacramento Union, January 20, 1989; Environment Offsets Interest in Dam Water, Rod Boyce, Sacramento Union, March 23, 1989; EPA Ruling Puts Cloud in Auburn Dam's Future, Rod Boyce, Sacramento Union, April 4, 1989; Big Setback for Auburn Dam Plan, Jim Mayer, Sacramento Bee, December 9, 1989; Announcement Jolts Dam Proponents, The Press Tribune, December 10, 1989. (Exhibit 19)

²⁴ Big Setback for Auburn Dam Plan, Jim Mayer, Sacramento Bee, December 9, 1989. (Exhibit 19)

‘...They really have to come to agreement and say...whether they want a project that will provide flood protection only or whether they want a project that will provide a water supply and generate energy and provide additional recreation.

‘Without that consensus from the counties, there’s not very much for the Bureau to do.’²⁵

The following year, the Bureau of Land Management completed its National Recreation Area study of Reclamation’s Auburn dam lands, concluding:

The upper three segments [including the Auburn project lands] are sufficiently spacious, have an abundance of outstanding natural and cultural features, and offer a wide variety of recreational opportunities. They lie with and are adjacent to a fast growing metropolitan area of more than a million people and with a short drive of many more millions. They provide the types of recreation most in demand by local residents, while at the same time offering qualities to attract visitors from a distance. They have the potential to provide even more public benefits under an NRA designation.

Following the established NRA criteria, the combination of these three segments possesses all the qualities envisioned by the federal government in the NRA concept, perhaps conforming even more closely than many established NRAs.²⁶

By 1992, the Corps of Engineers had developed, recommended, and taken to Congress a flood-control expandable dam proposal with the support of the Reclamation Board, the Department of Water Resources, and the Sacramento Flood Control Agency (SAFCA).²⁷ In its testimony before the Congress, Reclamation did not offer an opinion on the Corps of Engineers Auburn dam project. The proposed Corps dam was not a multipurpose project, although it might someday become one. Seventeen years after construction had stopped, and twelve years after it had told the Board that reauthorization of the Auburn-Folsom Unit was required,²⁸ Reclamation was still not in position to propose a reauthorization of its 1965 multipurpose dam project.

Reclamation’s multipurpose-dam supporters generally opposed the Corps’ proposal, as did environmental groups (an unusual confluence of interests). However, in his testimony and oral

²⁵ Meters, Big Dam Needed Someday, Water Head Says, Rod Boyce, Sacramento Union, August 21, 1989. (Exhibit 20)

²⁶ American River National Recreation Area Feasibility Study, US Department of the Interior, Bureau of Land Management, California, final, September 1990, pp. ii, iii. (Exhibit 21)

²⁷ American River Watershed Investigation (ARWI) Feasibility Report FEIR/FEIS, U.S. Army Corps of Engineers, South Pacific Division, The Reclamation Board, December 1991.

²⁸ Stipulation, page 2, paragraph 6.

remarks before the House Interior Committee hearing in July of 1992, DWR Director Dave Kennedy sought to assure multipurpose dam supporters that the Corps dam could be feasibly converted to multipurpose uses as envisioned by Reclamation.²⁹

But the Corps was not finding the Administration or Congressional political environment easy either. The Corps failed to win the support of the George Herbert Walker Bush administration, which had been unable to reconcile the Corps of Engineers with the critical voices of the U.S. Fish and Wildlife Service and the EPA.³⁰ The Auburn dam authorization bill was not marked up in the Interior Committee, and it was withdrawn from consideration in the WRDA by the Public Works Committee by a voice vote.

The day after California's senior Senator, Alan Cranston, announced his opposition to the dam (because of Director Kennedy's assurances to Rep. Doolittle that the dam could be converted to multipurpose uses), the House of Representatives considered an amendment from the ranking member of the Water Resources Subcommittee of the Public Works Committee, Thomas Petri, a Republican from Wisconsin (the Corps Auburn dam provision had been inserted into the bill by the Rules Committee in a Chairman's mark). The debate was spirited. Rep Petri emphasized the high costs of the dam (then estimated at \$700 million), lack of Administration support, and its environmental problems. Multipurpose dam supporters led by California Representatives John Doolittle, Duke Cunningham, and Bill Dannemyer also opposed the Corps dam. The Sacramento Congressional delegation, Representatives Matsui and Fazio, both Democrats, championed the dam, as did the chair of the Water Resources Subcommittee and the chairman and ranking member of the full committee. In the end, Rep. Petri's amendment to remove the Corps Auburn dam authorization from the Water Resources Development Act (WRDA 92) was approved by a vote of 271 to 140. Among those voting with Mr. Petri for environmental reasons and over the objections of the two Democratic representatives from Sacramento were Representatives Nancy Pelosi, Barbara Boxer, and George Miller.³¹

