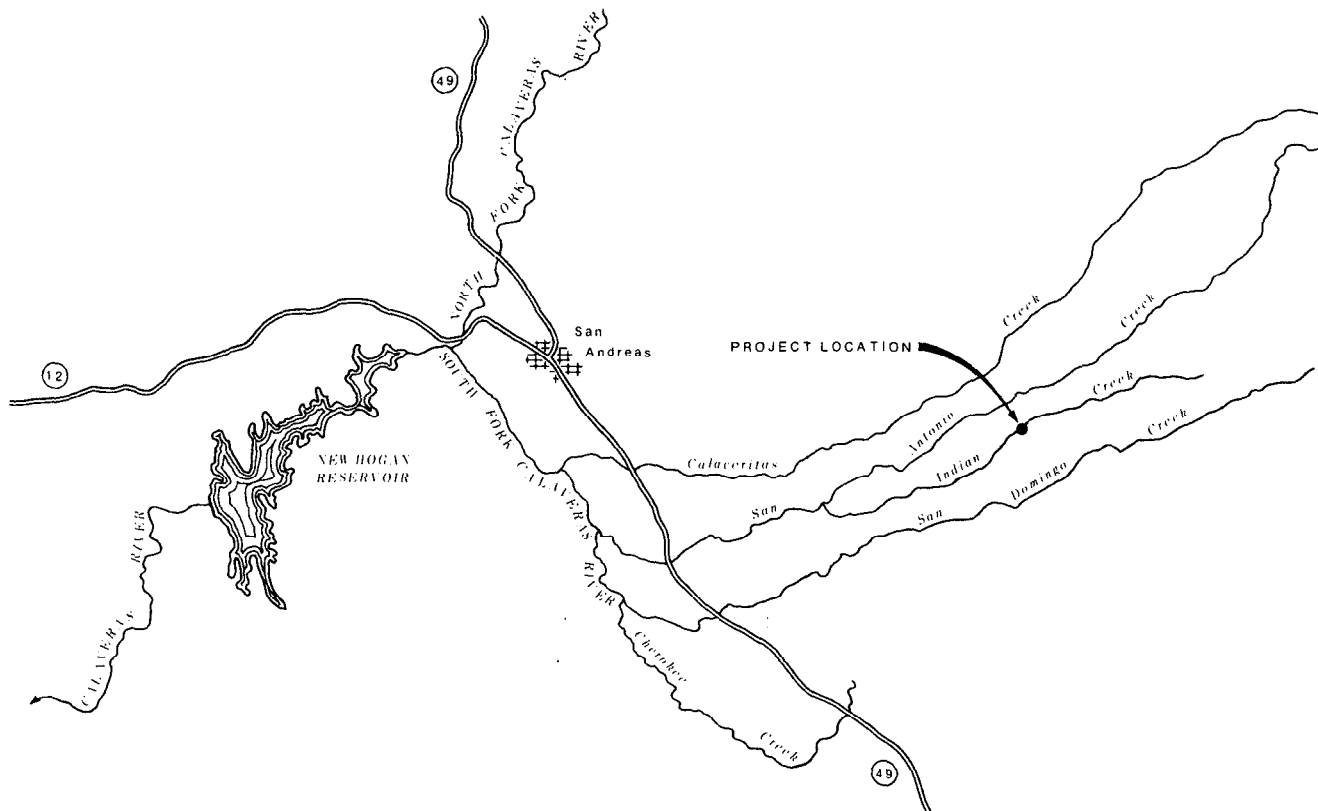


**INDIAN CREEK PROJECT
APPLICATION 5648C-13**

DECISION 1601



JULY 1984

STATE WATER RESOURCES CONTROL BOARD



STATE OF CALIFORNIA

George Deukmejian, Governor

**STATE WATER RESOURCES
CONTROL BOARD**

Carole A. Onorato, Chairwoman

Warren D. Noteware, Vice Chairman

Kenneth W. Willis, Member

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition for)
Partial Assignment of)
Application 5648C and Proposed)
Completed Application 5648C-13)

LINDA THORPE AND LINDA LENIGK,)
)
 Petitioners,)

U. S. BUREAU OF RECLAMATION,)
)
 Interested Party.)

DECISION: 1601

SOURCE: Indian Creek Tributary
to San Antonio Creek and
the South Fork of the
Calaveras River

