

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary Urgency)
Permit 17807 (Application 26170))
UNITED STATES WATER AND POWER RESOURCES)
SERVICE)
Permittee)

Order: WR 80- 3
Source: Old River (Delta)
County: Contra Costa

FINDINGS AND ORDER VALIDATING THE ISSUANCE
OF TEMPORARY URGENCY PERMIT 17807

BY BOARD VICE-CHAIRMAN MILLER:

The United States Water and Power Resources Service having filed Application 26170 for a temporary urgency permit to divert and use unappropriated water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the Water Code; the Board having consulted with the California Department of Fish and Game; Board Vice-Chairman Miller having concluded from available information that the applicant was entitled to a temporary permit to divert and use water, subject to review and validation by the Board as provided by Water Code Section 1425; the Board finds as follows:

Substance of the Application

1. Application 26170 is for a temporary permit to divert and use 6300 cubic feet per second by direct diversion and 200,000 acre-feet by storage from Old River in the Sacramento - San Joaquin Delta in Contra Costa County during the period from January 14, 1980 to April 30, 1980 for irrigation purposes. The maximum amount to be diverted is 200,000 acre-feet. The point of diversion is located within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 20, T1S, R4E, MDB&M.

Permittee's Project

2. The permittee has entered into an agreement with the California Department of Water Resources for diversion of water from Old River through Clifton

Court Forebay and the Delta Pumping Plant into the California Aqueduct for eventual irrigation use in the service area of the Westlands Water District (District). Only State pumping and conveyance capacity in excess of that necessary to operate the California Water Project will be used to divert water under this temporary permit. The water will be conveyed to San Luis (O'Neill) Forebay, then either delivered to the District through the San Luis Canal or stored in the federal share of San Luis Reservoir for later delivery to the District.

Existence of Unappropriated Water

3. Since about the middle of October, 1979, water quality in the Sacramento - San Joaquin Delta (Delta) has been far better than the minimum required standards contained in Board Decision 1485 and applicable water quality control plan. The computed Delta Outflow Index has been well above required values since December 26, 1979. The quantity of recent runoff indicates that Delta outflow should be in excess of that necessary to meet said requirements through April, 1980, if rainfall continues to be normal or above. So long as Delta standards are being met by uncontrollable flows through the Delta, water in excess of in-basin and export needs is available. Diversion under the temporary permit has been conditioned in this respect to require compliance with Board Decision 1485.

4. The intended use of water is beneficial.

Permittee has an Urgent and Temporary Need to Divert and Use

5. Permittee is owner and operator of the Tracy Pumping Plant and the contiguous Delta-Mendota Canal, both part of the Central Valley Project. On November 10, 1979, the Delta-Mendota Canal was taken out of service for maintenance. The canal is expected to be returned to service about February 1, 1980. Permittee will thus have lost about 80 days of pumping capability (approximately 650,000 acre-feet) and related storage in the federal share of San Luis Reservoir. Upon resumption of pumping from the Delta, permittee plans to use the

full capacity of the Delta-Mendota Canal to provide for contracted delivery of water. As a result, permittee will not be able to make up any of the lost pumping capability or completely use the total federal storage capacity in San Luis Reservoir this year.

6. The District contracts with permittee for purchase of irrigation water. The contract provides for a firm supply plus additional quantities when available. Because of the maintenance on the Delta-Mendota Canal, permittee will be able to furnish only the firm supply to the District during 1980 (1,150,000 acre-feet). Consequently, the District will not be able to provide a full supply of water throughout its service area, and some lands may receive no water. Since use of water for irrigation purposes is a high priority beneficial use, the Board concludes that the needs of the District are urgent. Further, the needs are only for 1980, having been caused by maintenance of the Delta-Mendota Canal.

Effect of the Diversion on Any Lawful User of Water and the Rights of Downstream Users

7. Water diverted under this temporary permit is excess water in the Delta that would otherwise flow to the ocean. All facilities used for diversion and transportation of the water are existing and have sufficient capacity for the quantities involved. Compliance with the requirements of this temporary permit will insure suitable water quality and quantity for lawful in-basin and export uses and rights.