In 1992, Congress passed the Central Valley Project Improvement Act, enhancing the purposes of the Central Valley Project (an environmental mission), requiring an Anadromous fish doubling plan for CVP streams, and reinforcing Reclamation's responsibilities to comply with state water law.

²⁹ Statement of Douglas P. Wheeler, Secretary of Resources, and David N. Kennedy, Director, Department of Water Resources, State of California, Final, Before the House Committee on the Interior, July 23, 1992. (Exhibit 22)

³⁰ Department of the Army, Statement of Morgan R. Rees, Deputy Assistant Secretary of the Army, (Planning Policy and Legislation) Before the Subcommittee on Water, Power, and Offshore Energy Resources, Committee on the Interior and Insular Affairs, July 23, 1992. (Exhibit 23) Federal Agency Comments, Corps of Engineers Auburn Dam, Excerpt from the testimony of Friends of the River before the House Interior Committee, July 23, 1992. (Exhibit 24)

³¹ Congressional Record, Volume 138, Washington, Wednesday, September 23, 1992, No. 131. (Exhibit 25)

The following year, SAFCA formed the Lower American River Task force, which began the consideration of flood control alternatives not involving Auburn dam. At the same time, the City County Office of Metropolitan Water Planning initiated stakeholder meetings of the Sacramento Water Forum, to explore meeting the Sacramento area's water supply needs while protecting the Lower American River.

In January of 1993, Reclamation finalized its finding that most of the river canyon in its Auburn project area was eligible for inclusion in the national wild and scenic river system. This was not the first wild-and-scenic river action on the American River.³² In 1972, the state of California added the lower American River below Nimbus Dam to the state wild and scenic river system. In 1978, the Congress added the North Fork of the American River upstream of the Auburn project lands to the national wild and scenic river system. In 1981, responding to a petition from Governor Jerry Brown, Secretary of the Interior Cecil Andrus added the lower American River to the national wild and scenic river system under section 2(a)(ii) of the Federal act.

And a few years earlier, in 1990, Judge Richard Hodge of the Alameda Superior Court issued a public-trust ruling establishing conditions on potential diversions by the East Bay Municipal Utility District (EBMUD) for receiving CVP water-service contract deliveries from the Folsom South Canal. (EBMUD and SMUD held the only significant Reclamation water-service contracts on the Folsom South Canal.) Reclamation remained effectively enjoined from issuing new water-service contracts until it completed environmental work for additional contracts satisfactory to the Federal District Court under NRDC v. Stamm — work that Reclamation did not seem to judge worthwhile to undertake.

Change was in the Air.

WRDA 1996, A Republican Congress

With the shift to Republican leadership in the Congress, Rep. John Doolittle assumed chairmanship of the Water and Power Subcommittee of the House Resources Committee, Reclamation's authorizing committee, announcing the beginning of a great new dam-building era for the country. Shortly after that, Rep. Doolittle's office informed the SAFCA board that he would block any Sacramento area flood-control project unless it was Auburn dam.

In response, SAFCA, the Reclamation Board, and the Corps developed three different flood-control approaches for the Sacramento area, 1) modification of Folsom Dam's outlets, 2)

³² Determination of Wild and Scenic Eligibility of Segments of the American River, (General Investigation Program), May 23, 1993, U.S. Bureau of Reclamation. (Exhibit 26)

adding levee improvements to dam modifications, 3) and a larger, more expensive version of the Auburn expandable flood-control dam than had been carried forward to defeat in 1992.³³

Sacramento leaders also invited Placer and El Dorado County water managers to join the Sacramento Area Water Forum, an invitation that was accepted in 1995.

