

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 19934  
of United States Bureau of Reclamation  
to Appropriate Water from Putah Creek,  
Napa County

Decision D 1131

ADOPTED MAY 22 1963

DECISION APPROVING APPLICATION

Application 19934 was filed on January 27, 1961, by the United States Bureau of Reclamation (hereinafter called the Bureau) for a permit to appropriate 7,500 acre-feet per annum (afa) by storage from November 1 to May 31 of each season in Lake Berryessa behind Monticello Dam on Putah Creek in Napa County.\* The water is to be used on lands adjacent to the lake for municipal, domestic, and stock water purposes. On January 23, 1962, the Bureau filed a petition to enlarge the place of use to include that portion of the watershed of Putah Creek which is in Napa County, all of which is above Monticello Dam. Protests to the application having been filed, a hearing was held by the Board on January 23, 1962, and February 13 and 15, 1963, before Board Members Kent Silverthorne (Chairman) and W. A. Alexander.

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\*Although Application 19934 also specifies a direct diversion of 20 cubic feet per second year-round and the application was so advertised, this quantity is, according to the applicant, actually intended to indicate the maximum rate of diversion of the stored water and is not intended as an additional appropriation over and above the 7,500 acre-feet (RT 47).

The Bureau, certain of the protestants, and other interested parties appeared and presented evidence and arguments in support of their respective positions.

The Board had previously adopted Decision D 869 approving applications of the Bureau to appropriate water of Putah Creek by storage in Lake Berryessa. The lake is a feature of the Solano Project of the Bureau which was designed and constructed primarily to provide a water supply for use in Solano County. The Solano County Flood Control and Water Conservation District (hereinafter called Solano) has executed a contract (USBR 5) under the provisions of Federal reclamation law by which it is to receive most of the water conserved by the project and has an option to contract for the balance (RT 60).

Except for infrequent winter floods, Monticello Dam controls the entire flow of Putah Creek, including releases that are required for flood control and to supply downstream prior water rights (RT 38). Permits issued to the Bureau cover the capacity of the reservoir plus direct diversion without storage of 1,016 cfs. This means that there would be no water subject to appropriation under Application 19934 except for a limitation that was included in permits issued to the Bureau pursuant to Decision D 869. This limitation was in the nature of a reservation or exception to the water right granted the Bureau in the following language:

"14. The permits and all rights acquired or to be acquired thereunder are and shall remain subject to depletion of stream flow above Monticello Reservoir, not to exceed 33,000 acre-feet of water annually, by future appropriations of water for reasonable beneficial use within the watershed of Putah Creek above said reservoir; provided such future appropriations shall be initiated and consummated pursuant to law prior to full beneficial use of water within the project service area under these permits."

It follows from the foregoing discussion that the subject application can be approved only upon the assumption that the water to be appropriated is excepted from the Bureau's previous permits by the quoted provision. Approval upon such assumption would not impair the vested rights of users on Putah Creek below Monticello Dam, since they would continue to be protected by a condition of the Bureau's permits which requires release of sufficient water past the dam to supply such users to the same extent as they would have been supplied from unregulated flow. As long as said condition is fully complied with, diversion of water as proposed in the application could have no effect on rights below the dam. The matter of compliance with said condition is a subject not related to the merits of Application 19934.

Because the Bureau's plan is to supply water to an area in Napa County directly from storage in Lake Berryessa, a project facility, and such water would otherwise be subject to the Solano contract with the United States, the Bureau and Solano have considered it necessary to negotiate an agreement whereby Solano would consent to the proposed water service to Napa County (RT 96). Such an agreement (USBR 9a) was drafted with the understanding that it would not be executed until after Application

19934 has been approved by the Board. A proposed contract (USBR 10a) between the Bureau and Napa County for a water supply from Lake Berryessa up to 7,500 afa upon conditions specified in the document, has also been drafted but will not be executed until after Solano executes its contract.

There is no dispute by any of the parties who appeared at the hearing that the water to be appropriated by the Bureau and supplied to Napa should be a part of the 33,000 acre-foot reservation specified in Decision D 869. There is a sharp dispute as to what part that should be, however. The Solano agreement (USBR 9a) provides that "the total quantity of water furnished hereunder, less the measured quantity thereof returning to Lake Berryessa by surface flow, shall be a part of the thirty-three thousand (33,000) acre-feet of water reserved for use within the watershed of Putah Creek above Lake Berryessa...."

The Board agrees with the position taken by the Lake County representatives that actual depletion of the water supply to Lake Berryessa should be the measure of the reservation contained in its former decision. "Deplete" means to reduce (Webster's New International Dictionary). In the Upper Putah Creek watershed the Board intended that depletion would be equal to gross diversion minus return flow. For the provisions of USBR Exhibit 9a to be consistent with this definition the word "surface" on line 2 of page 3 of the exhibit must be eliminated, and the word "measured" on line 1 of page 3 must be given a broad construction so as to include "a reasonably accurate determination based on sound engineering practices." Undoubtedly many of the projects in the Upper Putah Creek watershed are so situated that the stream depletion

will actually equal gross diversion, but this determination must be on an individual project basis after the project has been constructed and the water actually placed to beneficial use. The Board is without legal authority to consider Application 19934 any differently. Accordingly, a permit will be issued on Application 19934 for 7,500 afa which will be charged against the said 33,000 afa reservation only to the extent that use under the permit actually reduces the supply that would otherwise be available to the Bureau for downstream diversion.

#### ORDER

The applicant having established to the satisfaction of the Board that the change in place of use petitioned by applicant on January 23, 1962, will not operate to the injury of any legal user of the water involved, the Board so finds, and it is ORDERED that Application 19934 be amended to describe the place of use in accordance with the petition.

IT IS FURTHER ORDERED that Application 19934 be, and the same is, approved and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 7,500 acre-feet per annum by storage to be collected from about November 1 to about May 31 of each season.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. The time allowed to complete application of the water to the proposed use shall not extend beyond December 1, 1994, and may be terminated at any time prior thereto by order of the State Water Rights Board after hearing and upon a finding by the Board that full beneficial use of water has been made under Permits 10657, 10658 and 10659 issued on Applications 11199, 12578 and 12716 of the United States covering the Solano Project.

4. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

5. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights 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.

6. Permittee shall allow representatives of the State Water Rights Board, and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this                      day of                      , 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member