

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22316 by)
UNITED STATES BUREAU OF RECLAMATION,)
Applicant,)
DELTA WATER USERS ASSOCIATION, et al.,)
Protestants.)
Rock Slough in Contra Costa County)

Decision 1308

Amended by Order 9/5/68

DECISION APPROVING APPLICATION IN PART

Introduction

Application 22316, filed by the United States Bureau of Reclamation, is for a permit to appropriate 5,400 acre-feet annually by storage in Contra Loma Reservoir to be collected from January 1 to December 31 of each year from Rock Slough, which connects with Old River, a San Joaquin River-Delta channel. Protests were filed and a hearing was held on February 15, 1967, by the State Water Rights Board (predecessor of the State Water Resources Control Board). At the hearing, amendments to the application were offered and accepted which added recreation as a use, increased the place of use to include a small recreation area around the reservoir, and corrected

the estimated acreage of the place of use to read 120,000 acres. As amended, the application is for water to be used for irrigation, domestic, municipal, industrial, water quality control, and recreational purposes on 120,000 acres of land in Contra Costa County as delineated on a map filed with the application.

Description of the Project

The water applied for is to be diverted and conveyed by and through the existing Contra Costa Canal System when there is unused capacity, to a point near the Contra Loma Reservoir, where it will be lifted into the reservoir by a combination of pumps with a designed capacity of 21.16 cubic feet per second. The Contra Costa Canal System, a unit of the Central Valley Project (CVP), diverts water from Rock Slough through a series of four pumping plants, each with five pumps. Total or partial shutdown of any pumping plant due to power, pump, or motor failure interrupts service which is more than 90 percent to municipal and industrial users. Water stored in Contra Loma Reservoir will be released as necessary primarily to maintain the flow in the Contra Costa Canal when the normal supply fails, thereby increasing the reliability of the system. The reservoir will have an active capacity of 1,800 acre-feet and will be filled not more than three times a year.

Availability of Unappropriated Water

Application 22316 was accepted and processed pursuant to statutory and regulatory provisions as an application for a permit to appropriate unappropriated water. The application is on the standard printed form, which states that the applicant "does hereby make application for a permit to appropriate the following described unappropriated waters from the State of California." However, in a supplement attached to and made a part of the application, the applicant states, "Direct diversions of water to be stored in the Contra Loma Reservoir will be made under Applications 9366 and 9367 held by the United States. Re-diversion of Central Valley Project water will also be made under United States Applications 5626 [etc.] to supplement the diversions for storage requested in this application." This statement together with testimony by the applicant's witness at the hearing indicates that the applicant is requesting a permit to store 5,400 acre-feet of water annually, which it proposes to divert or redivert from Rock Slough under existing permits.

While it is true that the applicant now has permits which authorize direct diversion of not to exceed 350 cubic feet per second all year from Rock Slough through the Contra Costa Canal and that water will not be diverted at a greater

rate with Contra Loma Reservoir in operation, applicant's right under these permits does not entitle it to divert more water than is beneficially used in the authorized manner, which means that these permits do not authorize diversion from Rock Slough into storage even though such diversion is within the authorized rate, quantity, and season. Any water placed in storage will necessarily be diverted from Rock Slough under another right and will have the priority of such other right. It follows that Application 22316 must be treated on the same basis as any other application and its approval depends upon a finding by the Board that unappropriated water is available in Rock Slough.

There can be no question as to the availability of 5,400 acre-feet of unappropriated water in the Delta on an annual basis, but the season of availability is limited. For several years, it has been the policy of this Board to exclude July, August, and September from the season of diversion from the Delta based on numerous water rights studies which show only small quantities of water available in some of these months, with rare frequency. In Decision D 1291, on reconsideration of Decision D 1275, which dealt with appropriations for the State Water Project, an exception to the general rule was found justified under the particular circumstances. For any application with a later priority,

the frequency and quantities of water available in the Delta during July, August, and September as shown by conventional water rights studies would be insignificant. USBR Exhibit No. 16, which presents data on inflow to the Delta in a typical wet year with and without operation of the CVP, demonstrates that after all Delta users are satisfied, the water available in the Delta during July, August, and September is water which has been released from CVP storage. Therefore, as the only water available in the Delta in these months for diversion to storage in Contra Loma Reservoir by the United States is water released from CVP storage which it is entitled to redivert under its existing permits, these months will be excluded from the season of diversion in the permit issued pursuant to this application for unappropriated water. A permit so restricted will allow the applicant to operate as planned, either diverting pursuant to this permit or rediverting pursuant to other permits (USBR Exh. 3) to storage in Contra Loma Reservoir at any time of the year.

