

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 14595)	
Issued on Application 16305)	Order: WR 80- 16
)	
KNIGHTS LANDING RIDGE CUT WATER)	Source: Sacramento River;
USERS ASSOCIATION,)	Sycamore Slough
)	
Permittee)	County: Yolo

ORDER GRANTING EXTENSION OF TIME

BY BOARD MEMBER MITCHELL:

The time to complete construction and application of water to the proposed use under Permit 14595 having expired; the Board having sent a "Notice of Proposed Revocation" to Knights Landing Ridge Cut Water Users Association (permittee) in June 1976; permittee having requested a hearing; a public hearing having been held before Board Member Mitchell on November 14, 1978; permittee having appeared and presented evidence; the evidence having been duly considered, the Board finds as follows:

Substance of the Permit

1. Permit 14595 was issued on Application 16305 in 1964. Permit 14595 authorizes direct diversion of 200 cubic feet per second (cfs) from Sacramento River backwater in Sycamore Slough in Yolo County. The diversion season is April 1 through June 30 for irrigation of 14,444 acres in Colusa and Yolo Counties. The point of diversion is at the Knights Landing Outfall Gates within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 14, T11N, R2E, MDB&M. Water is rediverted at twenty-three points along Colusa Basin Drainage Canal, Knights Landing Ridge Cut, Yolo Bypass, and Sycamore Slough.

Background

2. The Colusa Basin Drainage Canal (Canal) is a large drainage canal maintained by Reclamation District No. 2047. The Canal is constructed

through the natural trough of Colusa Basin to a connection with the back levee borrow pits of Reclamation District No. 108. The Canal discharges into Sacramento River near Knights Landing through the Knights Landing Outfall Gates. The Department of Water Resources (Department) regulates Knights Landing Outfall Gates in accordance with criteria established by the State Reclamation Board.

3. Knights Landing Ridge Cut is an artificial channel that connects the Canal near Knights Landing with Yolo Bypass to the south. The Department regulates the water levels in Knights Landing Ridge Cut and the Canal by its operation of the Knights Landing Outfall Gates in conjunction with flashboards in the weir at the outlet of Knights Landing Ridge Cut. When the Department closes or partially closes the outfall gates, water from the Canal flows into Knights Landing Ridge Cut, thence Yolo Bypass.

Permittee's Project

4. Permittee is an organization of water users who divert water from the sources named at twenty-three points designated as points of diversion in finding one above. These diversions are made under prior vested, post-1914 appropriate rights not relevant to the present proceedings. Permittee's project involves diversion of water from the backwater of Sacramento River into the Canal for diversion at the points of diversion existing under the post-1914 appropriate rights of its members. Water is diverted into the Canal from Sycamore Slough under Permit 14595 only at times when flow in the Canal from other sources is insufficient to fulfill irrigation requirements of Association members under their own permits and licenses. Permit 14595 was obtained to provide a stand-by source of water. According to original hearing record, permittee expected to need supplemental water during the early part of the season. Later in the irrigation season return flow entering the canal from upstream irrigation is adequate to supply needs.

5. Permittee's project originally included the proposed installation of two pumps, each capable of pumping 100 cfs through the outfall gates. During construction of the pump facility, permittee encountered structural problems with the gates and the State Reclamation Board allowed installation of only one pump. Evidence received by the Board establishes that the Reclamation Board may allow installation of the second pump if the present pump platform is modified or if a duplicate pump platform is installed. The permittee is considering whether to undertake the work required by the Reclamation Board.

6. Permittee filed Application 16305 on April 7, 1955, for the proposed project. The United States Bureau of Reclamation (now the U S Water and Power Resources Service) filed a protest against approval of Application 16305, and the State Water Rights Board^{1/} held a hearing on Application 16305, among others, on October 25, 1963. On August 18, 1964, the Board adopted Decision 1190^{2/} which approved Application 16305 and authorized issuance of a permit. Permit 14595 was issued on December 21, 1964. Permit 14595 required, among other things, that construction work be completed on or before December 1, 1966, and that complete application of the water to the proposed use be made on or before December 1, 1967. Two further extensions have been granted to the permittee. The present extension expired on December 1, 1974.

1/ The State Water Rights Board is a predecessor in function of the State Water Resources Control Board.

