

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of proposed completed)
Application 5647-B to)
Appropriate from Antelope Creek, Bear)
River, and North Fork Mokelumne River,)
and Permit 12167 (Application 5648-B))
AMADOR COUNTY WATER AGENCY)
Applicant)

Decision 1490

DECISION APPROVING PROPOSED COMPLETED
APPLICATION 5647-B
AND ORDERING REVERSION
OF A PORTION OF
APPLICATION 5648-B

BY THE BOARD:

The Amador County Water Agency, hereinafter referred to as the "Agency", having filed a petition for a partial assignment of Application 5647¹/₁ and partial reversion of rights assigned to Jackson Valley Irrigation District under Application 5648-B; protests having been received; all protests having been dismissed; a public hearing having been held by the Board on March 30, 1978; the Agency and other interested persons having appeared; the Agency having presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

Substance of Application 5647-B and Permit 12167 Issued on Application 5648-B

1. Application 5647-B is for a permit to appropriate 3.0 cubic feet per second (cfs) by direct diversion, year-round, from the north fork of the Mokelumne River and 0.67 cfs by direct diversion, year-round, from Antelope Creek and 1,600 acre-feet per annum (afa) by storage to be collected

1. Applications 5647 and 5648 were originally filed by the Department of Finance pursuant to Water Code Section 10500. A much more detailed discussion of the history of these applications is included infra.

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from October 1 of each year to July 15 of the succeeding year in Lower Bear River Reservoir. The maximum rate of direct diversion from all sources is 3.0 cfs. The purpose of use is municipal and the place of use is within the Agency's Central Amador Project modified service area boundaries. The three points of diversion are located within the following tracts:

- a. SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 18, T8N, R16E,
MDB&M (Bear River)
- b. SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 23, T7N, R13E,
MDB&M (North Fork of Mokelumne River)
- c. NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 14, T17N, R13E,
MDB&M (Antelope Creek)

The second point of diversion is also a point of rediversion of releases from storage.

2. Permit 12167 issued on Application 5648-B authorizes the diversion of 50 cfs from the Mokelumne River with an annual limitation of 5,000 afa. The season of diversion is year-round for domestic and stock-watering uses and from March 1 to November 1 for irrigation.

3. Applications 5647 and 5648 were filed by the State of California on July 30, 1927, under the provisions of the Feigenbaum Act, Stats. 1927, c. 286, p. 508, which are now codified, as amended, in Part 2, Division 6 of the Water Code, commencing with Section 10500. On March 5, 1959, the Department of Water Resources ^{2/} released from priority a portion of Applications 5647 and 5648 in favor of Applications 13156 and 15201 filed by the East Bay Municipal Utility District, hereinafter referred to as "EBMUD". The release in part states:

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2. The Department of Water Resources is one of several predecessors in function of the State Board as it relates to Water Code Section 10504, which is that provision of state law authorizing the assignment or a release from priority of any portion of any application filed under Part 2, Division 6 of the Water Code. These applications are commonly referred to as "state filings".

"WITNESSETH, THAT: The Department of Water Resources under the authority of Section 10504 of the Water Code...does hereby release from priority to the East Bay Municipal Utility District all prior rights to water from the Mokelumne River and its tributaries existing under Applications Nos. 5647 and 5648 in favor of the District's Applications Nos. 13156 and 15201... provided that the quantity of water which the District is allowed to divert from the Mokelumne River watershed to the service area under such applications, permits, and licenses shall not exceed the equivalent for an average flow of 194 cubic feet per second or 140,000 acre-feet per annum....

"SUBJECT, HOWEVER, TO the following reservations and conditions:

- (1) A reservation for use in Amador County from water of the Mokelumne River and its tributaries covered by Applications Nos. 5647 and 5648 of such quantity of water for direct diversion to beneficial use and such quantity of water for diversion to storage to be later applied to beneficial use as is required to produce a safe yield, which when combined with the diversions now or hereafter made through the Amador Canal now in operation in Amador County, will amount to a total of 20,000 acre feet of water per annum...."
(Emphasis added.)