Water Quality

The only issue raised at the hearing concerned the protection of water quality in the Delta. Protestants contended that the applicant was requesting a permit to

divert water at times when it would not divert water under its existing permits and that the quality of water in the Delta should be protected by a condition in the permit restricting diversion when the quality was below minimum standards as defined in Delta Water Quality Criteria dated November 19, 1965 (USBR Exh. 17).

The applicant contended that high quality water is required for the use to be made of water diverted from the Delta under this application so that it must necessarily maintain a satisfactory quality of water in the Delta and no restrictions are necessary.

The subject of water quality in the Delta was considered in Decision D 990; the Board found that sufficient information was not available to formulate conditions regarding water quality in the Delta and reserved jurisdiction to consider the question at a later date. As this application and the applications considered in Decision D 990 are for water to operate the same unit of the Federal Central Valley Project, the same reservation of jurisdiction will be made in the permit issued on this application.

Deleted [In Decision D 1275 as amended by Decision D 1291, which approved applications for water to operate the State Water Project, the Board also reserved jurisdiction with regard to water quality control in the Delta, but imposed

[certain restrictions in the interim until a final determination can be made on the subject. It was determined that no restrictions were necessary during December through March, that restrictions defined in Condition No. 15 should apply during April through June, and that compliance with the contract between the State Department of Water Resources and Delta water users would provide reasonable protection during the balance of the year. Nothing has occurred in the relatively short interval since Decisions D 1275 and D 1291 were issued to change this situation, so that the findings therein with regard to interim quality requirements are adopted for the purposes of this decision. Therefore a condition similar to Condition No. 15 of Decision D 1275 will be included in the permit to be issued pursuant to this application, but as the present applicant has not entered into a contract with regard to Delta water quality, there will be no requirement comparable to Condition No. 16-a of Decision D 1275. July, August, and September will be excluded from the season of diversion pursuant to this application, which leaves only October and November to be considered. In view of the relatively small quantity of water involved in this application and the evidence that the operations [of the applicant require high quality of water in the Delta

when it is diverting, the Board concludes that no other condition relative to interim water quality standards is necessary.]

Other Permit Terms

The applicant holds Permits 12725 and 12726 (Applications 9366 and 9367) issued pursuant to Decision D 990, which contain limitations on the rate at which water may be diverted equal to the maximum capacity of the Contra Costa Canal System. As diversion under this application will utilize part of the capacity of the system and will supply part of the demands on the system, the combined rate of diversion under the permit issued on this application and Permits 12725 and 12726 will be limited as in the present permits.

As Contra Loma Reservoir is an integral part of the CVP, Conditions Nos. 22, 25, 26, 27 and 28 of Decision D 990 will be included in the permit issued pursuant to this application.

Conclusion

The evidence indicates, and the Board finds, that unappropriated water exists in the Delta at times and in sufficient amounts to justify the approval of Application 22316 in part; that the uses proposed are beneficial;

that such waters may be taken and used as proposed, subject to certain conditions, without interference with the exercise of prior rights; and that the application should be approved and a permit issued pursuant thereto, subject to the usual terms and conditions and the additional terms and conditions indicated in this decision. The Board finds that as so conditioned the developments proposed in this application will best develop, conserve, and utilize in the public interest the water sought to be appropriated.

ORDER

IT IS HEREBY ORDERED that Application 22316 be, and it is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 5,400 acre-feet per annum by storage to be collected at a maximum rate of 21.16 cubic feet per second from about October 1 of each year to about June 30 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. The maximum quantity herein stated may be reduced in the license if investigation warrants.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1990.

4. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.

