

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 13533 )  
Issued Pursuant to )  
Application 13423 )  
STOCKTON - EAST WATER DISTRICT, )  
Permittee. )

ORDER: WR 80- 17  
SOURCE: Calaveras River  
COUNTY: San Joaquin

ORDER REVOKING PERMIT TO APPROPRIATE WATER

BY BOARD MEMBER MITCHELL:

A hearing having been held pursuant to Section 1410 of the Water Code by the State Water Resources Control Board, hereafter Board, on September 11, 1979, for the purpose of allowing Stockton - East Water District, hereafter Permittee, to show cause why Permit 13533 should not be revoked; Permittee and other interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of Permit

1. Permit 13533 was issued to Stockton and East San Joaquin Water Conservation District, the original name of Permittee herein, on May 16, 1962. The permit allows the appropriation of 175 cubic feet per second (cfs), from Calaveras River from April 15 to June 30 and October 1 to November 1 for irrigation and domestic purposes within Permittee's service area. The point of diversion is within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 26, T2N, R6E, MDB&M. Points of rediversion are existing Dams 1, 2, 3, and 6, Pezzi Dam, Murphy Dam, and Pump Station No. 7 within the Calaveras River Channel.

2. Permit terms and conditions provided that construction be completed on or before December 1, 1967, and application of water to the proposed use on or before December 1, 1968. Permittee requested and received extensions of time in March, 1965, and March, 1971. The final extension of time expired December 1,

1973. On March 17, 1975, in response to a notice of proposed revocation, Permittee filed a request for further extension of time, seeking a ten-year extension.

#### Background

3. The Permittee serves an area of approximately 114,500 acres and about 190,000 people. Approximately 74,900 acres is agricultural. Urban development covers 30,500 acres and miscellaneous roadways, river channels, and unused land comprise approximately 9,100 acres. Calaveras River and Mormon Slough flow westerly through the district from the foothills to tide water. Included in the district is the City of Stockton and the Town of Linden. Several large industrial complexes are within the district including the Port of Stockton, Stockton Metropolitan Airport, and the U. S. Naval Reservation on Rough and Ready Island.

4. Although groundwater is the largest single source of supply to the Permittee, groundwater extractions have exceeded the recharge and the Permittee is confronted with an increasingly serious shortage of groundwater. The principal surface water supply is Calaveras River which is largely developed. Water is received from New Hogan Dam, marketed by the U. S. Water and Power Resources Service, shared between the Permittee and the upstream Calaveras County Water District (56.5 percent and 43.5 percent, respectively).

5. In order to meet its dwindling supplies and develop alternate sources to supplement its requirements, the Permittee, which also has License 2021, filed Application 13423 (Permit 13533 herein). The Permittee admits that it has not implemented its project under Permit 13533 because it considers Folsom-South Canal and New Melones as preferred sources.

#### Permittee's Project

6. The Permittee proposes to primarily divert backwater from the Delta which is forced upstream in the channel of the Calaveras River by tidal influence in addition to any natural flow from upstream sources. At the present time, the

backwater, due to the tidal influence, advances upstream only as far as Weber Pump which is located about 0.85 mile downstream from the proposed point of diversion described in Permit 13533. The plan is to excavate the channel in the lower reach of Calaveras River to induce backwater to flow to the first pump lift (point of diversion).

7. The first pumping plant (which has not been installed) would have a capacity of 175 cfs and would lift water into an 800-foot canal which will parallel the Calaveras River on the north bank. The canal will discharge the water back into the Calaveras River at the first point of rediversion, upstream from a dam which would be constructed across the channel of Calaveras River immediately upstream from the mouth of the Stockton diverting canal. The water would then be conveyed up the channel of Calaveras River for rediversion and use within the service area. This would be accomplished by a series of six additional pump lifts and dams across the River channel. The points of rediversion for Permit 13533 include five dams which are common points of diversion for License 2021.

8. Water will be diverted for irrigation purposes at numerous points along the 10.8 mile reach upstream from the mouth of Stockton Diverting Canal. Some of the water that is being transported for use within the service area will percolate into the underlying groundwater basin. This water, together with influent seepage from irrigation, will be extracted from the groundwater basin for local use. The plan provides that as the years pass the water will be used less for irrigation and more for domestic, municipal, industrial, and recreational purposes.

#### Record of Compliance with Permit Terms

9. Progress reports of Permittee up to the year 1969 state that use of water under the permit had not been commenced. Thereafter the reports for 1971, 1972, 1974 and 1975 alleged that water was being beneficially used pursuant

to the permit, however, the reports disclose at the same time that construction of the project has never been completed as described in the permit. It is not clear how water can be "rediverted" at the points described when there are no diversion facilities at the point of diversion. We take note of other discrepancies and misstatements of facts in reports by Permittee which shall be discussed as follows.