In spite of Rep. Doolittle's chairmanship of Reclamation's authorizing subcommittee, the action stayed with the Corps and its authorizing committee, the freshly renamed House Transportation and Infrastructure Committee. The Sacramento District and South Pacific Division of the Corps of Engineers, the Department of Water Resources, the Reclamation Board, and SAFCA (by a 7 to 6 vote) supported the Corps Auburn dam proposal. But this time the Chief of the Corps of Engineers, as well as the Department of the Army, did not concur with the proposal. The Corps itself was in disarray, and the lowest echelons of the Corps were out of step with both Corps Headquarters and the Administration. In an interview with President Clinton, local radio listeners learned that the President himself did not think it wise to proceed with the controversial Auburn dam.

In a showdown vote in the House Transportation and Infrastructure Committee, Representatives Doolittle, Matsui, Fazio, the House Republican leadership, and the committee's chair supported the Sacramento District's proposal. Opposing the dam for financial and environmental reasons was the chair of the Water Resources Subcommittee (Sherwood Boehlert), and the ranking member of the full committee (Jim Oberstar), as well as Rep. Thomas Petri. The vote was 35 to 28 against the dam. Rep Oberstar then offered a package of flood-control elements common to the various Corps alternatives, elements recommended by the Chief of the Corps of Engineers, as well as variable storage operations at Folsom Dam. Oberstar's amendment was passed by the Committee and became law with the passage of WRDA 1996.³⁴ Auburn dam was never taken up in WRDA 96 by either the full House or the Senate. It died in Committee.

Reclamation's American River Water Resources Investigation (ARWRI)

In 1991, after the collapse of Reclamation's efforts to make cost-sharing arrangements for Reclamation's Auburn dam, a joint power authority (JPA) of some agencies in Sacramento and San Joaquin Counties agreed to cost share a Reclamation study on regional water supply options for the Auburn-Folsom Unit of the CVP. The JPA, the Sacramento Metropolitan Water Agency (SMWA), and Reclamation prepared a planning report with accompanying environmental impact report/statement. The report examined, at program level, a conjunctive-use option similar to the emerging Water Forum agreement and three Auburn dam options. The 1997 final Reclamation/SMWA American River Water Resources Investigation (ARWRI) report concluded

³³ American River Watershed Project, California, (ARWP), Supplemental Report and EIS/EIR, U.S. Army Corps of Engineers, Sacramento District, The Reclamation Board, March 1996.

³⁴ 1996 WRDA press clip excerpts (Exhibit 27)

that per acre foot costs of meeting the study area needs were similar (\$400 to \$450 per acre foot), and that the conjunctive use option is the environmentally superior alternative.³⁵

More significantly, the 1998 ROD and memo from Reclamation Regional Director Roger Patterson³⁶ did not propose further Federal actions:

Reclamation is not proposing to initiate any Federal action to meet the area's needs. Reclamation will, as appropriate, cooperate with local agencies... (p. 1, Patterson memo)

Reclamation has not identified a Federal role for meeting the future water needs of the ARWRI study area; therefore, a Federal program has not been selected. While no Federal action will be initiated to meet the needs of the local area, Reclamation will, as appropriate, cooperate with local agencies as specific water management activities are proposed and implemented. (p. 1, ARWRI ROD)

SMWA never certified the EIR and is no longer active. Its Sacramento and Placer County members are now members of the Regional Water Authority, which does not work on Auburn dam issues.

Since 1999, Reclamation budget justification documents submitted to Congress have carried the following words:

Construction of Auburn Dam has been indefinitely deferred.³⁷

In addition, Reclamation, consistent with its 1984 letter to the Board, has also noted in its recent budget justification documents that the authorization ceiling exceeds the estimated cost of completion and that "[a]ppropriate congressional committees will be advised of the ceiling status of the project. Legislation to provide additional appropriation ceiling would be needed to complete the project as authorized."³⁸

³⁵ American River Water Resources Investigation, Planning Report and Draft EIS/EIR, January 1996, and Final EIR/EIS, Prepublication Draft, January 1997, Sacramento Metropolitan Water Authority, U.S. Department of the Interior Bureau of Reclamation.