2/ The State Water Rights Board adopted an Order Amending Decision 1190 on October 29, 1964. This order is not relevant to the present proceedings.

Permittee's Diligence in Construction of the Project and Use of Water

7. Table 1 illustrates the permittee's diversion of water at the point of diversion under Permit 14595. That table establishes that the permittee diverted no water under Permit 14595 for a period of ten years with the exception of about 80 acre-feet in 1968. Permittee Progress Reports indicate that an unspecified amount of water was diverted in 1975, 1976 and 1977. The permittee's responses to its lack of use of water and to the Board's Notice of Proposed Revocation are threefold: (1) The permittee has used water in the last three years, and therefore the three year forfeiture period contained in Water Code Section 1241 has not run; (1978 RT, p. 12, lines 13-22); (2) The Board should not require that the permittee divert water into the Canal under Permit 14595, if there is adequate water in the Canal from other sources. Such an action wastes electricity; (1978 RT, p. 13, lines 19-28); (3) Permit 14595 is an entitlement for a standby water supply, and use under the permit will not occur every year; (1978 RT, p. 7, lines 10-22).

8. The permittee's first response is not relevant to the present proceeding. Permit 14595 was proposed to be revoked under the provisions of Water Code Section 1410; it was not proposed under the provisions of Water Code Sections 1241 and 1675. These latter provisions concern revocation of licenses because of failure to beneficially use water for a period of three years or greater. Water Code Section 1410 concerns the revocation of a permit for failure to construct the diversion works or to complete use of water with diligence. This distinction is a technical one.

The Notice of Proposed Revocation included the following finding:

"No beneficial use of water within any period of three consecutive years has occurred."

While this finding is probative of the issue of diligence, the permittee may have misunderstood it. Accordingly, the Board construes the permittee's first response as argument that it has been diligent.

TABLE 1

Permittae's Diversion of Water at the Point of Diversion Under Permit 14595

Year	April	May	June	July
1965	--	--	--	--
1966	--	--	--	--
1967	--	--	--	--
1968	80 acre-feet	--	--	--
1969	--	--	--	--
1970	--	--	--	--
1971	--	--	--	--
1972	--	--	--	--
1973	--	--	--	--
1974	--	--	--	--
1975	Yes; no quantity	Yes; no quantity	Yes; no quantity	Yes; no quantity
1976	Yes; no quantity	Yes; no quantity	Yes; no quantity	Yes; no quantity
1977	Yes; no quantity	Yes; no quantity	Yes; no quantity	Yes; no quantity

9. The Board has reviewed the record to determine whether the permittee has been diligent in its construction of diversion works and in its application of water to the proposed use. Permit 14595 authorized the diversion of 200 cfs. As earlier stated, the permittee has installed 100 cfs of pumping capacity. While the remaining pumping capacity has not been installed, the permittee represents that it can now obtain the approvals necessary to install the remaining pumping capacity. The Board concludes that the permittee has been diligent in construction of the proposed diversion works.

10. The permittee's second response is based on a fundamental misconception. The statement implies that if the permittee diverted water into the Canal it would maintain its rights under Permit 14595 even though it did not need the water because there was adequate flow in the Canal from other sources. This is not correct. The amount of beneficial use is the basis, measure and limit of an appropriative right in this state. Felsenthal v. Warring, 40 Cal.App, 119, 133, 180 P. 67 (1919); Water Code Section 1240. No beneficial use of water occurs in the above hypothetical situation because there is assumed to be adequate water for the permittee's needs without any diversions under Permit 14595.

11. Permittee's third response presents a key issue. Water Code Section 1610 requires the Board to issue a license "which confirms the right to the appropriation of such an amount of water as has been determined to have been applied to beneficial use". However, licenses have been issued in the past for emergency or standby diversion projects where the full quantity of water allocated has not actually been used. The main requirement for such licenses is that the diversion facilities be in place and ready for use should an emergency or need for the water develop. Licenses of this type have been issued for fire protection and several licenses are on file for standby municipal purposes.

In the case of Permit 14595, part of the works has been installed and some water has been used.

