

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 5643A,) 14602 and 20532 by) UNITED STATES BUREAU OF RECLAMATION,) Applicant,) PACIFIC GAS AND ELECTRIC COMPANY,) et al.,) Protestants.)	Decision 1310 Source: Pit River in Modoc County
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The Project

Applications 5643A, 14602 and 20532 are held by the United States Bureau of Reclamation (Bureau) for the Allen Camp Unit of the Central Valley Project. Major works on the Pit River and in Big Valley in Modoc and Lassen Counties are planned for flood control and water conservation purposes.

These works include a dam 130 feet high on Pit River to be constructed about 9 miles upstream from the town of Lookout. This dam would form a long narrow reservoir with a capacity of 190,000 acre-feet of water and a surface area of 4,800 acres. There would be channel improvements, a diversion dam near Lookout, wells, pumping plants, drainage facilities and approximately 64 miles of canals which would supply water for irrigation in Big Valley.

Substance of Applications

Application 5643 was filed in 1927 by the State Department of Finance pursuant to Chapter 286, Statutes of 1927 (now Part 2, Division 6, of the Water Code). The application is for a permit to appropriate 80,000 acre-feet per annum (afa) by storage and 400 cubic feet per second (cfs) by direct diversion from Pit River between September 1 of each year and June 15 of the succeeding year at Allen Camp Dam and Reservoir, and to appropriate additional water at other points above Allen Camp Dam and from Ash Creek. The portion involving direct diversion and storage at Allen Camp Dam and Reservoir was assigned to the Bureau and numbered 5643A. Water is to be used for irrigation, domestic, stockwatering, municipal, industrial, recreational and fish maintenance and enhancement purposes.

The place of use consists of 56,158 acres gross area with 22,000 acres to be irrigated in any one year. Water will be delivered through project facilities to a proposed 7,000-acre wildlife refuge area and 4,513 acres of land with prior water rights all within the gross area of the place of use. Water will also be served through project facilities to 2,323 acres of land outside the place of use with prior rights.

Application 14602 was filed in 1951 by the Pit Soil Conservation District as trustee for Big Valley Irrigation

District and was later assigned to the Bureau. It is for a permit to appropriate from Pit River 75,000 afa by storage from October 1 to June 1 of each season. The purposes of use, points of diversion and rediversion and place of use are all the same as in Application 5643A.

Application 20532 was filed in 1961 by the Department of Water Resources pursuant to Part 2 of Division 6 of the Water Code and was later assigned to the Bureau. It is for a permit to appropriate 155,000 afa by storage from September 1 to June 15 of each season. The purpose of use, points of diversion and rediversion and place of use are all the same as in Application 5643A.

As amended by the Bureau, the applications provide that the total storage under all three applications will not exceed 190,000 afa.

The three applications were protested by the California Department of Fish and Game and Pacific Gas and Electric Company (PG&E) and a hearing was held before the State Water Rights Board (predecessor of the State Water Resources Control Board) in Alturas on November 2, 1965.

Appearances were made by the Bureau, as applicant, Fish and Game and PG&E, as protestants, and by Big Valley Irrigation District and Lassen-Modoc County Flood Control and Water Conservation District as interested parties.

Unappropriated water

PG&E operates a series of hydroelectric power plants on the Pit River below Allen Camp Dam and above Shasta Reservoir. The uppermost plant that uses Pit River water is about 65 river miles below Allen Camp Dam and is designated Pit No. 3. License 600 issued on Application 1891 with a priority of 1920 confirms a right to divert 3,000 cfs for this plant. The company holds License 5963 with a priority of 1920 for 3,000 cfs and License 5964 with a priority of 1952 for 500 cfs for use at Pit No. 4, which is downstream from Pit No. 3. Pit No. 5, downstream from Pit No. 4, utilizes 3,500 cfs. The company claims a riparian right for this plant and has purchased all of the lands which are riparian to Pit River between the intake of the company's diversion canal and the power plant.

Historical records show that flow of Pit River frequently drops below 3,000 cfs, particularly during September, October and November (PG&E Exh. 3 and 4). The company has asked that these months be deleted from any permits issued to the Bureau. However, flow in excess of 3,000 cfs has occurred at times during these months in some years and studies conducted by the Bureau indicate that the Allen Camp Project will, on the average, increase the flow available to the company during these months (USBR Exh. 26).

A permit term restricting diversions by the Bureau to times when water available to PG&E at Pit No. 3 is 3,000 cfs or more will adequately protect the prior rights of the company not only at that plant but at the other plants as well.

Operation of Allen Camp Dam and Reservoir in the manner proposed by the Bureau will not impair the prior rights of other persons to the use of water of either the Pit River or the Sacramento River.

The Allen Camp Project is favored by the Big Valley Irrigation District and by both Lassen and Modoc Counties. Zone 2 of the Lassen-Modoc County Flood Control and Water Conservation District has been created so as to provide a suitable entity to contract with the Bureau for project water. Big Valley Irrigation District constitutes the major portion of the service area of the project.

