

see: WR 81-11
79-14

see: D-869

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permitted
Applications 11199, 12578, and
12716,
UNITED STATES BUREAU OF RECLAMATION,
Permittee.

ORDER: WR 84-7
SOURCE: Putah Creek
COUNTY: Yolo, Solano,
and Napa

ORDER AMENDING ORDER WR 81-11

BY THE BOARD:

Order dated April 16, 1970, having provided a fixed release schedule, including a dry-year relaxation, to protect prior rights and to maintain percolation from the stream channel of Putah Creek below the Solano Diversion Dam; Orders WR 79-14 and WR 81-11 having amended the schedule in the aforementioned order; a Peremptory Writ of Mandamus having been issued in Solano County Flood Control and Water Conservation District v. State Water Resources Control Board, Superior Court, County of Solano, No. 80284; the Writ having directed that portions of Order WR 81-11 be set aside in favor of the order of April 16, 1970, the Board finds as follows:

1.0 Background

1.1 In 1957, Decision 869 was adopted approving issuance of permits for Applications 11199, 12578 and 12716 to the U. S. Bureau of Reclamation (Bureau) for the Solano Project. The permits authorize the Bureau to directly divert up to 1016 cubic feet per second from Putah Creek and to divert to storage 1,600,000 acre-feet of water in Lake Berryessa at Monticello Dam. Water is bypassed or released from Monticello Dam and

flows into Lake Solano impounded by Putah Diversion Dam (also referred to as Solano Dam) where it is either diverted to Putah South Canal for Solano Project purposes or released downstream into Putah Creek. Water diverted to Putah South Canal is distributed for municipal use in Fairfield, Vallejo and Vacaville and for irrigation of up to 80,000 acres in Solano County.

1.2 Condition 11 of Decision 869 required the Bureau to release water to Putah Creek below the Solano Diversion Dam to protect prior rights and maintain percolation to groundwater from the stream channel as it would occur from unregulated flow. Condition 12 of the Decision directed the Bureau to undertake an investigation to determine the amount of water that must be released to Putah Creek to comply with Condition 11. Condition 13 of the Decision reserved jurisdiction for the Board to adopt further orders concerning the proper amount of water to be released in accordance with Condition 11.

1.3 Following a hearing in 1969, the Board on April 16, 1970, adopted an interim fixed monthly release schedule for compliance with Condition 11 of Decision 869. More recently, the Board held a hearing in 1979, to determine whether that or some other schedule was adequate to be made a permanent requirement. As the result of the hearing and petition for reconsideration, Orders WR 79-14 and WR 81-11 adopted an amended fixed release schedule to replace the April 16, 1970, schedule.

1.4 Paragraph 11 of the 1970 Order required the Bureau to release or bypass water below the Putah Diversion Dam in accordance with the following schedule:

<u>PERIOD</u>	<u>NORMAL YEAR (cfs)*</u>	<u>DRY YEAR** (cfs)</u>
November through January	25	25
February	16	16
March	26	26
April	46	46
May through July	43	33
August	34	26
September and October	20	15

* Cubic feet per second.

** When inflow to Lake Berryessa is less than 150,000 acre-feet per annum.

The Board also reserved jurisdiction (1) to determine if that schedule provided adequate protection to downstream prior rights and resulted in percolation from the stream channel to the extent that water would have been available in the absence of the Solano Project, (2) to impose conditions providing for additional measurements and studies, and (3) to adopt further orders concerning the proper amount of water to be released (Condition 13).

- 1.5 Order WR 81-11 amended the 1970 schedule by providing the following schedule:

<u>MONTH</u>	<u>REQUIRED RELEASE (cfs)</u>
October	20
November	50
December	50
January	35
February	30
March	30
April	30
May	40
June	40
July	43
August	34
September	20

Further, the Bureau could reduce releases whenever both of the following conditions exist: (1) there is continuous surface flow between the Putah Diversion Dam and the Davis Gage (mile 7.2), and (2) there is a flow of not less than five cubic feet per second at the Davis Gage. (Order No. 2)

2.0 Peremptory Writ of Mandamus

The Peremptory Writ of Mandamus directs the Board to:

1. Set aside so much of Order WR 81-11 as imposes a new release schedule;
2. Reinstate the 1970 normal and dry year schedule; and
3. Allow the Bureau to reduce releases when continuous surface flow exists between the Putah Diversion Dam and the Davis Gage and at least five cubic feet per second is flowing at the Davis Gage.

Finally, the Writ expressly states that it does not limit the Board's discretion on remand including the exercise of reserved jurisdiction to amend the 1970 release schedule in the future. We note, however, that the Court in its Memorandum of Decision indicated the 1970 fixed release schedule should remain in place until evidence shows the requirements in Condition 11 are not being met.

3.0 Other Considerations

- 3.1 The Board has previously reserved jurisdiction to require additional studies to determine the quantity of water that must be released below the Putah Diversion Dam to protect prior rights and to maintain

percolation from the stream channel as it would occur from unregulated flow(Decision 869, Condition 13; Order of April 16, 1970, Condition 13).

3.2 The Bureau is not currently required to conduct additional investigations to determine the quantity of water that should be released below the Putah Diversion Dam (Order WR 79-14, order amending Condition 12). However, the Bureau has continued to submit data required by Condition 12(b) of the April 16, 1970 Order; that is, records of depth to groundwater and estimates of changes in groundwater storage in the area influenced by Putah Creek between mile 4.0 and mile 11.0.

3.3 Finding 1 of Order 79-14 states that the testimony concerning changes in groundwater storage and the relation between Putah Creek flows and groundwater recharge from percolation is contradictory and inconclusive and that the collection of additional data would also be inconclusive. Further, finding 12 of WR 81-11 states: (1) that collection of additional data would not appreciably assist the Board in further defining groundwater recharge requirements; (2) that if spills were to occur during the study period, monitoring would be of little value; and (3) therefore, the Board will not continue to reserve jurisdiction for the purpose of refining groundwater recharge requirements.

