

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 18714
of the United States Bureau of
Reclamation and Application 18732
of Chowchilla Water District to
Appropriate from Chowchilla River
in Madera County

Decision 1365

DECISION APPROVING APPLICATION 18714 IN PART
AND DENYING APPLICATION 18732

The United States Bureau of Reclamation (Bureau) and Chowchilla Water District having filed Applications 18714 and 18732, respectively, for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on February 25 and 26, 1969; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of Application

1. Application 18714 of the Bureau is for a permit to appropriate 1,000 cubic feet per second (cfs) by direct diversion from January 1 to December 31 of each year and 300,000 acre-feet per annum (afa) by storage from January 1 to December 31 of each year for irrigation, domestic, flood control, and recreational purposes from Chowchilla River tributary to San Joaquin River in Madera County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 22, T8S, R18E, MDB&M. The place of use is described as being within the service areas of districts, municipalities,

water companies, and other legal entities lying within T7-to-13S, R10-to-21E, MDB&M. However, at the hearing, the Bureau stated that the place of use will be limited to the service areas of Chowchilla Water District and LaBranza Water District.

2. Application 18732 of Chowchilla Water District is for a permit to appropriate 300,000 afa by storage from January 1 to December 31 of each year for irrigation, incidental domestic, and stockwatering purposes from Chowchilla River tributary to San Joaquin River in Madera County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 22, T8S, R18E, MDB&M. The place of use is within the service areas of Chowchilla Water District (see paragraph 4).

3. At the hearing, the Bureau stated that it would not attempt to support the requested 1,000 cfs by direct diversion, and could only show, at the most, 143,000 acre-feet of unappropriated water available for storage in any one year (RT 8).

4. At the hearing, Chowchilla Water District amended the place of use requested in its application to include the LaBranza Water District. The amended area is delineated on Chowchilla Water District Exhibit 2.

Protests

5. Protests were filed against Application 18714 by G. Oberti and Sons as successor to the Estate of Richard O. Bliss, W. P. Roduner, J. D. Knapp as successor to Ruth K. Trost, Grace C. and John P. Arnold, and G. D. Turnbow.

Protest were filed against Application 18732, by G. D. Turnbow, Grace C. Arnold, et al, and Estate of Richard O. Bliss.

The Proposed Project

6. Both applications are to appropriate any unappropriated water which may be developed by the proposed Buchanan Dam project. Buchanan Dam was authorized by the United States Congress in Public Law 87-874, 87th Congress (76 Stat. 1173). The dam is designed "for the benefit of navigation and the control of destructive floodwaters and other purposes" and is "authorized to be prosecuted under the direction of the Secretary of the Army." (76 Stat. 1173, Sec. 203). The dam and reservoir are to be located on Chowchilla River about 16 miles northeast of the City of Chowchilla. The capacity of the reservoir is to be approximately 150,000 acre-feet; of this amount 45,000 acre-feet would be reserved for flood control purposes and a pool of 10,000 acre-feet would be reserved for sediment storage and for fish, wildlife, and recreational purposes.

Relevant Contracts

7. On July 5, 1950, Chowchilla Water District entered into a contract with the United States for the purchase of 54,300 afa of Class I water and 80,200 afa of Class II water to be delivered from storage behind Friant Dam on San Joaquin River via Madera Canal to Chowchilla River thence to Chowchilla Water District. On May 28, 1968, a contract was executed between the United States, Chowchilla Water District, and LaBranza Water District (USBR Exh. 1). The LaBranza Water District is adjacent to a portion of the northerly boundary of Chowchilla Water District. The contract provides for the "furnishing of stored water from Buchanan." (USBR Exh. 17). Sections three and four of the contract provide that by agreement, the districts shall appoint a watermaster who shall control the storage behind Buchanan Dam

subject to: (1) written agreement between the districts, approved by the federal contracting officer; (2) flood control regulation; (3) prior rights of downstream users; and, (4) minimum pool of 10,000 acre-feet for recreation and incidental uses.

Availability of Unappropriated Water

8. Two operation studies were introduced by the Bureau (U-1 and R-4) to show the existence of unappropriated water available for storage in Buchanan Reservoir.

The U-1 operation study shows the amount of unappropriated water available, using only the flow of Chowchilla River, after meeting demands of existing rights below Buchanan Dam. This study shows that some water would be available for appropriation in 22 out of 45 years during the study period 1914 through 1958. During this period, the average annual available quantity was 18,400 acre-feet and the greatest quantity available in any one year was 143,000 acre-feet.

The R-4 operation study for the years 1914 through 1958 shows the amount of unappropriated water available when the use of Chowchilla River and Madera Canal is coordinated. In this study, Madera Canal water is sometimes used to meet rights downstream from Buchanan Reservoir, thereby making Chowchilla River water available for storage behind Buchanan Reservoir. Some water was placed in storage in the reservoir in all of the 45 years of the study period. A comparison of the U-1 operation study (pre-project) and R-4 operation study (project) demonstrates that an average of 29,000 acre-feet per annum of water can be developed by the coordinated use of Madera Canal and the proposed Buchanan Dam (RT 74).

