

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22407 )  
of Surety Leasing Corporation to )  
Appropriate from Wolf Creek in Lake )  
County )

---

Decision 1316

*Amended by Order 12/5/68*

DECISION APPROVING APPLICATION  
IN PART

Surety Leasing Corporation having filed Application 22407 for a permit to appropriate unappropriated water; protests having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; 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:

1. Application 22407 is for a permit to appropriate one cubic foot per second (cfs) by direct diversion from October 1 of each year to June 30 of the succeeding year and 280 acre-feet per annum (afa) by storage from November 1 of each year to April 30 of the succeeding year

for municipal and recreational purposes from Wolf Creek in Lake County. The point of diversion is to be located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 11, T14N, R7W, MDB&M. On March 20, 1968, the applicant filed a petition to add an additional point of diversion within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said section. The proposed change will not result in injury to any legal user of water involved and the petition should be granted.

2. Applicant is constructing a dam on Wolf Creek approximately one mile above its confluence with North Fork Cache Creek, which will form a reservoir having a capacity of approximately 265 acre-feet. The water will be used at a recreational subdivision where it is planned to construct approximately one thousand homes. It will supplement a supply available from springs. The project is being constructed with public moneys in cooperation with the County of Lake, and the applicant has indicated it intends to assign the rights obtained pursuant to Application 22407 to the county.

3. Clear Lake Water Company (hereinafter referred to as the company) filed a protest on the basis that the applicant's project would interfere with its claimed pre-1914 appropriative rights to store approximately 314,000 acre-feet annually in Clear Lake along with rights

in the natural flow of Cache Creek. Since Wolf Creek is not tributary to Clear Lake, the proposed appropriation will not affect the company's storage rights. The company's lowermost point of diversion from Cache Creek is at Moore Dam, which is upstream from the U.S.G.S. gaging station "near Yolo". Water passing this gaging station is surplus to the quantities necessary to satisfy the company's early rights to divert from Cache Creek.

The company is now in the process of dissolution and the protestant Yolo County Flood Control and Water Conservation District (hereinafter referred to as the district) has succeeded to all water rights belonging to the company (letter of February 21, 1968, from Clear Lake Water Company to Executive Officer, State Water Resources Control Board, Files of Application 20862).

4. In addition to its rights as successor of the Clear Lake Water Company, the district holds by assignment from Yolo County Permit 12848 (Application 11389), Permit 12849 (Application 15975) and Permit 12850 (Application 15976) which together authorize appropriation of 1,000 cfs by direct diversion from Cache Creek at Rumsey, Capay and Moore diversion dams and 1,480,000 afa by storage at Indian Valley, Wilson Valley, Esparto and Blue Ridge reservoirs.

5. On May 17, 1960, the district and Yolo County executed an agreement with Lake County and Lake County Flood Control and Water Conservation District providing that Yolo County would not protest any applications which might be filed by any applicant for use of water in Lake County within the Cache Creek watershed within the amounts set forth in said agreement, provided such applications shall have been approved by the Board of Supervisors of Lake County. The amounts of water set forth in the agreement include storage of up to a total of 5,000 acre-feet annually "in small reservoirs for use in Lake County."

The agreement also provided that any such applications for use of water in Lake County shall be deemed to have equal priority with Applications 15975 and 15976. The district has agreed to dismissal of the protest to Application 22407 as it relates to any interference with its rights under Permits 12849 and 12850 (issued on Applications 15975 and 15976) provided the Board of Supervisors of Lake County approves the applicant's project as coming within the amounts reserved under the agreement. The Board of Supervisors gave its approval by Resolution No. 68-11 on January 22, 1968, and the district's protest as it relates to claimed interference with its rights under Permits 12849 and 12850 can be considered to have been withdrawn.

Although the district has not withdrawn its protest based upon its claimed prior rights under Permit 12848 (issued on Application 11389), the agreement not to protest any applications coming under the terms of the agreement appears to effectively bar any such protest to the storage feature of Application 22407.

The May 17, 1960, agreement also provided that it would not affect the priority of Application 11389 for the storage of the waters of the North Fork Cache Creek as those priorities would exist in the absence of the agreement. Since Wolf Creek joins North Fork Cache Creek below the Indian Valley Reservoir site where water is to be stored under Permit 12848 issued on Application 11389, diversion under Application 22407 will not affect the water supply available to the district at this reservoir.