³⁶ ARWRI cover letter and ROD, 1997 and 1998. (Exhibit 28)

³⁷ Bureau Budget Justifications, Auburn-Folsom South Unit, 1999 to 2009, first pages. (Exhibit 30)

³⁸ 2009 Bureau Budget Justifications, Auburn-Folsom South Unit (complete with cover). (Exhibit 29)

1998 & 1999, WRDA Aspirations

In 1998, SAFCA embarked on an effort to authorize and construct a package of improved outlet works for Folsom dam and levee improvements, this time with the support of the Department of the Army. Supported by Senator Boxer and Representatives Matsui and Fazio, it was opposed by the Rep. Doolittle and the House leadership, as well as the Reclamation Board. As a result of the impasse, no biennial Corps of Engineers water resources bill (WRDA) passed in 1998.

Representative Doolittle introduced legislation to construct a 180,000 acre-foot dam of uncertain design or purpose at the Auburn site and transfer it and the surrounding lands to the State of California. Congressional hearings were held, the bill was marked up by the House Resources Committee, but was never taken up by the full House.³⁹ Reclamation's involvement in the Congressional deliberations on the dam was to testify that the Administration supported the SAFCA proposal and to note that the transfer of the Auburn dam site to the state of California had "merit and should be considered."⁴⁰

In 1999, Representatives Doolittle, Matsui, Herger, and Pombo, pushed for a requirement for Reclamation to execute CVP water-service contracts in the upper American River watershed over the objections of Reps. Tauscher, Miller, Dooley and other members of the San Joaquin Valley Congressional delegation. The House Rules Committee stripped out these provisions, as well as the ambitious levee improvements sought by SAFCA, bringing to the floor modifications to Folsom Dam's outlet works and more limited downstream levee improvements (proposed by the Reclamation Board) to permit emergency outflows consistent with Folsom Dam's emergency release diagram to be made with greater reliability. The measure was adopted, the Senate concurred, and the bill was signed into law.⁴¹ Modeling by MBK Engineers, SAFCA's consulting engineers, showed the design flood of the WRDA 99 authorized facilities (including the early releases provisions of the project) would equal or exceed the modeled design flood of Reclamation's Auburn dam authorized in 1965.⁴²

In 2000, the Sacramento Water Forum Agreement was completed and signed by nearly all of its member bodies. The Agreement had two coequal objectives:

Provide a reliable and safe water supply for the region's economic health and planned development to the year 2030; and preserve the fishery, wildlife, recreational, and aesthetic values of the Lower American River.

³⁹ WRDA 1998 press clip excerpts, (Exhibit 31)

⁴⁰ Statement of Roger Patterson, Regional Director, Mid-Pacific Region, Bureau of Reclamation, Department of the Interior, Transcript of the Witness Statement, American River Flood Protection Hearings, May 1998, Sacramento California.

⁴¹ WRDA 1999 press clip excerpts. (Exhibit 32)

⁴² House Document #305, 87th Congress, 2nd Session, pp. 14–18. (January 18, 1962) (Exhibit 7)

The agreement was a more specific and detailed version of Reclamation and SMWA's ARWRI conjunctive-use alternative. It involved seven elements: 1) increased surface water diversions, 2) actions to meet customer's needs while reducing diversion impacts in drier years, 3) an improved pattern of fishery flow releases from Folsom reservoir to be proposed to the SWRCB, 4) a lower American River habitat management element, which also addresses recreation in the lower American River, 5) a water conservation element, 6) a groundwater management element, 7) a Water Forum Successor effort.

The Water Forum did not include San Joaquin County or Reclamation, but there were negotiations with East Bay Municipal Utility District (EBMUD) and El Dorado County water managers. Reclamation, EBMUD, and El Dorado County interests were and are regular attendees of Water Forum meetings. El Dorado Irrigation District holds a procedural agreement with the Water Forum.