3.4 The record does not enable us to determine whether the 1970 fixed release schedule will or will not meet the percolation requirements set forth in Condition 11 of Decision 869, particularly if a prolonged drought similar to pre-project historical periods, such as 1916-1934, should reoccur. Therefore, we will continue to reserve jurisdiction

to protect downstream prior rights and maintain percolation to the stream channel to the extent that water would be available in the absence of the Solano Project. We will also continue to reserve jurisdiction to make such further orders that may be required concerning proper releases of water for such purpose, and to impose conditions providing for additional measurements or studies as may become necessary.

3.5. Although further measurement of groundwater levels will not assist in determining streambed percolation, measurement of depth to groundwater in the area of Putah creek between miles 4.0 and 11.0 can provide a useful indication of groundwater conditions. If measurements of depth to groundwater do not indicate a long term downward trend, it can be assumed that the requirements of Condition 11 of Decision 869 are being met. If the measurements show a lowering trend, specific studies could be initiated under the Board's reserved jurisdiction to determine if Condition 11 is being met. We will therefore continue to require that the Bureau measure and submit records of depth to groundwater in the spring of each year for the reach of the creek between miles 4.0 and 11.0. We will also require that the Bureau continue to submit daily records of diversion to Putah South Canal and flows past Putah Diversion Dam.

3.6. In order to enforce the five cubic feet per second flow criteria ordered by the court (see number 3. of Finding 2.0, above), it is necessary that Putah Creek streamflow data in the vicinity of the Davis gage be recorded on a daily basis. In the past, this measurement has been made by the U. S. Geological Survey, and more recently, by the California Department of Water Resources. We will

require that the Bureau operate and maintain such a gage if no other governmental agency continues such responsibility.

3.8 Order WR 79-14 added terms 22 and 23 to the Bureau's permits. These are standard permit terms that are included in all permits issued. It is the Board's policy to include current versions of these terms when taking action on existing permits. Therefore, the current version of these terms will be added to the Bureau's permits.

3.9 Order WR 79-14 also added term 21 to the Bureau's permits. This term was an adjunct to the revised release schedule set forth in that order, and is no longer applicable under the terms of the Writ of Mandamus.

3.8 Order WR 81-11 added term 24 to the Bureau's permits. This term required consultation with the Department of Fish and Game concerning releases of water to increase the fishery resource in Putah Creek below the Putah Diversion Dam. On January 27, 1982, the Department indicated that a fishery study of Putah Creek is not necessary. Therefore, condition 24 is moot and will not be a part of this order.

ORDER

NOW, THEREFORE, IT IS ORDERED that conditions 11, 12, and 13 of Decision 869 and the corresponding terms contained in Permits 10657, 10658, and 10659 issued pursuant to Applications 11199, 12578, and 12716 are amended to the following:

1. Amended condition 11:

11. Permittee shall release water into the Putah Creek channel from Monticello Dam and past the Putah Diversion Dam in accordance with the following schedule:

<u>PERIOD</u>	<u>NORMAL YEAR (cfs)*</u>	<u>DRY YEAR** (cfs)</u>
November through January	25	25
February	16	16
March	26	26
April	46	46
May through July	43	33
August	34	26
September and October	20	15

* Cubic feet per second.

** When inflow to Lake Berryessa is less than 150,000 acre-feet per annum.

Permittee may reduce the above releases whenever there is both a continuous surface flow between the Putah Diversion Dam and the Davis Gage (mile 7.2) and a flow of not less than five cubic feet per second at the Davis Gage.

2. Amended condition 12:

12. Permittee shall submit the following information to the Board with its annual progress reports, or at such other times as the Board may request:

(a) Daily records of diversions to Putah South Canal and flows past the Putah Diversion Dam.

(b) Records of depth to groundwater in the spring of each year for the area influenced by Putah Creek between mile 4.0 and mile 11.0.

Permittee shall allow authorized representatives of the Board reasonable access to the project works and properties for the purpose of gathering information and data.

3. Amended condition 13:

13. The State Water Resources Control Board reserves jurisdiction over the permits to: (1) determine if the schedule of releases required by condition 11 herein provides adequate protection to downstream prior rights and provides percolation from the stream channel of Putah Creek to the extent that would occur in the absence of the Solano Project, (2) make further orders that may be necessary concerning proper releases of water, and (3) impose conditions providing for additional measurements or studies that may be necessary for a final determination to be made.

IT IS FURTHER ORDERED that the following terms be added to Permits 10657, 10658, and 10659:

19. A streamflow gage suitable to the State Water Resources Control Board, capable of measuring flows of five cubic feet per second, shall be located in Putah Creek in the vicinity of the Davis Gage (mile 7.2). Permittee shall, as necessary, install, operate, and maintain such a gage if a suitable facility is not being operated by another governmental agency.

20. Pursuant to California Water Code Sections 100 and 275 and the public trust doctrine, 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 protect public trust uses, 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) to 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 unreasonable 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.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action takes into account the public interest and is necessary to protect public trust uses. All such actions shall conform to the standard of reasonableness contained in Article X, Section 2 of the California Constitution.

21. 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.

CERTIFICATION

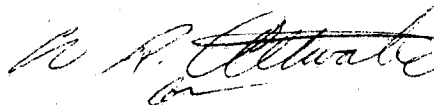
The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 21, 1984.

Aye: Carole A. Onorato
Warren D. Noteware
Kenneth W. Willis
Darlene E. Ruiz

No:

Absent:

Abstain:



Michael A. Campos
Executive Director