12. During the 1976-77 drought permittee continued diverting water after receiving notice from the Board that pumping should cease because all streamflow was required for prior rights. A responsible representative authorized to act for permittee could not be located for some time. When the proper representative was located the pump was turned off immediately. A new term should be imposed on the permit to prevent this from occurring again. A second term should be added to require a pumping record to be submitted to the Board each year.

Conclusions

13. From the foregoing findings, the Board concludes that an extension of time should be granted under Permit 14595 subject to the conditions in the order following.

ORDER

1. It is hereby ordered that permittee shall notify the Board within six months if it intends to install the second pump. If permittee elects to install the second pump the time to complete construction is extended 2½ years from the date of this order.

2. If permittee elects to install the second pump and completes the installation within the time specified in (1) above, the time to complete use is extended 4½ years from the date of this order.

3. If permittee elects not to install a second pump or fails to complete the installation within the time specified in (1) above, the time to complete use of water is extended 2½ years from the date of this order and the Division of Water Rights is directed to inspect the project for licensing at the expiration of that time.

IT IS FURTHER ORDERED that Permit Term 7 be deleted and the following terms be added, as numbered, to Permit 14595:

7. Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, 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.

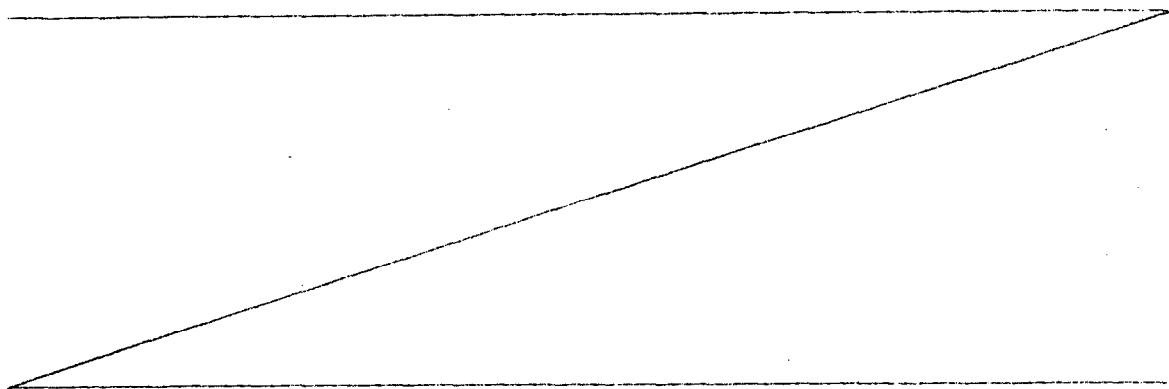
The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

9. 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.

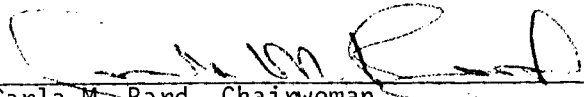
10. Within six months of the date of this order, Permittee shall designate a representative with authority to make changes in the operation of the diversion works. Such representative shall be authorized to receive notifications from the Board in the event water supply conditions require a curtailment of pumping, and shall make changes in accordance with Board notification. An alternative representative shall also be designated with the same authority to act should the primary representative be unavailable.

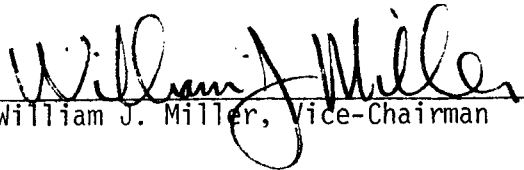
11. Permittee shall maintain a daily pumping record and submit a copy each year with the annual progress report.



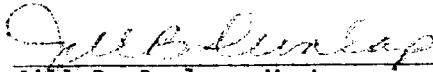
12. The State Water Resources Control Board retains continuing authority over this permit and any license issued pursuant thereto to require permittee to implement a water conservation program to assure that water is not being used in a wasteful or unreasonable manner.

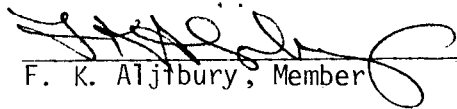
Dated: August 21, 1980


Carla M. Bard, Chairwoman


William J. Miller, Vice-Chairman


L. L. Mitchell, Member


Jill B. Dunlap, Member


F. K. Atjibury, Member