4. On August 28, 1959, the Department of Water Resources issued a partial assignment of Application 5648 to the Jackson Valley Irrigation District, hereinafter referred to as "JVID". The partial assignment states in part:

"The Department of Water Resources under the authority of Section 10504 of the Water Code...does hereby assign to the Jackson Valley Irrigation District the rights to appropriate water of the Mokelumne River acquired or initiated under Application No. 5648 to the extent of 50 cubic feet per second, but not to exceed 5,000 acre-feet per annum, subject, however, to the following reservations and conditions:

- (1) That whenever any of the rights to water covered by this assignment shall, as conclusively determined from time to time by the Director of Water Resources, be required for use in Amador County for irrigation, domestic or municipal purposes at points upstream from the assignee's point of diversion, the rights herein assigned shall revert to the State in an amount equal to the upstream needs that the Director of Water Resources determines to exist; provided, that as a condition precedent to the reversion to the State of the rights to more than 2,200 acre-feet per annum herein assigned, the upstream water users shall, as conclusively determined by the Director of Water

Resources and the California Water Commission, have made provision for a substitute supply to the Jackson Valley Irrigation District delivered so that it will be available to the same places of use as were served under the rights which reverted equal in every respect to the rights that are to revert in excess of 2,200 acre-feet per annum without cost to the District; " (Emphasis added.)

5. Pacific Gas and Electric Company, hereinafter referred to as "PG&E", owns and operates the Amador Canal in the County of Amador. In accordance with rights recognized by the provision of several court decrees PG&E is allowed to divert by means of the Amador Canal up to 30 cfs as a maximum flow but is limited to a total diversion of 15,000 acre feet in any calendar year. PG&E serves water diverted by the Amador Canal to the communities of Jackson, Sutter Creek, Ione, Dry Town, and Amador City. The Amador Canal diversion and the partial assignment of Application 5648 to JVID utilized the full reservation of 20,000 acre feet per year for use of water from the Mokelumne River and its tributaries contained in the release of priority to the EBMUD.

The Applicant's Project

6. The agency proposes to utilize several existing diversion structures on the North Fork Mokelumne River or tributaries thereto to develop a firm project yield of 1,150 afa. A maximum authorized diversion of 1,600 afa is estimated to be required to produce a firm yield of 1,150 afa. The project storage would be provided by enlarging lower Bear Reservoir on Bear River, a facility owned and operated by PG&E. Water would be released from that reservoir into Bear River and would flow into the North Fork of the Mokelumne River; the released water would be rediverted from the North Fork at PG&E's existing Tiger Creek afterbay by means of a siphon and pumping station which

would lift the water up to the distribution system. Standby facilities are also a part of the project. These facilities consist of existing wells and storage tanks and a surface diversion from Antelope Creek, which is the present source of water from Antelope Creek to the Pioneer Community Services District.

Protests

7. The EBMUD, JVID and the California Department of Fish and Game, hereinafter referred to as the "Department", filed protests to the approval of the subject application. The EBMUD and JVID alleged injury to prior rights; the Department alleged injury to the fish and wildlife resources of Antelope Creek, Bear River, and North Fork Mokelumne River.

8. The Agency executed an agreement with EBMUD, County of Amador, and Pioneer Community Services District on August 23, 1977, and a supplementary agreement on March 14, 1978.^{3/} EBMUD withdrew its protest on March 17, 1978.

9. The Agency executed an agreement with JVID on March 13, 1978, and JVID withdrew its protest on March 17, 1978. The agreement states in pertinent part:

"(4) It is agreed and understood that if Agency is successful in obtaining water rights requested, as hereinabove mentioned, the water rights of Agency and District would be correlative, that is, of the same priority date, July 30, 1927; and that in such an event, the District would then be entitled to divert

3. These agreements, among other things, terminate a previous agreement authorizing the diversion of water from Antelope Creek by the Pioneer Community Services District, incorporate several previous agreements by the parties, provide for a delivery of records of diversions of water by the applicant to the EBMUD, and incorporate several previous court decrees relating to water rights on the Mokelumne River and its tributaries.

directly to the extent of 50 cubic feet per second, but not to exceed 3,850 acre-feet annually and the Agency would then be entitled to divert directly to the extent of 3 cubic feet per second not to exceed 1,150 acre-feet annually and would be able to divert to storage for later use a maximum of 1,600 acre-feet annually in order to assure the safe yield of the 1,150 acre-feet.

