

appendix C

The Hodge Decision

APPENDIX C

WHAT IS THE HODGE DECISION?

Existing flow requirements, for the Lower American River, known as Decision D – 893, were set 40 years ago when much less was known about the life cycles and needs of the fish, particularly fall-run chinook salmon. Since then we have learned more about them and watched as their population further declined under the outdated standard.

In 1970 the East Bay Municipal Utility District (EBMUD) contracted with the U. S. Bureau of Reclamation for water that would be diverted from the Lower American River into the Folsom South Canal at Nimbus which is upstream of the Lower American River. Parties including Sacramento County, the Environmental Defense Fund, and Save the American River Association sued EBMUD over concern about how these increased diversions would further impact the Lower American River fishery. Millions of dollars were spent on legal costs and fishery studies.

At the end of the 17-year lawsuit, Judge Hodge evaluated all of the evidence and issued his decision which balanced the needs of the fishery with EBMUD’s contractual entitlement to American River water. Judge Hodge reasoned that because EBMUD had reasonable and feasible alternatives for meeting its needs, it could use the Folsom-South Canal diversion only when specified flows would remain in the river. These flows have come to be known as the Hodge Flows.

While Judge Hodge’s decision applies only to parties to that lawsuit, the Water Forum is considering the same standards for any water district that was found to have reasonable and feasible alternatives.

The Water Forum also recognizes that some agencies, such as those at higher elevations, have no reasonable and feasible alternatives to increased American River diversions in most years and therefore probably would not be held to the Hodge standard.

D – 893

September 15 – December 31	500 cubic feet per second
January 1 – September 14	250 cubic feet per second

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October 15 – February	2,000 cubic feet per second
March – June	3,000 cubic feet per second
July – October 14	1,750 cubic feet per second