COUNTY: Calaveras

DECISION ASSIGNING A PORTION OF
APPLICATION 5648C AND APPROVING PROPOSED
COMPLETED APPLICATION 5648C-13

BY VICE-CHAIRMAN NOTEWARE:

1.0 INTRODUCTION

The State Water Resources Control Board (Board) having held a hearing on January 18, 1983 to consider whether a portion of Application 5648-C should be assigned and whether proposed completed Application 5648C-13 should be approved; petitioners for assignment having appeared and testified; the U. S. Bureau of Reclamation (Bureau) having appeared as an interested party; the evidence having been received and duly considered, the Board finds as follows:

2.0 SUBSTANCE OF APPLICATION AND PETITION

2.1 State Filing

Application 5648 was filed on behalf of the State of California on July 30, 1927 for potential projects on the Mokelumne, Stanislaus and Calaveras Rivers. The Calaveras portion of the application is for a permit to appropriate year-round 800 cubic feet per second (cfs) of water by direct diversion and 100,000 acre-feet annually (afa) year-round to storage in Section 31, T4N, R11E, MDB&M for irrigation and domestic uses. The place of use is 310,000 acres within T1S, R10E to 12E inclusive and T1N to 6N inclusive, R9E to 15E inclusive. The Calaveras River portion of Application 5648 has been denominated as Application 5648-C, to facilitate record keeping.

2.2 Petition and Application

The petition for partial assignment and proposed completed Application 5648C-13 seeks to appropriate 10 afa to storage from November 1 through April 30 from Indian Creek, tributary to San Antonio Creek thence the South Fork of the Calaveras River. The point of diversion is located within the NE1/4 of SW1/4, Section 25, T4N, R13E, MDB&M. Water will be used for stockwatering, recreation, fire protection, wildlife enhancement and irrigation of five acres within the NE1/4 of SW1/4 of Section 25, T4N, R13E, MDB&M.

3.0 INTERESTED PARTY

3.1 Bureau Appearance and Position

The Bureau appeared at the hearing as an interested party and

contended that the partial assignment of Application 5648-C should not grant the recipient a higher priority right to take and use water than is possessed by the Bureau under permitted Application 18812.

3.2 New Hogan Dam and Water Right

New Hogan Dam and Reservoir constructed at the proposed point of diversion and storage for Application 5648-C is operated under permitted Application 18812. The Bureau is authorized to appropriate 200 cfs by direct diversion from November 1 to May 1 and divert 325,000 afa to storage from November 1 to May 1. The place of use is partially coincident with the western portion of the place of use for Application 5648-C. The reservoir is a unit of the Central Valley Project (Water Code Section 11100 et seq) and is subject to the requirement that the watershed of origin not be deprived of the prior right to all the water reasonably required to supply the beneficial needs of the watershed (Water Code Sections 11128 and 11460). Project water is delivered to the watershed of origin and places immediately adjacent thereto. (D-1179, p. 25; T, p. 27, 21-26.)

4.0 PROJECT DESCRIPTION AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

4.1 Project Description

The petitioners propose to construct a 12-foot high earthen dam forming a 10 acre-foot onstream reservoir. The water will be used for stockwatering, recreation, fire protection, wildlife enhancement and irrigation of five acres of pasture, orchard and gardens along Indian Creek just below the reservoir. Water will be piped to orchard and garden by an existing ditch once used for mining. (Staff 1, 5648-C.)

4.2 CEQA Compliance

No local agency will exercise approval power over the project (T, 11-4, 11-8), and this Board is the lead agency for purposes of complying with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.). The proposed project will have no significant environmental effect and is exempt from preparation of environmental documents in accordance with Title 14, Cal.Admin.Code, Section 15304.

5.0 APPLICABLE LAW

The Legislature authorized the filing of applications to appropriate water which "...is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state." These applications have priority over applications subsequently filed. (Water Code Section 10500.) Such applications are held by this Board, and any portion of an application may be assigned or released from priority when "...the release or assignment is for a purpose of development not in conflict with such general or coordinated plan or with water quality objectives established pursuant to law." (Water Code Section 10504.) Release of the priority or assignment of any state-held application is prohibited, however, when the county in which the water originates would be deprived of water necessary for development. (Water Code Section 10505.) The point of diversion and place of storage in

applications may be changed provided (a) the proposed change does not initiate a new right and (b) no injury will occur to another lawful user of water. (23 Cal.Admin.Code 738.)