"(5) It is agreed by the parties hereto that so much of Agency's Application described hereinabove as is concerned with rights to divert at Antelope Creek, that those rights to divert are standby rights and alternative to the other rights to divert set forth in Agency's Application...." (Emphasis added.)

10. The Agency executed an agreement with the Department and P.G.&E. on January 17, 1978. The Department withdrew its protest on March 10, 1978. This agreement recognizes that the Department is presently negotiating with PG&E for adequate minimum pools in Upper and Lower Bear River reservoirs and for adequate minimum releases below PG&E's project facilities on the Bear River and the North Fork Mokelumne River, including Tiger Creek afterbay. This agreement requires the Agency to adhere to the agreement between PG&E and the Department as it concerns minimum pools in Upper and Lower Bear River Reservoirs and minimum flows downstream and any permit issued pursuant to this proposed completed application should be so conditioned.

Reversion of Rights Assigned to the JVID

11. The Agency seeks a reversion of rights assigned to the JVID on August 28, 1959, by the Department of Water Resources. That partial assignment, as indicated in Finding 4 above, subjected the partial assignment to a reversion of rights, if the Director of Water Resources^{4/} determines that any of the rights to water are required for upstream needs in Amador County for irrigation, domestic, or municipal purposes. The Agency established at the hearing that the current well water supply is of poor quality, that the

4. As indicated earlier, the Board now exercises this authority.

total supply currently available is undependable during dry years and that the proposed service area is experiencing a rapid rate of growth. The agency estimates that the water sought to be appropriated will provide an adequate supply of water for municipal purposes until about the year 2000. The Board concludes that the Agency proposes to use the water for municipal purposes, that the proposed place of use is within the County of Amador and that the water is needed within said place of use. Accordingly, the Agency has established those facts necessary to cause a reversion of rights to the State of the right to divert 1,150 acre-feet per annum of the maximum 5,000 afa assigned to the JVID by the State of California. Since the Agency has requested a reversion of the right to divert less than 2,200 afa, the Agency is not required by the terms of the reversion provision to provide JVID with a substitute supply.

Partial Assignment of State Application 5647 Held by the Board

12. The Board may assign any application filed in accordance with Water Code Section 10500 and held by the Board when the assignment is for the purpose of development not in conflict with a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the State or with water quality objectives established pursuant to law (Water Code Section 10504). Further, no such assignment shall be made that will deprive the County in which the water covered by the application originates of any such water necessary for the development of the County (Water Code Section 10505).

13. The Central Amador Project (Modified), consists of works for the purpose of diverting water of the North Fork Mokelumne River and tributaries thereof for domestic and municipal purposes in the central portion of Amador County. The partial assignment of Application No. 5647 is for a purpose of development not in conflict with the general or coordinated plan looking toward the development, utilization or conservation of the water resources

of the State, but is in furtherance thereof. Since the partial assignment of Application No. 5647 is for the purpose of developing a water supply for a portion of a county in which the water originates, the approval of the assignment will not deprive any County in which such appropriated water originates of such water necessary for the development of any such County. Accordingly, the Board concludes that the agency is entitled to a partial assignment of Application 5647 in the amount of 1,150 afa from the North Fork Mokelumne River, Bear River and Antelope Creek.

Availability of Unappropriated Water

14. The Agency proposes diversions from three sources: North Fork Mokelumne River, Bear River, and Antelope Creek. In issuing Permit 12167 on Application 5648-B to the JVID, the Board necessarily found that unappropriated water was available to supply the applicant, JVID. In effect, the subject application merely proposes to change the point of diversion upstream of a portion of the right granted to the JVID and to change the entity which is authorized to divert the water. Consequently, our previous finding concerning the existence of unappropriated water also establishes that there is unappropriated water to supply the Agency for this application as that determination relates to other rights in general on the stream system. However, when a point of diversion is moved upstream on a stream system, the watershed which contributes to the water supply diminishes in area and conceptually, there is no guarantee that water will be physically available at the upstream point of diversion. Run-off characteristics indicate that there is sufficient water available in the North Fork Mokelumne River and Bear River to satisfy the needs of the Agency. Antelope Creek, the only other source for this application,