In 2000, the CalFed Record of Decision was signed. Auburn dam is not one of the water storage projects proposed for feasibility investigations.⁴³

After months of meetings among the Department of the Interior, Reclamation, EBMUD, Sacramento County, Friends of the River, and Senator Dianne Feinstein, on January 23, 2001 the EBMUD board voted to embark on a diversion from the Sacramento River to take its Folsom-South Unit water-service contract.⁴⁴ Reclamation amended EBMUD's CVP water-service contract consistent with the agreement between the parties, and the project is currently under construction. Consistent with SMUD's purveyor-specific agreement, some of SMUD's water-service contract deliveries will be diverted from the Sacramento River, or will be subject to dry-year reductions or cut off when diverted from the Folsom-South Canal.

In 2001, Friends of the River received a letter from California's senior senator, Dianne Feinstein, opposing Auburn dam.

In 2002, the Corps of Engineers, the Reclamation Board, and SAFCA proposed the "Long Term Study," recommending a 7.5 foot flood-control raise of Folsom Dam and initial operations approaches for the project.⁴⁵ The study was conducted under the direction of Section 566 of WRDA 99, consistent with the intent of the Chief of the Corps of Engineers in the 1996 ARWP Chief's report:

⁴³ Auburn dam has not appeared in water bond proposals advocated by the State Chamber of Commerce and Governor Schwarzenegger in recent years.

⁴⁴ "EBMUD Pursues Sacramento River Water Supply," EBMUD Reports, March 2001. (Exhibit 33)

⁴⁵ Final Supplemental Plan Formulation, EIS/EIR, Long-Term Study, American River Watershed, California, U.S.A.C.E, SAFCA, Reclamation Board, February 2002; Chief's Report, Long Term Study, 2002. (Exhibit 34)

Upon clarification of the cost-sharing policy, and better understanding of the availability of Federal resources, I will make further recommendations concerning implementation for a more comprehensive plan for the American River which would provide a substantially higher degree of flood hazard reduction.⁴⁶

The project was authorized with the support of Representatives Matsui and Doolittle and Senator Barbara Boxer in the Omnibus Appropriations bill of 2004.⁴⁷

After the Corps encountered major design and contracting problems in 2005,⁴⁸ Reclamation led a joint Federal effort with the Corps of Engineers to redesign the Corps' project to consolidate Reclamation's dam-safety objectives with Corps floodwater management projects. The Corps, Reclamation, The Reclamation Board, SAFCA, and the Department of Water Resources issued a Project Alternatives Solutions Study (PASS) II report in June of 2006 and an FEIS/EIR in March of 2007 for a joint Folsom Dam Safety and Flood Damage Reduction Project.⁴⁹ The project was authorized in WRDA 2007. The groundbreaking was in January 2008, an event attended by many dignitaries, including the Secretary of the Interior and the Governor of California.⁵⁰ Construction is well underway. Once completed, the inflow design flood for the modified Folsom Dam should exceed 500,000 cfs and the corresponding inflow design flood of the 1965 Auburn dam.⁵¹

Interior Secretary Kempthorne remarks delivered several days after Rep. John Doolittle announced his retirement, contained the following admission:

⁴⁶ Chief's Report, American River Watershed, 1996. (Exhibit 35)

⁴⁷ Dam raise deal authorization press. (Exhibit 36)

⁴⁸ Folsom Dam Cost Overrun. (Exhibit 37)

⁴⁹ Folsom Dam Raise & Auxiliary Spillway Alternative Project Alternatives Solutions Study (PASS II). Final Report, Bureau of Reclamation, DWR, the Reclamation Board, SAFCA, U.S. Army Corps of Engineers, Final Report, June 2006; Folsom Dam Safety and Flood Damage Reduction, Final EIS/EIR, Folsom, California, Mid-Pacific Region, Bureau of Reclamation, U.S. Army Corps of Engineers, Sacramento District, DWR, The Reclamation Board, SAFCA, March 2007.

⁵⁰ Finally No Flood Fight, Sacramento Bee Editorial, March 22, 2007; Folsom Dam Flood Control Project, Kathy Locke, Sacramento Bee, January 12, 2008. (Exhibit 38)

⁵¹ Reference Guide to Flood Control Performance on the American River, Friends of the River, January 7, 2008. (Exhibit 39) AR Flood Performance Chart, brief, 061206, Friends of the River, June 12, 2006. (Exhibit 40)

Short of building an ark, this is the best protection we can offer the citizens of Sacramento if it happens to rain for 40 days and 40 nights.⁵²

In 2006, Reclamation completed a report to update the potential costs to construct relevant components of the Auburn-Folsom South Project. They estimate long-term average annual project yield increases at 208,000 acre feet annually and the cost of the dam to be between \$6 and 10 billion.^{53 54} According to the Sacramento Bee:

For now there is no plan to resume additional construction on Auburn dam; doing so would require Congressional legislation.