8. A Notice of Application and Issuance of Temporary Permit was published by the permittee on January 18, 1980, in accordance with the provisions of Chapter 6.5, Part 2, Division 2 of the Water Code. The Board received objections from the San Francisco Bay Conservation and Development Commission (BCDC) and the Central Delta Water Agency. In addition, comments were received from the Delta Water Users Association, South Delta Water Agency, and the San Joaquin County

Board of Supervisors.

9. The Delta Water Users Association, South Delta Water Agency and the San Joaquin Board of Supervisors all requested the Board to reserve jurisdiction to afford protection to the Delta's water supply. Water Code Section 1429 directs the Board to supervise the diversion and use of water under a temporary permit and Water Code Section 1430 authorizes the Board to modify or revoke a temporary permit at any time. These provisions of law clearly provide the Board adequate authority to assure that the Delta's water supply is protected.

10. The Central Delta Water Agency objected to validation of the temporary permit unless specific water quality standards are included. Those standards are the same as introduced during the proceedings leading to Board Decision 1485. That decision specifies terms and conditions to protect fish and wildlife, water quality, Suisun Marsh, Delta agriculture, and municipal and industrial uses. Since the temporary permit requires compliance with all of the terms and conditions of Decision 1485 plus an additional requirement for the survival of striped bass (discussed later), the Board concludes that sufficient protection for the waters of the Delta has been provided.

11. The San Francisco Bay Conservation and Development Commission (BCDC) objected to the issuance of the temporary permit. BCDC asserted that the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) required that the Board prepare an environmental impact report for the diversion and use of water authorized by the temporary permit. More specifically, BCDC made the following points:

a. The Board acknowledged in Decision 1485 and the accompanying environmental impact report (EIR) that little was known about reduced winter and spring flows into the San Francisco Bay system. Consequently, the Board is unable to find that the diversion and use of 200,000 acre-feet from the Delta will not have an adverse effect on the San Francisco Bay system.

b. The Draft Notice of Exemption describes the Delta as a not particularly sensitive environment and that the diversion will have no significant cumulative impacts. This description is in error because the Bay-Delta system is the most significant estuary in the state.

c. The diversion and use of said water will result in increased drainage problems in the San Joaquin Valley and will provide additional pressure for construction of a drain into the Delta or Bay.

d. The analysis presented by the draft Notice of Exemption would allow complete diversion of all winter and spring flows above the standards contained in Decision 1485.

e. The customers of the permittee should not be granted special consideration given the failure of the permittee to comply with water quality standards established by the Board.

12. The Board's responses to these allegations are as follows:

a. Decision 1485 and the accompanying EIR acknowledged that little was known about reduced winter and spring flows into the San Francisco Bay system. However, this fact does not preclude the Board from concluding that the diversion and use of water under the temporary permit is a minor alteration to land, water, and vegetation which is exempt from CEQA under the provisions of Section 15104 of Title 14, Cal. Adm. Code because of the unusual factual circumstances that exist. The diversion and use of water under the temporary permit arguably could have two direct and immediate impacts on the Delta: (1) Said diversion could take water from the Delta needed as outflow. This effect may be measured by the total quantity authorized for diversion. (2) Said diversion could take water from the Delta at a rate which affected the salinity, for example, on a short term basis. This effect may be measured by the maximum authorized rate of diversion.

Permittee is authorized under other water right entitlements to have diverted about 650,000 acre-feet during the period when the Delta- Mendota Canal is

expected to be out of service. Since the permittee is only authorized to divert 200,000 acre-feet under the temporary permit, the net effect is a reduced gross diversion from the Delta. A new permit term 12 is added to make clear that the water authorized under this permit is not in addition to other water right entitlements.

Current facilities and authorizations permit a maximum rate of diversion of 4600 cubic feet per second (cfs) into the Delta-Mendota Canal and 6300 cfs into the California Aqueduct. Therefore, a total rate of 10,900 cfs can be diverted from the Delta. Since the rate of diversion under the temporary permit will not exceed the 6300 cfs capacity of the Delta Pumping Plant, the fact that water will be diverted for the permittee and not the Department of Water Resources will not make any difference as far as the Delta is concerned.

b. The Board agrees that the initial Draft Notice of Exemption contained some inaccuracies. It has been revised.

c. Since the permittee could have diverted approximately 650,000 acre-feet during the period that the Delta-Mendota Canal is out of service, a lesser diversion of 200,000 acre-feet will reduce existing drainage problems in the San Joaquin Valley.

d. While the provisions of the temporary permit require that the water quality standards in Decision 1485 be met, other provisions could require under certain circumstances the maintenance of better water quality than required by that decision. Nonetheless, the Board appreciates BCDC's concern regarding the possibility of harm to the Bay-Delta system by the diversion and use of water under the temporary permit. Accordingly, Delta conditions will be closely monitored, and the Board is prepared to take action on short notice.

e. Temporary Permit 17807 was issued because the diversion and use of water would benefit the people of the State of California and because it was believed that no adverse environmental impacts would result.