has a much smaller watershed than the other two sources. However, the County of Amador holds Permit 12122 issued on Application 13034 which authorizes the diversion of 15 cfs from Antelope Creek. Progress reports received for Permit 12122 indicate that Antelope Creek has always had surface flow except for times during the 1977 drought and that 150 gpm has historically been diverted from Antelope Creek. The flow during most months of most years is considerably greater than 150 gpm. Since Permit 12122 is junior to any permit issued on the subject application and since it authorizes a diversion of 15 cfs, water will be physically available to the Agency on Antelope Creek. The Board therefore concludes that unappropriated water is available to supply the Agency.

15. The intended use is beneficial.

Findings Concerning the California Environmental Quality Act

16. The Agency prepared a final Environmental Impact Report (EIR) as required by the California Environmental Quality Act (Public Resources Code Section 21000 et seq.). A Notice of Determination was filed on October 31, 1977.

17. The Final EIR identified several short term adverse environmental impacts associated with the project. These impacts may include unsightliness, noise, dust, air quality reduction, disruption of traffic and utilities, loss of wildlife, disturbance of wildlife habitat, increased erosion, and increased stream turbidity. All of these impacts are unavoidable consequences of any construction project. These impacts may be reduced by use of appropriate construction practices. The Agency proposes to install exhaust muffling devices and spark suppressors on equipment; minimize open trench time; provide flagmen on roads where work is in progress, post signs and other hazard warning devices to the public; and provide dust abatement, if possible.

18. The Final EIR also identified several long-term adverse environmental impacts associated with the project. These impacts include the following:

- (a) A loss of water for hydroelectric generation;
- (b) Increased energy consumption;
- (c) Reduction of JVID water supply;
- (d) Reduction in flow of Mokelumne River between Electra powerhouse and Pardee Reservoir;
- (e) Reduction of wildlife habitat;
- (f) Visual effects; and
- (g) Growth-inducing impacts.

19. The Board's findings concerning these adverse impacts are as follows:

(a) The Agency estimates that about 2,000,000^{5/} kilowatt hours of energy will be lost in 1980 if 825 acre-feet of water is diverted by the project during that year. In the year 2000 the annual loss would be about double. Although this adverse impact is substantial, it is unavoidable with the contemplated project.

(b) The Agency estimates that 1,300,000 kilowatt hours of energy will be needed to operate the Central Amador Water Project in the first year of operation and that about 4,080,000 kilowatt hours will be used in the year 2000. The total energy use by the existing water supply system is not known but it is expected to be substantially less than that needed for the Central Amador Water Project. Although this adverse impact is substantial, it is unavoidable with the contemplated project.

5. The California Energy Resources Conservation and Development Commission indicates that the average home in California uses about 6,000 kilowatt hours per year.

(c) The reversion of a portion of the water previously assigned to JVID theoretically reduces the amount available to the JVID. However, progress reports submitted by the JVID indicate that use under Application 5648-B rarely occurs. The basic water supply for JVID is diverted under other permits held by JVID. Consequently, this impact is not substantial.

(d) The proposed water diversion will reduce flows in the North Fork Mokelumne downstream of Tiger Creek Afterbay and will reduce the flows in the Mokelumne River from the confluence of the Mokelumne River and North Fork Mokelumne to Pardee Reservoir on the Mokelumne River. However, since the rate of diversion is small, the effect of the diversion will not be substantial except in extremely dry years. The reduction in flows in these rivers is an unavoidable impact of this project.

(e) New above-ground structures to be built as part of this project include a pumping plant at Tiger Creek Afterbay, a clearwell storage tank near Barton, and the Mount Grossman storage tank. The areas to be occupied by these structures will be permanently lost as wildlife habitat. Since the total area will be less than 3,000 square feet, this impact, although adverse, is not substantial.

(f) The new above-ground facilities will have an adverse aesthetic impact on those persons viewing them. However, the Agency proposes to paint the tanks to blend into the natural surroundings. Most of the planned structures are not easily visible from commonly traveled roads. The Board concludes that this impact, although adverse, is not substantial.

