

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the matter of Application 24169)
of the Las Virgenes Municipal)
Water District to Appropriate)
from an Unnamed Stream in)
Los Angeles County)

DECISION 1483

DECISION APPROVING APPLICATION

BY THE BOARD:

Las Virgenes Municipal Water District having filed Application 24169 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestant having stipulated to proceedings in lieu of hearing as provided by Section 737, Article 14, Subchapter 2, Chapter 3, of Title 23, California Administrative Code; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board having considered all available information, finds as follows:

Substance of Application:

1. Application 24169 is for a permit to appropriate 1500 acre-feet per annum (afa) from an unnamed stream Tributary to Triunfo Canyon in Los Angeles County to be collected from November 1 of each year to May 15 of the succeeding year. The applicant proposes to use the water for municipal and incidental recreational uses. The points of diversion are located within NE 1/4 of NE 1/4, Section 35, T1N, R19W, SBB&M in Los Angeles County.

Applicant's Project

2. The applicant has constructed an earthen dam which is about 166 feet high by 1500 feet long. The earthen dam impounds a reservoir which has a surface area of about 150 acres and a capacity of about 10,000 acre feet. (This reservoir is commonly known as "Westlake Reservoir", but will be hereinafter referred to as "applicant's impoundment" to avoid confusion with a downstream impoundment). The applicant purchases about 8000 acre feet each year of State Water Project water which is imported to Southern California by the Department of Water Resources. The applicant stores this water in its impoundment prior to delivery to the applicant's customers. The purpose of application 24169 is to authorize the diversion to storage of winter run-off from the approximately 575 acres of watershed above the dam, to supplement applicant's purchased supply.

Protests

3. A protest was filed by the Malibou Lake Mountain Club, Ltd. Protestant holds License 4907 (Application 3051) which authorizes appropriation of 0.25 cubic feet per second (cfs) by direct diversion from January 1 to December 31 and collection to storage of 200 acre feet from January 1 to April 1 of each year. The license authorizes retention of a maximum of 725 acre feet in protestant's reservoir, known as Malibou Lake. Of this amount 525 acre feet is dead storage which may be replaced if it becomes necessary to drain the reservoir and if such replenishment causes no injury to downstream users. The uses covered by the license are domestic and recreational. However, since 1965 water has not been used for domestic purposes, since another source of domestic water is available.

4. Malibou Lake, located on Triunfo Creek

about seven miles downstream of applicant's dam, impounds
a reservoir with a surface area of 150 acres and capacity of 725
acre feet. The reservoir has filled and spilled in most years since its construction. The reservoir was emptied in 1970 to allow for repair work. The reservoir completely refilled the same year and it has remained full since that time. The reservoir collects water to storage from a watershed of about fifty square miles.

5. Protestant allege that during many dry years there has been insufficient water flowing in Triunfo Creek to fill Malibou Lake and that when the lake is low great damage to the environment results, such as loss of fish and growth of weeds. Protestant further alleges that this upstream appropriation, if approved, will exacerbate the difficult situation in dry years. The protestant has no objection to the approval of Application 24169 if the applicant agrees not to divert and store water until such time of each year as Malibou Lake has filled with water.

Availability of Unappropriated Water

6. There are no records of flow in the unnamed stream and there are no nearby meteorological stations. The best estimate of annual rainfall for the watershed of applicant's dam is about fourteen inches. This amount of rainfall would not provide 1500 acre feet of water during a normal year. However, applicant asserts that the 1500 acre feet of water is that quantity of water resulting from a maximum design storm.

7. Applicant asserts that its proposed diversion of water from 575 acres of the 50 square mile watershed tributary to Malibou Lake will have little if any effect on the natural flow which reaches Malibou Lake. The applicant further asserts that there is no practical way to comply with the Protestant's request that applicant refrain from diverting any water each year until Malibou Lake fills, because an intervening impoundment, commonly known as "Westlake", intercepts the flow pursuant to a right described below. Alternatively, applicant recognizes that it could be authorized to store water during the rainy season conditioned upon the requirement that it release water if Malibou Lake does not fill. Applicant responds that such use by protestant of applicant's storage facilities would cause additional evaporative losses which would further reduce the storage value of such water to protestant even if such captured water would pass through Westlake. Finally, the applicant asserts that the right to divert under License 4907 for domestic purposes has been forfeited, since there has been three years non-use, and that this application for municipal purposes should be given priority over the recreation use under Protestant's license.

8. The American-Hawaiian Steamship Company is the holder of License 10288 (Application 22597), which authorizes the diversion to storage of water at Westlake. License 10288 authorizes the diversion to storage of 1,500 afa to be collected from about October 1 of each year to about June 1 of the succeeding year, except that after initial filling the Licensee's right extends only to water necessary to keep the reservoir full by replacing water lost by evaporation and seepage and to refill the reservoir if emptied for

maintenance. The stream flow from the 575 acre watershed above applicant's impoundment will contribute to the stream flow downstream of Westlake only when water is being released from Westlake or when Westlake is full.

9. The watershed which is tributary to applicant's impoundment, contributes little water to protestants Malibou Lake, since the watershed is less than 2% of the area of the watershed tributary to protestant's impoundment. During a year of normal or above normal rainfall, Malibou Lake will fill and therefore the protestant would not be injured by applicant's proposed appropriation. During years of less than normal rainfall, Malibou Lake may not fill. However, in such years a 575 acre watershed would not produce sufficient runoff to reach Malibou Lake seven miles away, if the inflow were released when received and if the released inflow were not intercepted by Westlake.^{1/} As the applicant recognizes the only practical way for the runoff from the watershed tributary to applicant's impoundment to accrue to the benefit of protestant's Malibou Lake in a dry year is for the applicant to release the inflow in a slug flow at the end of the diversion season. Some of the water included within such a large release of stored water could possibly reach Malibou Lake seven miles away, although the evaporation and seepage losses would be substantial.

