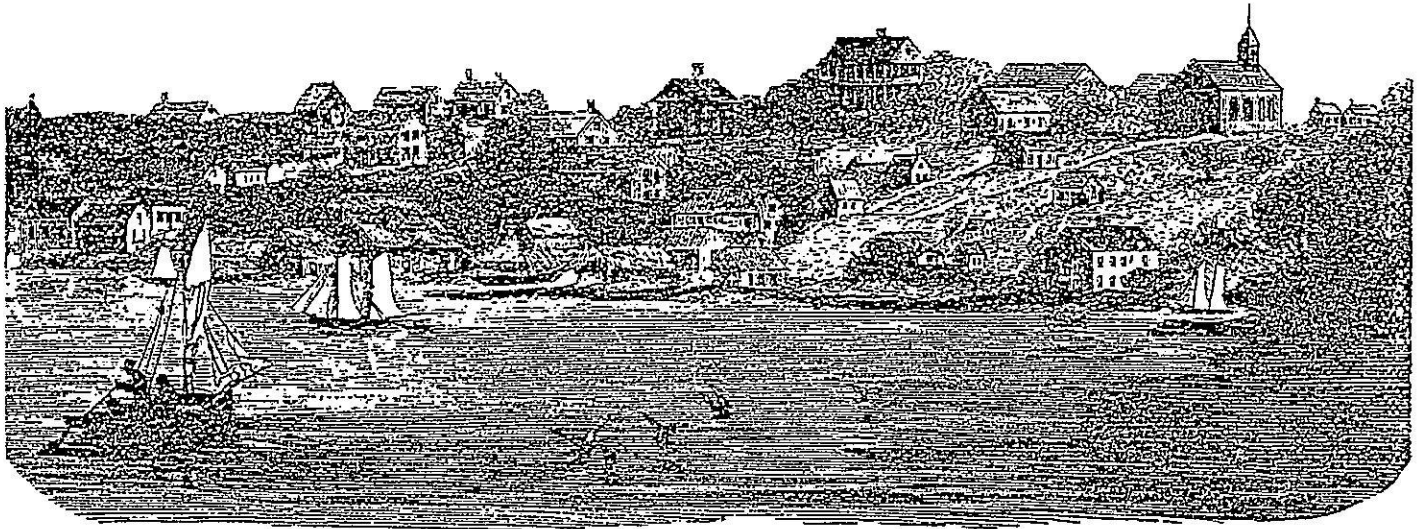


# CALIFORNIA V. UNITED STATES: The New Melones Decision



The last cubic yards of rock and earth will soon be poured. Construction has produced a massive earth-filled dam which blocks the canyon and dwarfs the structure, one mile upstream, that it will replace. The physical existence of New Melones Dam is now a fact. Moreover, the doubt which has plagued its future operations is now dispelled. With the United States Supreme Court decision in *California v. United States*, \_\_\_ U.S. \_\_\_, 98 S. Ct. 2985, 57 L. Ed. 2d 1018, (1978), the issue of which rules govern the determination of who ultimately controls the dam's operations has been resolved.

New Melones Dam is scheduled to be a part of the Central Valley Project (CVP). It was built by the Army Corps of Engineers and will be operated by the Bureau of Reclamation (Bureau) as part of the federally funded and operated CVP. The reservoir has a capacity of 2.4 million acre feet (MAF), compared with the capacity of 112,000 acre feet of the existing Melones Reservoir. The Stanislaus River, which the dam will back up, is an important recreation and wildlife resource in central California.

## Background

The legal controversy over New Melones began in 1972 when the Bureau applied to the California State Water Resources Control Board (Board) for permits to appropriate unappropriated water in the Stanislaus River. Following a period of study and hearings, the Board issued its Decision 1422 in April, 1973. The Board found that there was unappropriated water available during certain seasons. However, the Board found that the Bureau had "no specific plan for applying project water to beneficial use at any particular location." The Board approved the application, but made the permits subject to twenty-four conditions. The major import of the conditions was to: 1) prohibit full impoundment until the Bureau could show a specific plan for the water;

2) require preference for users in the Stanislaus River basin; 3) require storage releases to control the level of total dissolved solids (salinity) in the Sacramento-San Joaquin Delta, into which the Stanislaus flows, thereby protecting fish and wildlife.

The Bureau responded by filing a complaint for declaratory relief in United States District Court for the Eastern District of California. The Bureau alleged that it applied for the permits as a matter of comity, but was not required to do so as a matter of federal reclamation law. Thus the Bureau sought declaratory relief that: 1) When the United States chooses to submit applications to the Board, the State must grant the permit if unappropriated water is available; 2) The State cannot seek to control a federal reclamation project by placing conditions on the permit; and 3) Decision 1422 was void in all respects where it contradicted federal law. In *United States v. California* (1975), Judge McBride granted summary judgment to the United States (a non-moving party) and entered the requested relief.

On appeal, this judgment was affirmed. The Ninth Circuit Court of Appeals altered the judgment slightly and ruled that the United States was required by federal reclamation law, rather than just comity, to apply to the Board to determine if unappropriated water was available. However, the judgment was upheld in all other respects.