Effect of the Proposed Diversion on Fish, Wildlife, and Other Instream Beneficial Uses

13. The California Department of Fish and Game requested that somewhat more stringent requirements than contained in Board Decision 1485 for the protection of striped bass be included in this temporary permit. The Board's policy guidance for long-term water development planning is set forth in the Water Quality Control Plan for the Sacramento - San Joaquin Delta and Suisun Marsh (Delta Plan). The Delta Plan recognizes the need on future projects to maintain winter flow conditions no worse than those which occurred during 1976 until the causes for the 1977 decrease in striped bass and other aquatic populations are more fully understood. The Board did not set any specific water quality standards for striped bass during the winter in the Delta Plan. The Department of Fish and Game's recommendations for Delta outflow during February, March, and April are the average computed outflows in 1976 for those months.

14. Term 11 of the temporary permit includes the striped bass requirements requested by the Department of Fish and Game. Further detailed analysis indicates that the wording of said term 11 should be modified to the following:

"For the survival of striped bass, no water shall be diverted under this temporary permit when the computed daily Delta Outflow Index at Chipps Island for the previous day is less than:

February	7500 cfs
March	7800 cfs
April	8500 cfs

Findings Concerning the California Environmental Quality Act

15. This Board order authorizes diversion of a relatively small quantity of the total flow in Old River and the Delta, through existing facilities for a period of no more than 3½ months. Such activity constitutes only a minor alteration to land, water and vegetation; and is thereby exempt from the provisions of

the California Environmental Quality Act (Public Resources Code Section 21000 et. seq.) in accordance with Section 15104, Chapter 3, Title 14, California Administrative Code.

Action by Vice- Chairman Miller

16. Staff explained the foregoing situation to Vice-Chairman Miller and recommended approval of the temporary permit. Vice-Chairman Miller concurred with the staff recommendation, and on January 14, 1980 authorized issuance of the temporary permit. On the same date, Temporary Permit 17807 was issued.

NOW, THEREFORE, IT IS ORDERED THAT:

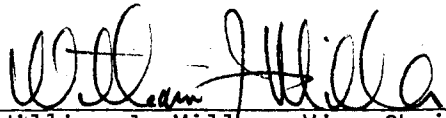
1. Issuance of Temporary Permit 17807 is validated.
2. Term 11, of Temporary Permit 17807 is modified to read as follows:
"For the survival of striped bass, no water shall be diverted under this temporary permit when the computed daily Delta Outflow Index at Chipps Island for the previous day is less than:

February	7500 cfs
March	7800 cfs
April	8800 cfs
3. A new permit term 12 is added to read as follows:
"The diversion and use of water under this temporary permit is intended to replace in part water authorized to be diverted under existing water right entitlements of the permittee at the Tracy Pumping Plant and the Delta-Mendota Canal and is not in addition thereto."
4. Pursuant to Section 2713 (c), Title 2, California Administrative

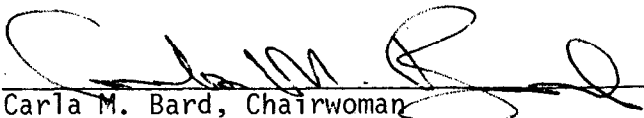
Code, the Chief, Division of Water Rights shall file a Notice of Exemption with the Secretary for the Resources Agency.

Dated: **JAN 24 1980**

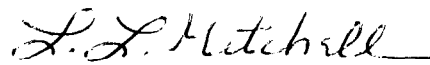
WE CONCUR:



William J. Miller, Vice-Chairman



Carla M. Bard, Chairwoman



L. L. Mitchell, Member



Jill B. Dunlap, Member



F. K. Aljibury, Member

1

