

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

McNich
9-4-68

A to D 1308

In the Matter of Application 22316 by
UNITED STATES BUREAU OF RECLAMATION,
Applicant,
DELTA WATER USERS ASSOCIATION, et al.,
Protestants.

Source: Rock Slough
County: Contra Costa

(a- 9/5)

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 rediversion 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
Norman B. Hume, Member

/s/ E. F. Dibble
E. F. Dibble, Member