10. The point of diversion under Permit 13533 is Pump Station No. 1, located within NE $\frac{1}{4}$  of projected Section 26, T2N, R6E, MDB&M. All remaining points (Dams 1 through 6 and Pump Stations 2 through Number 7) are construed to be for rediversion. The points of rediversion for Permit 13533, as we have previously stated, are points of rediversion already in existence and operating for License 2021. (The Permittee has reported that the full licensed amount of water under License 2021 has been used each year.) Permittee has by inference in its reports alleged progress toward completion of the project by citing construction of these check dams. We note, however, that during the hearing Permittee testified that the last dam built had been completed in 1963 or 1964 (RT 61 Mr. Sagehorn). Testimony of Permittee further revealed that the dams were constructed for use under License 2021 and releases from New Hogan Reservoir, although they "could be utilized" for this particular project (Permit 13533). Permittee has offered no evidence that any construction of any type has ever been done specifically for this project.

11. Representatives of the Permittee admitted at the hearing that it had not implemented the project. As justification, Permittee cited the costs of the project and stated that they would prefer to obtain the additional needed water from Folsom-South Canal or New Melones. They admitted however that these sources are not likely to become available to them within the foreseeable future. Nonetheless, Permittee requests the permit not be revoked, and asks that an extension of time of at least ten years be granted to them to allow them to

continue studying the feasibility of the Folsom-South Canal and New Melones. Permittee argues that equitable considerations alone warrant granting of the extension.

12. We cannot agree. Although the Board does have the authority to grant extensions, we require the Permittee to show due diligence and good cause for extending the time within which the water is put to beneficial use. In the instant case, the Permittee admits that it does not wish to go ahead with the project, and in fact further admits that it is not likely to do so. To grant the extension under the facts of this case would be a serious abuse of the Board's discretionary power.

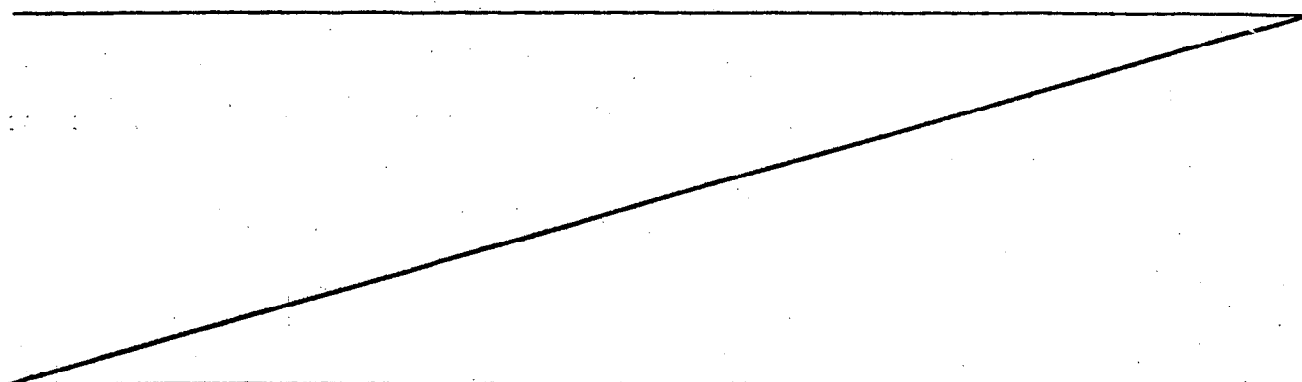
Conclusions

13. We find that water has not been appropriated and put to beneficial use within the terms and authority of the permit herein. The permittee has not shown that due diligence has been exercised, that failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided, or that satisfactory progress will be made if an extension of time is granted.

14. Section 1410 Water Code provides, in part, that the Board may revoke the permit and declare the water to be subject to appropriation when it finds that the Permittee has not applied the water to beneficial use or complied with the conditions of its permit.

15. It is concluded from the foregoing findings that Permit 13533 should be revoked.

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NOW, THEREFORE, IT IS ORDERED that Permit 13533 be revoked, and all rights thereunder are terminated forthwith.

Dated: SEPTEMBER 18 1980

CONCURRED BY:

/S/ L. L. Mitchell  
L. L. Mitchell, Member

/S/ Carla M. Bard  
Carla M. Bard, Chairwoman

/S/ William J. Miller  
William J. Miller, Vice-Chairman

/S/ Jill B. Dunlap  
Jill B. Dunlap, Member

Absent  
F. K. Aljibury, Member