

~~amended~~ D-1422
see →
ORDER
WR
82-9

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

80-20
81-1
82-9
83-3
83-7

In the Matter of Permits 16597,)
16598, 16599, and 16600, issued)
on Applications 14858, 14859,)
19303, and 19304)
U. S. BUREAU OF RECLAMATION,)
Permittee.)

Order: W. R. #82-3
Source: Stanislaus River
Counties: Calaveras and
Tuolumne

ORDER DENYING PETITION
BY UNITED STATES BUREAU OF RECLAMATION
FOR APPROVAL OF STORAGE UNDER
CONDITIONS 1-a AND 1-b OF DECISION 1422

BY THE BOARD:

1. On March 30, 1982, Permittee Bureau of Reclamation filed with the State Water Resources Control Board a document entitled "Petition for Order Permitting Delivery of Water for Consumptive Uses in 1982". The petition recites that permittee and the Central San Joaquin Water Conservation District (District) have agreed to enter into a temporary water service contract for delivery of, and payment for, up to 7,500 acre-feet of water "from New Melones Reservoir" for consumptive uses in 1982. The water would be diverted at Goodwin Dam, through existing facilities of others.

2. The petition requests a Board order authorizing delivery of water currently in New Melones Reservoir to the District. The request purports to be made pursuant to Conditions 1-a and 1-d of Decision 1422. These conditions, which relate to the consumptive use water right permits for the New Melones Project, are as follows:

"1-a. The water appropriated under the permit issued pursuant to Application 14858 shall be limited to the quantity which can be beneficially used and shall not exceed 980,000 acre-feet per annum by storage to be collected from November 1 of each year to June 30 of the succeeding year. Until further order of the State Water Resources Control Board, the water shall be used only for preservation and enhancement of fish and wildlife, recreation and water quality control purposes.

* * *

"1-d. The water appropriated under the permit issued pursuant to Application 19304 shall be limited to the quantity which can be beneficially used and shall not exceed 1,420,000 acre-feet per annum by storage to be collected from November 1 of each year to June 30 of the succeeding year. Until further order of the State Water Resources Control Board, the water shall be used only for preservation and enhancement of fish and wildlife, recreation and water quality control purposes."

3. The Bureau's request is unnecessary and inappropriate. Under present operational criteria -- developed by the Bureau in response to the U. S. Court of Appeals injunction pending appeal -- it appears that impoundment in New Melones Reservoir will exceed 1,800,000 acre-feet. The Bureau remains under a duty to evacuate this water down to the Order 80-20 level, and where possible, to use alternative waterways to do so. Under the circumstances, there is no need to store water in New Melones Reservoir to provide 7,500 acre-feet of water to the Central San Joaquin District. Regulation of the river in accordance with the court order will necessarily make that amount of water available for temporary use this year to the District by direct diversion. Further, not only will water necessarily be available by direct diversion to temporarily serve the District, such service would clearly be a means of implementing the "alternative waterways" portion of the court order.

4. The Bureau does not have direct diversion rights for consumptive use from the Stanislaus River. Water Code Section 1381 provides that the issuance of a permit gives the right to take and use water only to the extent and for the purpose allowed in the permit. Decision 1422, which prescribes the extent and purposes of water use under the New Melones Project permits, does not authorize direct diversion for consumptive use, only for power. A non-consumptive water right may not be changed to add a substantial, non-incidental consumptive use. Although Applications 14858 and 19304 included direct diversion, the record shows that the direct diversion portions of those applications were not pursued by the Bureau in the proceeding which led to Decision 1422. Accordingly, direct diversion for consumptive uses was not authorized by Decision 1422 or the water right permits issued in accordance therewith.

5. The Bureau (or the District) may wish to apply for a temporary direct diversion permit, pursuant to Water Code Section 1425 et seq., to obtain water to temporarily serve the District this season. As noted above, water clearly appears to be available to serve the proposed diversion and use.

6. Based on the foregoing, the petition to authorize storage in New Melones Reservoir should be denied. Denial should be without prejudice to application for a temporary permit authorizing direct diversion of up to 7,500 acre-feet of water.

ORDER

1. The petition is denied.
2. Denial of the petition is without prejudice to an application for a temporary urgency permit to divert and use up to 7,500 acre-feet of water to serve the District during 1982.

Dated: May 20, 1982


CARLA M. BARD, CHAIRWOMAN


L. L. MITCHELL, VICE CHAIRMAN


JILL B. DUNLAP, MEMBER

ABSENT

F. K. ALJIBURY, MEMBER