Quantity of Unappropriated Water Available and Season of Diversion

9. The quantities of water assumed available for appropriation under the U-1 operation study and the quantities placed in storage under the R-4 operation study are both dependent on certain assumptions concerning runoff available for storage and requirements for downstream rights. The R-4 study, in addition, is based on a specific set of criteria for operation in conjunction with Madera Canal supply. The effect of the reservoir operation is to fully control the flow of the river, with water available for storage in large quantities during flood flows of generally only a few days duration. Under the conjunctive operation proposed and with protection for downstream rights, such full regulation should be allowed to the extent of the capability of the facility to be constructed. Therefore, the quantity of water to be allowed for diversion annually should equal the greatest amount available in any one year, namely, 143,000 acre-feet.

In the R-4 operation study, with coordinated operation of Buchanan Reservoir and Madera Canal, increases in storage in the reservoir occurred in November in 5 years; April, 23 years; and May, 12 years. Therefore, the season for collection of water to storage should be from November 1 of each year to May 31 of the succeeding year.

Flood Control

10. The storage of water or regulation of flow for flood control purposes is a continuing paramount power of the United States conferred on it by the Commerce Clause of the United States Constitution and is outside the jurisdiction of this Board. Accordingly, Application 18714 insofar as it relates to appropriation of water for flood control purposes will be disallowed for lack of jurisdiction.

Analysis of Competing Applications

11. The application of Chowchilla Water District (Application 18732) is for use of water within Chowchilla Water District and LaBranza Water District, while the application of the Bureau describes the service areas of the Buchanan project and the proposed Hidden Dam project on the Fresno River. However, at the hearing the Bureau indicated that it intended to serve only Chowchilla Water District and LaBranza Water District, since the Bureau was obligated to do so by contract (RT 37-38).

Chowchilla Water District argues that the application of the Bureau should not be approved because the Bureau lacked authority to file the application in 1959, since the project had not received congressional authorization and the Bureau is not an appropriator. The Chowchilla Water District also argues that the project is feasible for irrigation use only because the Bureau is using the appropriated flow of Chowchilla River belonging to the Chowchilla Water District and substituting water from Madera Canal, and that Chowchilla Water District and LaBranza Water District have the sole power, subject to flood control criteria, to determine under what conditions water will be stored and released from storage.

The California Water Code provides that any person, including the United States, may apply for and secure from the Board, in conformity with part 2, Division 2 of the Water Code and reasonable rules and regulations of the Board, a permit for any unappropriated water (Water Code Sections 1252, 1252.5). The Board does not require authorization of a federal project as a condition precedent to the effective filing of an application. The authorization of the project becomes important only at the time the Board is presented with the question of whether or not the application should be approved. Application 18714 of the Bureau was filed with the Board on May 15, 1959.

The project described in the application was subsequently authorized by Congress on October 23, 1962. This fully satisfies California statutory requirements. The application of the Bureau was filed before that of Chowchilla Water District. The Bureau therefore has a priority of right until its application is rejected (Water Code Section 1450).

The policy of the State is to encourage development and beneficial use of water to the fullest extent possible consistent with protection of vested rights. "Physical solutions," which enable beneficial use of water by subsequent appropriators without material injury to owners of prior rights, have been upheld by the courts on numerous occasions. Such solutions generally take the form of a substitute supply of water furnished to the prior user in place of the existing supply (see City of Lodi v. East Bay Municipal Utility District, 7 Cal. 2d 316.)

While a portion of the natural flow of Chowchilla River presently is used to meet existing rights downstream from the site of Buchanan Reservoir, a permit can be issued to the Bureau for appropriation of Chowchilla River water if the downstream rights are supplied with an equal quantity of water of comparable quality from Madera Canal or other source.

As indicated previously under the discussion of "Relevant Contracts", Chowchilla Water District is not the sole determiner of when water will be released from Buchanan Reservoir. First, there must be a written agreement between the districts involved which must be approved by a federal contracting officer. Second, releases to the district are made subject to prior rights of downstream users and, third, a minimum pool must be maintained of 10,000 acre-feet.

In addition to the foregoing, approval of the Bureau's application is in the public interest so as to facilitate possible future integration of the Buchanan project with the proposed federal Eastside project.

Issuance of a permit to the Bureau, with the limitation of the place of use to include only the service areas of Chowchilla and LaBranza Water Districts, will protect the rights of the districts to use project water.

Upstream Reservation

12. Several parties who own property in the Chowchilla River watershed above the Buchanan Dam site have argued that Water Code Sections 11460, 11128, and 12931 require the Board to include an upstream reservation for future use in any permits granted under either of the subject applications.