## Supreme Court Decision

The issue of whether a state can place conditions on a permit to a federal water project was resolved by the United States Supreme Court on July 3, 1978. The Court held that a state could make a permit for appropriative water rights to the federal government conditional so long as the conditions did not contradict a "clear congressional directive."

(continued on page 10)

## The New Melones Decision

(continued from page 3)

The focus of the issue was sec. 8 of the Reclamation Act of 1902. This section provides that, "nothing in this Act shall be construed as affecting . . . the laws of any State . . . relating to the control, appropriation, use or distribution of water used in irrigation . . . and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws . . ." In interpreting this section, the Court reviewed the development of water rights and reclamation law in the western states. Note was made of the "Severance Doctrine" expounded in *California Oregon Power Co. v. Beaver Portland Cement*, (1935) to show that water on the public domain was "subject to the plenary control of the States." After tracing the same concept through the Mining Act of 1866, the Desert Lands Act of 1877, and legislation in the 1890's which reserved reservoir sites for the federal government, the Court looked extensively at the legislative history of the 1902 Reclamation Act to determine the legislative intent in sec. 8.

The Court concluded that the legislative intent was unmistakably that of state control. Numerous quotes were taken from the Congressional Record. Among them was a response by a sponsor of the reclamation bill to the charge that under the bill the federal government could condemn water in contravention of state law. Representative Mondell said that "the bill provides explicitly that even an appropriation of water can not be made except under state law." The Court also quoted from the House Committee Report on the bill which said that "sec. 8 recognized State control over waters of non-navigable streams."

After establishing the legislative history and intent of the 1902 Act, the Court addressed itself to prior cases relied on by the lower courts. In *Ivanhoe Irrigation Dist. v. McCracken* (1958) and *City of Fresno v. California* (1963), the Court had ruled that sec. 8 did not compel the federal government to comply with a state law which was inconsistent with a specific federal provision. The most troubling problem was a statement in *Ivanhoe* that "we read nothing in sec. 8 that compels the United States to deliver water on conditions imposed by the State." In *United States v. California* the Court found that this statement "went beyond the actual facts of that case," disavowing it as "dictum." The Court's rationale focused on the fact that in *Ivanhoe* a direct conflict between federal and state law existed. Where no such conflict exists, as in *United States v. California*, the Court decided that sec. 8 does require the federal government to follow state law.

The majority concluded their argument by noting the Bureau policy of complying with state law, and by citing two recent Acts, the Flood Control Act of 1944, which authorized New Melones, and the McCarren Amendment (subjecting the United States to state court jurisdiction for general stream adjudications), to show the general legislative intent to have states control the water within their boundaries.

The dissent felt that the true rule should be the statement from *Ivanhoe*, arguing primarily on the

grounds that federal law controls. The case, however, can be viewed as a blow for state's rights, especially when compared with another case reported the same day, *United States v. New Mexico*. [A casenote on this case follows this article. Ed.] That case construed the doctrine of federal reserved water rights very narrowly and in accordance with the state position on the issue. Thus the two cases, both authored by Justice Rehnquist, support the view advanced by the Board that the states retain the power to control their water resources, absent superceding federal directives.

### The Future

The immediate future of the New Melones decision will be a further review of Decision 1422 by the federal district court to determine if any of its conditions do conflict with a "clear congressional directive." The State may seek to strengthen its position by renewing its arguments that the United States is equitably and collaterally estopped from denying the validity of Decision 1422. The equitable estoppel argument is that the federal government as in the past always initiated and complied with the Board's decisions and should not now be heard to deny the existence of the Board's jurisdiction. The collateral estoppel argument is that the Bureau failed to pursue its state court remedy, pursuant to California statute, and is therefore bound by the Board's decision. The District Court previously held that there was no collateral estoppel because the Board lacked jurisdiction over the Bureau. If *California v. United States* can be seen as recognizing this jurisdiction, the collateral estoppel argument may be revived.

Regardless of the outcome in this instance, the real impact of the ruling will be to give the State a much stronger hand in water management in California. In addition to delaying the inundation of the Stanislaus River until the Bureau can show a specific plan for the water, the decision will have a tremendous impact on the development of a comprehensive plan for management of the Sacramento-San Joaquin Delta. The Bureau has consistently maintained that it is not required to meet state-mandated water quality standards in the operation of its Delta facilities. The decision in *California v. United States* may be the ammunition the State needs to make its Delta water quality standards stick. This newly confirmed element of state control will also be a major factor in the continuing controversy over the Peripheral Canal. [See "The Peripheral Canal: Moment of Decision," *ENVIRONS*, Vol. 2, No. 2, and "The Peripheral Canal: A Setback in Round Two," *ENVIRONS*, Vol. 2, No. 4. Ed.] Moreover, it will provide a stronger state voice in the future development of reclamation projects in California.

It is interesting to note that this re-emerging concept of state control comes from amidst the most massive federal reclamation project in the nation. It is also fitting that the Court looked back to the early development of reclamation law in the west to find this concept. The Court pointed out that the federal government's intended role was that of assisting the state in developing its water resources rather than controlling it. From California's point of view, the New Melones decision has evened out a long-standing imbalance.

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