Fish and Game

An agreement between the Department of Fish and Game and the Bureau dated December 8, 1966, provides for operation of the project in a manner satisfactory to the Department, although some of the provisions are subject to approval by Congress. By memorandum to the Board dated December 20, 1966, the Department stated that its protests

to the applications may be dismissed if those provisions of the agreement which are within the Board's jurisdiction are made conditions of the Bureau's permits. The Bureau has agreed to this proposal and the permits will be conditioned accordingly.

Reservations for Uses of Water Above Allen Camp

The assignment of Application 5643A by the California Water Commission to the Bureau was made expressly subject to certain conditions, including the following:

"(1) Appropriation of water under said portion of Application 5643 herein assigned is subordinate to uses of water in the Pit River watershed above Allen Camp Dam which have been made prior to the date of this assignment on lands being irrigated prior to the date of assignment and for which applications have been filed with the State Water Rights Board or for which court decrees have been entered;

"(2) Use of water which may ultimately be made under the remaining unassigned portion of said Application 5643 for use in areas above Allen Camp Dam on the Pit River with a priority equal to the portion hereby assigned, will be limited to developments envisioned under Bulletin No. 3 of the Department of Water Resources entitled, 'The California Water Plan,' and as further defined in Bulletin No. 86 of the Department of Water Resources entitled, 'Upper Pit River Investigation,' or developments which would not result in a water yield in excess of that which would be obtained by the operation of the four reservoirs above Allen Camp Dam envisioned in said Bulletins Nos. 3 and 86."

Both the Bureau and Modoc County had previously consented to inclusion of these terms in the assignment of Application 5643A. The assignment of Application 20532

contains similar conditions. The Bureau indicated it has no objection to inclusion of either of these terms in any permits issued on its applications, including Application 14602 (RT 128).

Modoc County appeared through its special counsel at a hearing held by a subcommittee of the Commission on the Bureau's request for assignment of the applications and proposed that certain other conditions be included in the assignments for the protection of existing and future uses of water in Modoc County. The stipulated provisions took the place of the conditions proposed by the county and were the result of discussions at the hearing and subsequent negotiations. Apparently satisfied with the protection afforded by these provisions, Modoc County made no appearance at the hearing held by the Board.

The second condition above quoted is not a restriction on use under the assigned applications but rather purports to limit future use in the watershed above Allen Camp Dam under the unassigned portion of Application 5643 which carries a priority equal to that acquired by the Bureau for the Allen Camp Project. This condition may have formed part of the consideration for the Bureau's acceptance of the first condition. At any rate, since these conditions were found mutually acceptable to both the Bureau and Modoc County, and were approved by the California

Water Commission which at that time was the state agency primarily responsible for protecting counties of origin, and since no appearance was made before the Board by Modoc County or by any interest in that county, we find that provisions which can fairly be said to fall within the ambit of these conditions should be included in permits to be issued to the Bureau.

Although the first-quoted assignment condition refers only to pre-assignment uses for which applications had been filed with the State Water Rights Board or for which court decrees had been entered, the Bureau interprets this to mean uses made under any valid claim of right (RT 37).

The assignment provision refers to uses "on lands being irrigated prior to the date of assignment," but the Bureau does not interpret this to exclude beneficial uses other than irrigation (RT 38).

The Bureau's permits should provide that they are subordinate to all lawful uses of water in the Pit River watershed above Allen Camp Dam which were commenced prior to October 2, 1964, the date of assignment of Applications 5643A and 20532 to the Bureau.

The unassigned portion of Application 5643 covers appropriation of 625 cfs by direct diversion and 110,000 afa by storage, exclusive of Ash Creek. The application

refers to Jess Valley Reservoir on the South Fork Pit River as the place of storage. Bulletin 3 of the Department of Water Resources, "The California Water Plan," suggests for future consideration four small reservoirs, one each on Parker Creek, South Fork at Jess Valley, Stony Canyon Creek at Sears Flat, and enlargement of Bailey Reservoir on Crooks Canyon Creek. None of these developments have been studied nor were they considered in detail in Bulletin 3. Department of Water Resources Bulletin 86, "Upper Pit River Investigation," states on pages 115 and 116 that although intensive study of future upstream developments has not yet been undertaken, the aggregate new average seasonal yield of the four reservoirs mentioned in Bulletin 3 would be about 16,400 acre-feet and that they would cause an average seasonal depletion of the Pit River at Allen Camp of about 13,700 acre-feet. The Bureau's operation study for the Allen Camp Reservoir makes allowance for these four reservoirs and accepts the State's estimate of the future depletion which will result from them (RT 50). At the hearing before the California Water Commission, representatives of the Bureau stated that in planning the Allen Camp Project the four upstream reservoirs had been taken into consideration and that no objection would be made to other substitute developments so long as depletion of the flow at Allen Camp Dam was not increased over the estimate made by the State (RT 57). The assignment

Since Applications 14602 and 20532 have a later priority than Application 5643, permits issued to the Bureau on those applications should be subordinate to future uses above Allen Camp Dam to the extent of the same reduction of inflow to Allen Camp Reservoir whether the uses are under assigned portions of Application 5643 or under independent applications.