The Buchanan project is not part of the State Central Valley Project and even if it were, project water will all be used within the areas protected by these code sections. Therefore, operation of the project as planned will not be contrary to the provisions of those sections. Even though the watershed protection laws are not applicable, the Board, as it did in Decision D 869 concerning the Monticello project on Putah Creek, may exercise its authority to condition permits in the public interest to reserve water for future development within the watershed upstream from the permittee's project.

However, such a reservation of water for uses which would result in depletion of the downstream supply in this instance would be of little or no value. The record is clear that water in excess of existing requirements below Buchanan dam site does not occur in the majority of years. Thus, any upstream development which requires a firm yield to meet its diversion requirements and consumptive uses would result in infringement of rights prior to those which might be acquired for the Buchanan project. For this reason a reservation of water for upstream uses under future applications will not

be made except for storage of water for stockwatering and recreational purposes in reservoirs having a capacity not more than 10 acre-feet each, provided that such reservoirs are kept free of phreatophytes. These types of uses are essentially non-consumptive and would probably not result in a loss of water in excess of what would have occurred from use by the phreatophytes within the area that the reservoir occupies.

The Bureau, in making its operation studies of Buchanan Reservoir, deducted 2,500 acre-feet annually from the historical flow of Chowchilla River to allow for future depletion upstream from the reservoir. An increase of this magnitude over historical depletion, due to increased use under rights prior to Applications 18714 and 18732, is unlikely. Application 18732 was filed on May 21, 1959. A review of applications made after that date in the Chowchilla River watershed above Buchanan dam site shows that up to February 25, 1969, permits for consumptive use purposes with a total face value of only 339 afa by storage and about 66 afa by direct diversion have been issued. The actual diversions and the depletion resulting from rights of this face value can be expected to be much less than 405 acre-feet. The Board finds it to be in the public interest to also subject the permit for Buchanan Reservoir to these permits which have been issued. Future irrigation and other consumptive use requirements in the watershed above the proposed Buchanan Reservoir will need to be met by imported water or by exchange agreement with the Bureau or other agencies.

Reservation of Jurisdiction

13. A primary interest of this Board in acting upon the subject applications is to recognize and protect the interests of those who have prior vested rights to the water of the Chowchilla River. While all permits

are issued subject to vested rights, the Board is required by law to afford a degree of affirmative protection to prior vested rights whenever reasonable and feasible conditions can be formulated for their protection. Buchanan Reservoir will be capable of controlling the entire flow of Chowchilla River. The planned operation calls for the satisfaction of prior rights by releases from Buchanan Reservoir or deliveries through Madera Canal. This may entail agreements with prior right users.

The contract between the Bureau and Chowchilla Water District and LaBranza Water District anticipates a later agreement between the districts and the Bureau for operation of Buchanan Reservoir. No plan of operation was offered by the applicants at the hearing. Therefore, the Board will retain jurisdiction for the purpose of imposing terms and conditions for protection of downstream rights after further hearing, if agreements are not reached with protestants or other holders of vested rights.

Conclusions

14. From the foregoing findings, the Board concludes that Application 18714 of the U. S. Bureau of Reclamation, as amended, should be approved in part, and that Application 18732 of Chowchilla Water District should be denied.

ORDER

IT IS HEREBY ORDERED that Application 18714 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 for irrigation, domestic, and recreational purposes

and shall not exceed 143,000 acre-feet per annum by storage to be collected from about November 1 of each year to about May 31 of the succeeding year.

2. 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.

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

4. Actual construction work shall begin on or before December 1, 1974, 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, 1979.

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

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. The place of use for water diverted under this permit shall be limited to the service areas of Chowchilla Water District and LaBranza Water District.

10. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans, which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

11. 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.

12. 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.

13. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, so that water entering the reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights.

14. Permittee shall install and maintain measuring devices satisfactory to the State Water Resources Control Board so that accurate measurement can be made of the quantity of water flowing into and out of its reservoir.

15. The State Water Resources Control Board reserves jurisdiction over this permit for the purpose of formulating terms and conditions for protection of existing downstream water rights. Permittee shall submit to the Board agreements reached with owners of downstream rights to flow of Chowchilla River. The Board may, at any time, on its own motion or at the request of protestants or interested parties, hear, review and make such further order as may be necessary.

16. This permit and all rights acquired or to be acquired thereunder are and shall remain subject to the appropriations of water above Buchanan Reservoir under permits issued prior to February 25, 1969.

17. This permit is subject to future upstream appropriations by storage for stockwatering and recreational purposes, provided that storage is in reservoirs of a capacity not in excess of 10 acre-feet each, and further provided that such reservoirs are kept free of phreatophytes.

IT IS FURTHER ORDERED that Application 18732 be denied.

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

Dated: November 19, 1970.

/s/ Kerry W. Mulligan
Kerry W. Mulligan, Chairman

/s/ E. F. Dibble
E. F. Dibble, Vice Chairman

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

/s/ Ronald B. Robie
Ronald B. Robie, Member

/s/ W. W. Adams
W. W. Adams, Member