‘We are simply delivering the report as we were required to do, and that’s pretty much the end of the story,’ [Reclamation Folsom Area Manager] Finnegan said.

Buttoning Up the Project

Reclamation has been demobilizing the Auburn Folsom South Unit construction effort since the 1980s.⁵⁵ Its project facilities are now used by others.⁵⁶ And on May 29, 2008, Rep. Doolittle presided over the dedication of a restored river and a new, permanent pump station to allow the Placer County Water Agency to deliver Middle Fork Project water to its service area — without Auburn dam. Citing Reclamation law and California law requiring that diversions have a beneficial use, California’s Attorney General had made a request to Reclamation that the river be

⁵² Remarks as Prepared for Delivery by The Honorable Dirk Kempthorne Secretary of the Interior Groundbreaking of Joint Federal Project Folsom Dam and Reservoir Sacramento, California, Department of the Interior, January 11, 2008. (Exhibit 41)

⁵³ Auburn-Folsom South Unit Special Report, Benefits and Cost Update, Central Valley Project California, U.S. Department of Interior, Bureau of Reclamation, Mid-Pacific Region, December 2006. p. TS-3

⁵⁴ Dam Cost Skyrocket, Gus Thomson, Auburn Journal, January 30, 2007; Auburn Dam Price Tag Soars, Matt Weiser, Sacramento Bee, January 31, 2007; Spending More Now to Study Auburn Dam Would be Wasteful, Auburn Journal Editorial, January 30, 2008; Forget an Auburn Dam, Sacramento Bee Editorial, February 1, 2008 (Exhibit 42)

⁵⁵ Right Now, Just a Giant Idle Hole, Dam: Weeds Grow Amid Site, Rod Boyce, Sacramento Union, January 22, 1989; 4 Hold Jobs and Hope at Auburn Dam Site, Patrick Hoge, Sacramento Bee, July 24, 1989. (Exhibit 43)

⁵⁶ Demobilization of Auburn Dam Construction memo. (Exhibit 44)

restored, and this project was how Reclamation responded.⁵⁷ The retiring Rep. Doolittle made an impassioned speech for Reclamation's Auburn dam and its water right while the restored river gurgled past the assembled dignitaries and invited guests.⁵⁸

Retrospective on Due Diligence

Since construction of Auburn dam was halted in 1975, no Administration has submitted a recommendation to Congress to authorize or reauthorize an Auburn dam — of any kind. Thirteen bills have been introduced by members to do so. None have passed even one House of Congress; one (HR 4211) formally cleared a committee, but it was not taken up on the floor of the House, another was defeated by a large vote on the floor. The U.S. Supreme Court, (the New Melones decision) has affirmed the requirement of Reclamation facilities to comply with state water law, a provision of Reclamation law reaffirmed by the Congress in 1992 in the Central Valley Improvement Act.⁵⁹

Reflections on Water Rights

The California Water Boards' Draft Strategic Plan Update (2008-2012) [May 30, 2008] contained an interesting item, a 'pie chart' included as appendix 3, that shows the amount of water permitted and licensed, and the amount not subject to appropriative rights. Add it up and there is 203 M acre feet annually (afy) directly diverted or diverted to storage. On paper, you get 543 M afy, 7 times the average annual runoff (about 77 M afy) in the whole state.⁶⁰

⁵⁷ California Attorney General memo to Reclamation on restoring the American River, Bill Lockyer, September 29, 1999. (Exhibit 45)

⁵⁸ Doolittle, Restored River Get Star Treatment at Pump Plant Dedication, Gus Thomson, Auburn Journal, May 29, 2008. (Exhibit 46)

⁵⁹ Summary of Legislation to Authorize or Reauthorize Auburn Dam. (Exhibit 47)

⁶⁰ SWRCB strategic plan pie chart, Distribution of Water Rights by Diversion Amount. (Exhibit 48)