5. All rights and privileges under this permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

6. The combined rates of diversion from Rock Slough, pursuant to this permit and permits numbered 12725 and 12726 (Applications 9366 and 9367), shall not exceed 350 cubic feet per second.

7. Storage of water under this permit for use beyond the Sacramento-San Joaquin Delta* or outside the watershed of the Sacramento River Basin** shall be subject to rights initiated by applications for use within said watershed and Delta regardless of the date of filing said applications.

8. The State Water Resources Control Board reserves continuing jurisdiction over this permit for such time as may be prescribed by the Board, for the purpose of formulating terms and conditions relative to salinity control in the Sacramento-San Joaquin Delta. Permittee shall, on or before January 1, 1969, and each six months

* For the purpose of this order the Sacramento-San Joaquin Delta shall be that area defined in Water Code Section 12220.

** For the purpose of this order the Sacramento River Basin shall be that portion of the State encompassed by a line beginning at the Sacramento-San Joaquin Delta at Collinsville; thence northeasterly to the crest of the Montezuma Hills; thence northwesterly through the crest of the Vaca Mountains; thence northerly along the crest of Putah, Cache, Stony, Thomes, and Cottonwood Creek Basins and along the crest of the Trinity Mountains to Mt. Eddy; thence easterly through Mt. Shasta and along the northern boundary of the Pit River Basin to the crest of the Warner Mountains; thence southerly and westerly along the boundary of the Pit River Basin to Red Cinder Cone Peak; thence easterly along the northern boundary of the Feather River Basin to the crest of the Sierra Nevada; thence southerly along the crest of the Sierra Nevada to the southern boundary of the American River Basin; thence westerly along the southern boundary of the American River Basin to the eastern boundary of said Delta; thence northerly, westerly, and southerly along the boundary of the Delta to the point of beginning.

thereafter, submit to the Board a written report as to the progress of negotiations relative to agreement between permittee and the State of California and/or the permittee and water users in the Delta and in Northern Contra Costa County.

9. The Board reserves continuing jurisdiction over this permit for an indefinite period not to extend beyond the date of issuance of license for the purpose of coordinating terms and conditions of the permits with terms and conditions which have been or which may be included in permits issued pursuant to other applications of the United States in furtherance of the Central Valley Project and applications of the State of California in furtherance of the State Water Resources Development System.

~~Deleted~~ 10. Until further order of the Board, no water shall be diverted to storage under this permit during the period from April 1 through June 30 at any time the maximum surface zone chloride ion content of the San Joaquin River at Blind Point exceeds 250 parts per million. If Blind Point is not used as a monitoring station, permittee shall establish a correlation with some other station satisfactory to the Board to provide the necessary data on quality at Blind Point.

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11. Upon the request of the Board, permittee shall make such measurements and maintain and furnish to the Board such records and information as may be necessary to determine compliance with the terms and conditions of this permit, including the recognition of vested rights and for the further purpose of determining the quantities of water placed to beneficial use under the permit.

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12. This permit shall be subject to "Agreement Between the United States of America and the Department of Water Resources of the State of California for the Coordinated Operation of the Federal Central Valley Project and the State Feather River and Delta Diversion Projects" dated May 16, 1960, filed of record as Department of Water Resources Exhibit 77 at the hearing on Applications 5625, 5626, 9363, 9364, 9365, 9366, 9367, 9368 and 10588.

Adopted as the decision and order of the State
Water Resources Control Board at a meeting duly called
and held at Eureka, California.

Dated: **JUL 18 1968**

/s/ George B. Maul
George B. Maul, Chairman

/s/ W. A. Alexander
W. A. Alexander, Vice Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ Norman B. Hume
Norman B. Hume, Member

/s/ E. F. Dibble
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Protestants.

Source: Rock Slough
County: Contra Costa

ORDER AMENDING DECISION 1308 AND IN OTHER RESPECTS
DENYING PETITIONS FOR RECONSIDERATION

Petitions for reconsideration of Decision 1308 were filed by the United States Bureau of Reclamation and the Contra Costa County Water District.