It follows from the foregoing discussion that only that part of Application 22407 pertaining to direct diversion is subject to protest by the district to the extent such direct diversion might interfere with the district's prior rights under Permit 12848 to divert water from Cache Creek below the North Fork.

6. Permit 12848 authorizes appropriation between October 1 and June 30 of each season of 250,000 afa by storage at proposed Indian Valley Reservoir on North Fork Cache Creek and 1,000 cfs by direct diversion from Cache Creek at Rumsey, Capay and Moore diversion dams.

These quantities of water total more than the flow available in Cache Creek. However, it has been almost 22 years since Application 11389 was filed and the district's current plans are found in its "Feasibility Report on Proposed Cache Creek Project", dated January, 1963. An operation study of the Clear Lake and Indian Valley Reservoir system contained in this report covering the years 1916 to 1934, a dry period, shows that at the present level of development in the service area of the district the average annual spill in Cache Creek past the Capay diversion dam would be 109,440 acre-feet, varying from a low of 6,000 acre-feet in 1923-24 to a high of 614,000 acre-feet in the year 1926-27 (Appendix G). The spill at Capay is, for all practical purposes, in excess of the district's needs since diversions of the district below Capay are offset by intervening return flows. By the year 1975 the estimated water diversion requirements for the district's Cache Creek service area will be 257,000 acre-feet annually (Page IV-17, Feasibility Report on Proposed Cache Creek Project, dated January 1963). The record of historical flows at Cache Creek measured at a U.S.G.S. gaging station "near Yolo" (1928 through 1967), located below the district's lowermost point of diversion, shows that water occurred in excess of this amount in only 14 of the 39 years of record, or just over one-third of the

time. However, the district will be adequately protected during times when unappropriated water is not available by a term in the permit issued on Application 22407 restricting diversion under the permit to times when water is passing this gaging station. Issuance of a permit subject to such a condition will satisfy the position of the district as expressed in a letter from its attorney dated August 4, 1967, which states that the protest of the company stands "to any diversion season extending beyond March 1, except to the extent that in wet years all water is not being diverted into the canals of the Clear Lake Water Company system."

7. It is clear from the records of the U.S.G.S. gaging station "near Yolo" that, under present development, unappropriated water does not occur in sufficient years during the month of June to justify including that month in the direct diversion season, as requested by Application 22407.

8. 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.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22407 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 22407 and all relevant information on file therewith, particularly the report of the field investigation made July 13, 1967; files of Applications 11389, 15975 and 15976; State Water Rights Board Decision D 991; Yolo County Flood Control and Water Conservation District "Cache Creek Project" feasibility report, dated January 1963; U. S. Department of the Interior, Geological Survey, Water Resources Division, "Water Resources Data for California, Part 1, Surface Water Records, Volume 2, Northern Great Basin and Central Valley" for period of published record; and U.S.G.S. topographic maps for the area under consideration.

#### ORDER

IT IS HEREBY ORDERED that the petition to add an additional point of diversion under Application 22407, filed on March 20, 1968, be, and it is, granted.

IT IS FURTHER ORDERED that Application 22407 be, and it is, approved in part, 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 one cubic foot per second by direct diversion to be diverted from about October 1 of each year to about June 1 of the succeeding year and 280 acre-feet per annum by storage to be collected from about November 1 of each year to about May 1 of the succeeding year.

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

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

3. Construction work shall be completed on or before December 1, 1971.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1972.

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

6. 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 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.

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. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights.

Permittee shall, when required by the State Water Resources Control Board, install and maintain an outlet pipe of adequate capacity in its dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board to comply with the preceding paragraph.

9. 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.

10. If the dam is of such size as to be within the jurisdiction of the Department of Water Resources as to safety, storage of water shall not be commenced until the Department has approved plans and specifications.

11. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian and/or prior appropriative right, the rights so determined and the right acquired under this permit for direct diversion of water shall not result in a combined right to the use of water in excess of that which could be claimed under the largest of the rights.

12. Permittee shall restrict its diversion under this permit to times when water flows past the U.S.G.S. gaging station "near Yolo".

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: **NOV 7 1968**

GEORGE B. MAUL  
George B. Maul, Chairman

W. A. ALEXANDER  
W. A. Alexander, Vice Chairman

RALPH J. MCGILL  
Ralph J. McGill, Member

NORMAN B. HUME  
Norman B. Hume, Member

E. F. DIBBLE  
E. F. Dibble, Member