

# R RIGHTS



## *State water control on trial*

SAN FRANCISCO, Calif. — The State of California has taken a dispute with the Federal Energy Regulatory Commission (FERC) over streamflow regulations directly to the 9th U.S. Circuit Court of Appeals. In a potentially precedent-setting case, FERC and California are arguing whether the federal agency has the authority to supersede the state's power to grant water rights and regulate streamflows. California's appeal has been joined by many parties filing "friend of the court" briefs, including 15 of the 17 western states and three environmental groups.

Rod Walston of the state attorney general's office explained that the case arose with an application to construct a hydroelectric project on Rock Creek in El Dorado County, Calif. FERC's permit imposed seasonal interim flow requirements of 15 and 30 cubic feet per second (cfs). When Rock Creek applied to California for

a water right, the state imposed a 60 cfs minimum streamflow. The project proponents went back to FERC and the federal agency ruled it had the superior jurisdiction.

Walston said the state bases its case on Section 27 of the Federal Power Act of 1920. That section says the act shall not interfere with state laws relating to "control, appropriation, use, or distribution of water."

Oral arguments before the court are expected in early fall. Walston predicted the case will reach the U.S. Supreme Court within a year.

California is also arguing with FERC over the provisions of Section 401 of the Clean Water Act which allows states to assume the federal water quality certification program. The law allows a state one year to certify or deny projects on the basis of their water quality impacts.

**State of California v. FERC, Case 87-7538, 9th Circuit Court of Appeals.**