Wildlife Enhancement

The Bureau requested that the applications be amended to include wildlife enhancement as a purpose for which water will be used. This request was supported by evidence and the applications will be amended accordingly.

Goose Lake Basin

The assignment of Applications 5643A and 20532 specifically excludes water originating in Goose Lake Basin. A representative of the Goose Lake Soil Conservation District had appeared at the hearing conducted by the subcommittee of the California Water Commission and requested such exclusion. Counsel for the Bureau stated that water from that source had not been considered for the Allen Camp Project. Therefore, the Bureau's permits should exclude water from the Goose Lake Basin.

Water Rights Appurtenant to the Land

In accordance with the views expressed in Decisions D 935 and D 990, the permits should provide in substance that rights to be acquired thereunder will be appurtenant to the land on which the water is used and that such rights shall continue in perpetuity.

ORDER

IT IS HEREBY ORDERED that Application 5643A, 14602 and 20532 be, and they are, approved, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1(a). The water appropriated pursuant to Application 5643A shall be limited to the quantity which can be beneficially used and shall not exceed 400 cubic feet per second by direct diversion and 80,000 acre-feet per annum by storage to be diverted and collected from about September 1 of each year to about June 15 of the succeeding year.

(b). The water appropriated pursuant to Application 14602 shall be limited to the quantity which can be beneficially used and shall not exceed 75,000 acre-feet per annum by storage to be collected from about October 1 of each year to about June 1 of the succeeding year.

(c). The water appropriated pursuant to Application 20532 shall be limited to the quantity which can be beneficially used and shall not exceed 155,000 acre-feet per annum by storage to be collected from about September 1 of each year to about June 15 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 total quantity of water diverted to storage pursuant to permits issued on Applications 5643A, 14602 and 20532 shall not exceed 190,000 acre-feet per annum.

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

4. Actual construction work shall begin on or before June 1, 1969, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1983.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

7. 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.

8. 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.

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

10. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit.

11. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

12. Subject to the existence of long-term water delivery contracts between the United States and public

agencies and subject to the compliance with the provisions of said contracts by said public agencies, this permit is further conditioned as follows:

(a) The right to the beneficial use of water for irrigation purposes, except where water is distributed to the general public by a private agency in charge of a public use, shall be appurtenant to the land on which said water shall be applied, subject to continued beneficial use and the right to change the point of diversion, place of use, and purpose of use as provided in Chapter 10 of Part 2 of Division 2 of the Water Code of the State of California and further subject to the right to dispose of a temporary surplus.

(b) The right to the beneficial use of water for irrigation purposes shall, consistent with other terms of this permit, continue in perpetuity.

13. This permit does not include water originating in the Goose Lake Basin.

14. No water shall be diverted under this permit at any time that the water available for diversion at Pit No. 3 power plant of Pacific Gas and Electric Company is less than 3,000 cubic feet per second as set forth in License 600 (Application 1891).

15. This permit shall be subject to "Memorandum of Agreement for the Protection and Preservation of Fish and Wildlife and Recreational Resources of the Pit River, and Big Valley, in Modoc and Lassen Counties, as Affected by the Construction and Operation of the Proposed Allen Camp Dam and Related Works, and Various Diversions Proposed Under the Above Entitled Applications" dated December 8, 1966, filed with the State Water Resources Control Board, to the extent the provisions thereof are within the jurisdiction of the Board.

16. This permit shall be subordinate to all lawful uses of water in the Pit River watershed above Allen Camp Dam which were commenced prior to October 2, 1964, the date of assignment of Applications 5643A and 20532 to the United States Bureau of Reclamation.

17. Rights acquired under the permit issued pursuant to Application 5643A shall have equal priority with uses of water within the Pit River watershed above Allen Camp Dam commenced subsequent to October 2, 1964, under assigned portions of Application 5643 or other lawful appropriations, regardless of the dates on which they were initiated, to the extent of 13,700 acre-feet annual average reduction of beneficially usable inflow to Allen Camp Reservoir.

18. Rights acquired under the permits issued pursuant to Applications 14602 and 20532 shall be subordinate to uses of water in the Pit River watershed above Allen Camp Dam commenced subsequent to October 2, 1964, under assigned portions of Application 5643 or other lawful appropriations, regardless of the dates on which they were initiated, to the extent of 13,700 acre-feet annual average reduction of beneficially usable inflow to Allen Camp Reservoir.

19. Permits issued pursuant to Applications 5643A and 14602 shall be subject to the continuing jurisdiction of the Superior Court of the State of California in and for the County of Modoc as set forth in paragraph 37 of the Decree in Action No. 6395, in the matter of the determination of the rights of the various claimants of the water of Pit River stream system between Canby Bridge and Muck Valley gage, except Ash Creek in Modoc and Lassen Counties.

20. Permits issued pursuant to Applications 5643A and 20532 shall include the following additional term:

Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).

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
E. F. Dibble, Member