(g) The Central Amador Water Project will allow projected growth to occur. While the adverse impacts of population growth may justify the denial of an otherwise meritorious application in certain circumstances, the Board believes that the extent of population growth in an area is primarily a question for local government to determine through their land use ordinances. The County of Amador and other local agencies have authority to control population growth if the need arises.

20. The Board concludes that the Agency has mitigated or avoided the adverse impacts to the extent feasible.

21. From the foregoing findings, the Board concludes that a portion of the rights under Application 5648 previously assigned to JVID should revert to the State, that a portion of Application 5647 should be assigned to the Agency, that Application 5647-B should be approved, and that a permit should be issued to the Agency subject to the limitations and conditions set forth in the orders following:

ORDER

IT IS HEREBY ORDERED that the right to divert 1,150 acre-feet per annum of the maximum 5,000 acre-feet per annum assigned to the Jackson Valley Irrigation District by the State pursuant to an assignment dated August 28, 1959, shall revert to the State forthwith.

IT IS HEREBY FURTHER ORDERED that Permit 12167 issued on Application 5648-B be modified by reducing the amount of water to be diverted thereunder from 5,000 acre-feet per annum to 3,850 acre-feet per annum.

IT IS HEREBY FURTHER ORDERED that the rights to appropriate water of the North Fork Mokelumne River, Bear River, and Antelope Creek acquired or initiated under Application No. 5647 be, and they are, assigned in part to the Amador County Water Agency as follows:

1. By Direct diversion:
 - (a) 3 cubic feet per second from January 1 to December 31 of each year from North Fork Mokelumne River not to exceed 1,150 acre-feet per annum.
 - (b) 0.67 cubic foot per second from January 1 to December 31 of each year from Antelope Creek not to exceed 279 acre-feet per annum.
2. By storage, 1,600 acre-feet to be collected from October 1 of each year to July 15 of the succeeding year from Bear River.

The total amount of water to be taken from all sources whether by direct diversion or rediversion from storage shall not exceed 1,150 acre-feet per water year from October 1 to September 30.

IT IS HEREBY FURTHER ORDERED that Application 5647-B be approved and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed:
 - (a) By direct diversion:
 - (1) 3 cubic feet per second from January 1 to December 31 of each year from North Fork Mokelumne River not to exceed 1,150 acre-feet per annum.

(2) 0.67 cubic foot per second from January 1 to December 31 of each year from Antelope Creek not to exceed 279 acre-feet per annum.

(b) By storage 1,600 acre-feet to be collected from October 1 of each year to July 15 of the succeeding year from Bear River.

The total amount of water to be taken from all sources whether by direct diversion or rediversion from storage shall not exceed 1,150 acre-feet per water year from October 1 to September 30.

2. The amount authorized for appropriation may be reduced in the license if investigation warrants.
3. 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.
4. Said construction work shall be completed on or before December 1, 1979.
5. Complete application of the water to the proposed use shall be made on or before December 1, 2000.
6. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.
7. Permittee shall allow representatives of the 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.

8. Pursuant to California Water Code Sections 100 and 275, 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, 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 tail-water or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) 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.

9. 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.
10. This permit is subject to the agreement dated August 23, 1977 and supplementary agreement dated March 14, 1978 between permittee, East Bay Municipal Utility District, County of Amador, and Pioneer Community Services District; to the agreement dated March 13, 1978 between Permittee and Jackson Valley Irrigation District; and to the agreement dated January 17, 1978 between Permittee, the Department

of Fish and Game, and Pacific Gas and Electric, to the extent such agreements cover matters within the Board's jurisdiction. The permittee shall supply the Board with a copy of any future agreements or amendments to agreements that may affect this permit.

11. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.
12. 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, 5B 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 ground water 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.

13. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).

Dated: January 25, 1979

ABSENT

John E. Bryson, Chairman

/S/ W. DON MAUGHAN

W. Don Maughan, Vice Chairman

/S/ WILLIAM J. MILLER

William J. Miller, Member

/S/ L. L. MITCHELL

L. L. Mitchell, Member