6.0 BOARD POLICY RESPECTING APPLICATION 5648-C

6.1 Decision D1179

Adopted in 1964, Decision D1179 approved:

- o Application 11792 for the Calaveras County Water District (District) for appropriation of 30 cfs of water by direct diversion and 51,200 afa to storage above New Hogan Reservoir;
- o Application 18812 for the Bureau for appropriation of 200 cfs of water by direct diversion and 325,000 afa by storage at New Hogan Reservoir; and
- o Application 12839 for Stockton and East San Joaquin Water Conservation District for 200,000 afa to underground storage below New Hogan Reservoir.

Decision D1179 also found that no further unappropriated water remained in the Calaveras River. The priority of state-held Application 5648-C has been released in favor of Application 11792. Decision D1179 also subjected the New Hogan right to future upstream applications for stockwatering but not for other purposes.

6.2 Prior Board Policy

6.2.1 Subtraction of Water from District's Allocation

Because the unappropriated water in the river was fully allocated and the District has not constructed its projects for supplying water

above New Hogan Reservoir, the Board has been approving petitions for assignment of portions of state-held Application 5648-C for projects other than stockwatering subject to the following condition:

This permit is junior in priority to and subject to rights evidenced by permits and licenses for all projects located above and below New Hogan Reservoir for which applications were filed between July 30, 1927 and _____ (date of petition for assignment). This permit, however, is senior in priority to permitted Application 18812 for appropriation of water at New Hogan Reservoir.

This permit is junior in priority to Permit 15012 of Calaveras County Water District. The combined amount diverted under all permits issued pursuant to Application 5648C and Permit 15012 shall not exceed the amount allowed under Permit 15012.

The condition has two unusual aspects. First, the assignments subtract water from the amount allocated to the District by permitted Application 11792A -- even though Application 11792A is superior in priority to Application 5648-C (release of priority). Second, the assignments are made junior in priority to permits and licenses issued on applications which were filed after the date of the state-held application, except for the Bureau's right for New Hogan Reservoir.

6.2.2 Implication of the Subtraction Proviso

The subtraction proviso is included with the District's consent, is recognition that the water of the river is fully allocated and is, in effect, a waiver on a case-by-case basis of the release of priority of Application 5648C and the priority of Application 11792A. Assuming the District eventually fully constructs its projects and places water to use, subtracting water from the District's undeveloped right, which

is superior to the Bureau's right to water for New Hogan Reservoir, prevents any further reduction in the quantity of water the Bureau would receive.

6.2.3 Reversal of Priorities

The reversal of priorities may also be explained by looking to the purpose of state-held Application 5648-C. The project described by the application is for the purpose of reserving water to develop a large project to serve portions of Calaveras and San Joaquin Counties. Inasmuch as the projects developed under applications filed subsequent to Application 5648-C may also put water to use within these counties and because these projects were very small, there was no equitable nor overriding public benefit to be served by asserting the priority of the state-held application over county of origin projects constructed under regular applications filed after 1927, the year of filing of Application 5628. We note, however, that the priority reversal includes applications situated outside the county of origin and the place of use for Application 5648-C. (Decision 1581.) We will return to this point after considering the Bureau's position in this matter.

7.0

BUREAU'S PRAYER

The Bureau seeks to have set aside that portion of the special condition excluding New Hogan Reservoir from the reversal of priorities. In support of its request the Bureau makes the point that New Hogan Reservoir also delivers water for use to the watershed and

water is not exported from the area. (T, p. 27, 21-26.) As will be explained, our policy for assigning portions of Application 5648-C will be reconsidered.

8.0 RESPONSE TO BUREAU

8.1 New Hogan Reservoir Water Origin and Place of Use

Water collected by New Hogan Reservoir originates in the watersheds of the north and south forks of the Calaveras river in Calaveras County -- the county of origin. Assignments or releases from priority of state-held applications, such as Application 5648-C, must be prohibited when the county in which the water originates would be deprived of water necessary for its development. (Water Code Section 10505.) Water collected by New Hogan Reservoir is served to portions of Calaveras County and to San Joaquin County -- the watershed of origin and areas immediately adjacent thereto. The watershed of origin and areas immediately adjacent does not necessarily coincide with the county of origin. In this instance the county of origin and watershed partially coincide. The Bureau has contracted to supply substantial amounts of water to Stockton East Water District which is outside the county of origin and mostly outside the place of use set forth in Application 5648-C.