1/ American-Hawaiian Steamship Company's License 10288 is subject to vested rights and under License 10288 the Steamship Company would be required to bypass any inflow of water necessary to satisfy vested rights. Accordingly, it would have to pass such released water inflow through Westlake.

However, such a requirement would give protestant the benefit of applicant's storage. In a suitable case, such a condition might be appropriate to protect a prior right; in the instant case, such a condition would enhance protestant's right by making available to him some water which in all probability would not reach his facility in a dry year, at the cost of the loss, through evaporation and stream-bed percolation, of a significant portion of the inflow into applicant's impoundment.

10. Applicant's contention concerning forfeiture of domestic use under License 4907 must be determined in a separate proceeding held in accordance with Article 7, Chapter 9, Part 2, Division 2 of the Water Code.

11. Unappropriated water is available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

12. The intended use is beneficial.

Findings Concerning the California Environmental Quality Act

13. Section 15070, Article 6, Chapter 3, of Title 14 of the California Administrative Code exempts certain projects from the requirement of preparing an environmental impact report or negative declaration. Section 15070 states in part:

"(a) A project as defined in Section 15037(a)(1) of these Guidelines approved prior to November 23, 1970, shall require an Environmental Impact Report or a Negative Declaration if the project may have a significant effect on the environment, and either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3), or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973 involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date." ...

(Emphasis added)

14. Applicant executed the following agreement and acquired the following approval, both of which were related to construction of applicant's impoundment:

- a. An agreement with the Metropolitan Water District of Southern California, which required construction of Applicant's impoundment, was approved by the applicant in 1960 as part of the applicant's annexation to the Metropolitan Water District.
- b. The Division of Dam Safety of the Department of Water Resources issued Permit No. 1073 on September 4, 1970. The Division issued a Certificate of Approval for the dam on April 11, 1972.

15. In the present matter the construction of applicant's dam and the proposed storage of water constitutes a project both under Section 15037(a)(1) and Section 15037(a)(3) of the State EIR Guidelines. In such event, a project to be exempt as an ongoing project must satisfy the criteria in both Section 15070(a) and 15070(b).

- a. A project as defined in Section 15037(a)(1) is an ongoing project if it was approved prior to November 23, 1970 and if neither of two conditions specified in Section 15070(a) are met. Here the applicant approved the project in 1960 when it entered into the agreement with Metropolitan Water District of Southern California, which agreement required the construction of applicant's dam. Since the public funds allocated for the project have been spent and since the applicant does not propose any modifications in the project, the applicant's project is an ongoing project for purposes of Section 15070(a) of the State EIR Guidelines.

b. A project as defined in Section 15037(a)(3) is not an ongoing project if the discretionary governmental approvals after April 5, 1973 involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date. Here there are three governmental approvals: The issuance of Permit No. 1073 by the Division of Dam Safety, Department of Water Resources, on September 4, 1970, the issuance of a Certificate of Approval by the Division of Dam Safety, Department of Water Resources, for the dam on April 11, 1972; and the issuance of a water right entitlement.

Since the two governmental approvals by the Division of Dam Safety involve a greater degree of responsibility over the project than the issuance by the Board of a water right entitlement for a supplemental water supply the applicant's project is an ongoing project for purposes of Section 15070(b) of the State EIR Guidelines.^{2/}

From the foregoing findings the Board concludes that Application 24169 should be approved and that a permit be issued to the applicant subject to the limitations and conditions set forth in the order following.

^{2/} If a lawsuit had been filed relating to those approvals granted prior to December 10, 1972 a project may not be an ongoing project under Section 15070(b), even though it satisfied the other criteria. Here, there was no such lawsuit and therefore this exception contained in Section 15070 (b)(2) does not apply.

The records documents, and other data relied upon in determining the matter are: Application 24169 and all relevant information on file therewith, particularly the report of field investigation made on May 14, 1975. Application 3051 and all relevant information on file therewith, and Application 22597 and all relevant information on file therewith.

ORDER

IT IS HEREBY ORDERED that Application 24169 be approved and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions.

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1500 acre-feet per annum to be collected from November 1 of each year to May 15 of the succeeding year.

2. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

3. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

4. Permittee shall allow representatives of State Water Resources Control 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.

5. Pursuant to California Water Code Section 100, 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, or unreasonable method of use, or unreasonable method of diversion of said water.

This 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) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) 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.

6. The quantity of water diverted under this permit and under license issued pursuant thereto is subject to modifications 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.

7. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

8. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

9. The amount authorized for appropriation may be reduced in the license if investigation warrants.

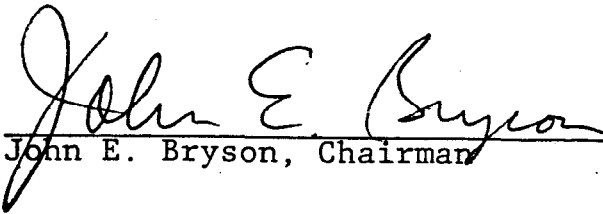
10. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Los Angeles Region, pursuant to Water Code Section 13260, and the Regional Board or State Water

Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

- (1) The Regional Board issues a waiver pursuant to Section 13269, or
- (2) The Regional Board fails to act within 120 days of the filing of the report.

No report of waste discharge pursuant to Section 13260 of the Water Code shall be required for percolation to the groundwater of water resulting from the irrigation of crops.


Dated: June 15, 1978



John E. Bryson, Chairman



W. Don Maughan, Vice Chairman



W. W. Adams, Member