The Bureau objects to the Board's finding that no unappropriated water is available for appropriation under Application 22316 during the months of July, August and September. In its petition, the Bureau states that the primary purpose of this application was to provide for the temporary offstream storage in Contra Loma Reservoir of water diverted under permits issued on Applications 9366 and 9367 and that storage in Contra Loma Reservoir will not result in an increase over the actual scope of the appropriation envisioned by Applications 9366 and 9367 but is part of the progressive development originally contemplated and consummated with due diligence. The Bureau contends the Board was in error in its findings that existing permits issued pursuant to applica-

tions 9366 and 9367 do not authorize diversion from Rock Slough into storage and that Application 22316 must be considered as a separate application to appropriate unappropriated water.

In substance, the Bureau seems to be proposing that the Board issue a new permit which would authorize a change under the existing permits from direct diversion to direct diversion in part and diversion to storage in part. The contentions of the Bureau do not raise any issues that were not considered and discussed in Decision 1308. Existing permits cannot be amended by issuing a new permit. Each application for a permit must be judged on its own merits and in light of availability of unappropriated water at the time the application was filed. The contention of the Bureau that diversion to storage will not increase the scope of the appropriation envisioned by Applications 9366 and 9367 but is part of the progressive development originally contemplated, is incorrect. Applications 9366 and 9367, which were state filings, clearly set forth the plan and intent that the proposed appropriation was to be accomplished by direct diversion only, from which it follows that a right cannot be acquired under these applications to more water than can be beneficially used by direct diversion. Since storage of water in Contra Loma Reservoir will cause more water to be used than would be used by direct diversion, such storage must be under a new and separate water right.

The petition of the Bureau includes a request for reconsideration of Paragraph 10 of the order, pertaining to protection of water quality in the Delta. Paragraph 10 was included on the theory that the restrictions on the right acquired under this application should be consistent with the restrictions imposed on the State of California for diversions from the Delta under applications with earlier priority. Such consistency should undoubtedly be the eventual objective. However, a permit issued pursuant to this application will be interrelated with the other permits held by the Bureau for the Central Valley Project, including permits for direct diversion and redirection of water by means of the Contra Costa Canal. It would serve no useful purpose and would be impractical to require the Bureau to observe water quality criteria when diverting water to storage which it need not observe when diverting water through the same canal for use without storage. Also, the same reservation of jurisdiction over water quality protection in the new permit as in the old permits will provide the basic protection to Delta water users. Little or no additional protection would result from interim restrictions in the new permit, particularly in view of the small quantity of water involved in comparison to the total quantity of water authorized to be diverted from the Delta under existing permits which do not include interim quality restrictions. Therefore, it is concluded that a

special condition in the permit relative to interim water quality standards is not necessary.

The petition of the Contra Costa County Water District is based on several grounds. The District contends that Decision 1308 is essentially no more than an amendment of the Bureau's permits under Applications 9366 and 9367. In substance, this is the same as the Bureau's contention already discussed and disposed of. The District contends that the decision should not limit the Bureau to the storage of 5,400 acre-feet per annum but should allow it to store whatever amount is necessary within the 350 cubic feet per second limit. The application specifies 5,400 acre-feet per annum and the Board cannot authorize diversion of more water than is requested in the application. The District also objects to permit Condition No. 7 on the basis that it is not consistent with the Watershed Protection Act. This subject was thoroughly considered and decided in Decision D 990 which imposed on the Bureau's basic permits to divert and redivert water into the Contra Costa Canal certain limitations with regard to the watershed of origin. The permit issued under this application will be inter-related with the Bureau's present permits and therefore should be subject to identical limitations concerning the watershed of origin.

ORDER

IT IS HEREBY ORDERED that Decision 1308 be amended by deleting the last four lines of page 6, all of page 7, the first three lines of page 8, and Paragraph 10 on page 12, and by renumbering Paragraphs 11 and 12 on page 13 as Paragraphs 10 and 11.

IT IS FURTHER ORDERED that in all other respects the petitions for reconsideration of Decision 1308 filed by the United States Bureau of Reclamation and the Contra Costa County Water District be, and they are, denied.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: September 5, 1968

/s/ George B. Maul
George B. Maul, Chairman

/s/ W. A. Alexander
W. A. Alexander, Vice Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ Norman B. Hume
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/s/ W. A. Alexander
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/s/ E. F. Dibble
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