8.2 Assurance of Water Supply to County of Origin

The question remains whether the assignment of Application 5648-C with the special condition will assure the county of origin the water necessary for its development. The practice of assigning portions of Application 5648-C subject to the special conditions came about at a

time when it was anticipated that the District would develop several large water projects under permitted Application 11792 that would serve the needs of persons in the upper Calaveras River watershed above New Hogan Reservoir (county of origin). Under current due diligence permit conditions the District is required to complete construction of these projects in 1985. The District has not commenced construction on any of these projects and nothing in the Board's files indicates that any of the projects will be constructed to serve the needs of persons in the county of origin. Under these circumstances we believe the granting of the request of the Bureau to make the special condition for the assignment of portions of Application 5648-C junior to water supplied outside the county of origin is inappropriate. The condition should be amended to make the permit issued junior only to appropriated water used within the county of origin (see condition 5). Finally, in order to firm up the likelihood that water will be available for the petitioner, we will deduct the quantity of water assigned under Application 5648-C from Application 11792 with the District's concurrence.

8.3 Future Board Policy

The past Board policy of assigning portions of State filing 5648C for small local non-stockwatering projects should be changed. The procedure is unnecessarily cumbersome and the use of State applications in this manner is not in accordance with the intent of

the Legislature. The policy of the Board in considering future applications will be as set forth below.¹ Acquisition of water rights by persons proposing projects in the upper watershed will be accomplished by the filing of regular applications. The priority of such applications for non stockwatering purposes will be junior to the New Hogan permits. Further, the applicant's right will be enhanced by subtracting the amounts of water diverted under these permits from permitted Application 11792. This procedure will be followed by the Board in future requests for appropriation for other than stockwatering purposes in the Calaveras River watershed above New Hogan Reservoir, unless a future petition for assignment is received which is intended to fulfill the purposes for which Application 5648-C was filed.

9.0 FINDINGS REQUIRED BY WATER CODE SECTIONS 10504 AND 10505

9.1 County of Origin Protection and Non-conflict.

The proposed place of use is within Calaveras County, the county in which the water originates. Consequently, the project will not deprive the county of origin of water necessary for development (Section 10505) nor is the purpose of development in conflict with any general or coordinated plan to supply water under Application 5648-C (Section 10504).

¹ One other petition for assignment of a portion of Application 5648-C, by Chatom Co., Ltd., is currently pending. It will be processed in accordance with the policy in force prior to this decision.

9.2 Compliance with Water Quality Objectives

The Board may assign any portion of a state filing for a purpose of development not in conflict with established water quality objectives (Section 10504). Standard permit condition 100 will assure compliance with water quality objectives. Condition 100 requires the applicant to file a Report of Waste Discharge with the appropriate California Regional Water Quality Control Board and to comply with any Waste Discharge Requirements issued to protect water quality.

10.0 CHANGE IN POINT OF DIVERSION AND PLACE OF USE

Applicants proposed point of diversion is located on a tributary to the Calaveras River upstream from the point of diversion proposed in Application 5648-C. A point of diversion and place of storage may be changed provided the proposed change does not initiate a new right and no injury will occur to another lawful user of water (23 Cal. Admin. Code 738). The partial assignment will not result in the initiation of a new right nor will a lawful user of water be injured.

11.0 ORDER

IT IS HEREBY ORDERED that Application 5648-C held in the name of the State Water Resources Control Board be partially assigned and that proposed completed Application 5648C-13 be approved and a permit

issued to the applicant, subject to vested rights. The permit shall contain standard permit terms 6, 10, 11, 12 & 13² in addition to the following special terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 acre-feet per annum to be collected from November 1 of each year through April 30 of the succeeding year.
2. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.
3. Construction work shall be completed by December 1, 1987.
4. Complete application of the water to the authorized use shall be made by December 1, 1988.
5. This permit is junior in priority to and subject to rights evidenced by permits and licenses for all projects located in Calaveras County for applications filed between July 30, 1927 and November 17, 1981 to the extent the appropriated water is used within Calaveras County.

² The Board keeps a list of standard permit terms. Copies of these terms are available upon request.

6. The combined amount diverted under all permits issued pursuant to Application 5648C and Permit 15012 shall not exceed the amount allowed under Permit 15012.
7. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.
8. 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).

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 the decision duly and regularly adopted at a meeting of the State Water Resources Control Board held July 19, 1984.

Aye:

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

No:

Absent:

Abstain:

for Walter Pettit
Michael A. Campos
Executive Director