

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application  
20350 of U. S. Bureau of  
Reclamation to Appropriate  
from American River and Deer  
Creek in Sacramento County

Decision 1361

DECISION APPROVING APPLICATION IN PART

United States Bureau of Reclamation (USBR) having filed Application 20350 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Resources Control Board on May 7, 1968; applicant and protestant having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Application to Appropriate Water from the American River.

Application 20350 is for a permit to appropriate water from two sources, the American River and Deer Creek in Sacramento County. The diversion proposed from the American River is up to 100 cubic feet per second (cfs) by pumping from Folsom Reservoir to supplement diversion directly applied to beneficial use in the Folsom-Malby service area and storage in the County Line Reservoir from Deer Creek.

Applicant's witness testified that the American River water to be used would be a rediversion and a re-storage of water appropriated under Applications 18722 and 21637; that the 100 cfs of direct diversion of American River water applied for under Application 20350 and the storage of this water in County Line Reservoir is not in addition to the water applied for under Applications 18722 and 21637 (RT 21); that with Auburn Reservoir, Folsom Reservoir, and Folsom South Canal in operation there will be very little surplus spill water in Folsom Reservoir which could be diverted for use in the Folsom-Malby area; and USBR therefore assumes that the supply for the Folsom-Malby area will come from Deer Creek when available, and will be supplemented as necessary by water from storage in Auburn Reservoir covered by Applications 18722 and 21637 (RT 32). Applications 18722 and 21637, referred to in the testimony and listed in USBR Exhibit 5, are for storage of 800,000 acre-feet per annum (afa) in Auburn Reservoir, include Folsom and County Line Reservoirs in the points of rediversion, describe the Folsom-Malby conduit, and designate the Folsom-Malby area as a place of use. The Board has since approved Applications 18721 (with amendments to include uses proposed under Application 18722) and 21637; therefore, that portion of Application 20350 which is for a permit to appropriate water from the American River is unnecessary and is denied.

Application to Appropriate Water from Deer Creek.

Application 20350, as it applies to Deer Creek, is for a permit to appropriate up to 90 cfs by direct diversion from November 1 of each year to March 31 of the succeeding year, and 40,000 afa by storage during the same season, for domestic, recreational, municipal, and industrial purposes. The point of diversion is County Line Dam.

Protest by the Department of Fish and Game.

The only protest against Application 20350 was filed by the California Department of Fish and Game based solely on the effect of the proposed diversion from the American River. The diversion from Deer Creek was not protested; however, Fish and Game introduced testimony that there was no fish life in Deer Creek below the County Line Dam to be protected but releases from the reservoir would be necessary to protect the wildlife habitat. Subsequent to the hearing, Fish and Game and the applicant entered into an agreement which included provisions for releases from, and maintenance of a minimum pool in, County Line Reservoir. Fish and Game filed the agreement in this proceeding with instructions that its protest could be considered withdrawn if those terms of the agreement, which are within the jurisdiction of the Board, are made conditions of any permit. An appropriate provision should be included in any permit issued making it subject to the agreement between Fish and Game and the applicant.

The Rate and Quantity of Direct Diversion from Deer Creek.

The monthly demand, in acre-feet, for the Folsom-Malby area set forth in USBR Exhibit 16 for the proposed season of diversion and the month of April is as follows:

<u>Month</u>	<u>Acre-Feet</u>
November	900
December	480
January	480
February	480
March	960
April	1,260

For the season from November 1 to March 31 of the succeeding year, the demand is 3,300 acre-feet with a maximum monthly demand of 960 acre-feet in March. The continuous flow equivalent of 960 acre-feet in 30 days is 16 cfs which raises a question as to the reasonableness of the proposed direct diversion of 90 cfs. The maximum direct diversion required will exceed the continuous flow equivalent if the supply fluctuates and can be regulated by temporary storage. Water stored less than 30 days is classified as regulated direct diversion (Title 23, Cal. Admin. Code, Section 685 (d)). The data set forth in USBR Exhibit No. 16 demonstrates there is a possibility that flows of Deer Creek of up to 90 cfs may occur for short periods during the proposed season of diversion which could be regulated in County Line Reservoir and used

within the following 30 days. Therefore, direct diversion of not to exceed 90 cfs should be authorized with the total quantity limited to the demand during the proposed season of diversion (3,300 afa) and the following 30 days (1,260 afa) or 4,560 afa.

The Quantity of Storage from Deer Creek.

Applicant proposes to store all flow of Deer Creek during the period November through March in excess of vested rights and the direct diversion demand. The reservoir will have a gross capacity of 40,000 acre-feet and be operated to maintain a flood control reservation of 15,000 acre-feet from November 1 to March 15, reducing at a constant rate to 10,000 acre-feet on March 31 and to zero on May 1. In the operation study, USBR Exhibit 16, applicant assumed that all available Deer Creek water would be stored before any American River water would be pumped into the reservoir. The maximum quantity stored from Deer Creek between November 1 and March 31 in the study is approximately 12,240 acre-feet (1944-45). However, 30,000 acre-feet (gross capacity of the reservoir less the 10,000 acre-feet flood control reservation on March 31) is the maximum available storage capacity of the reservoir in any one season between November 1 and March 31 and storage of that quantity should be authorized.

Availability of Unappropriated Water.

No issue was raised at the hearing regarding interference by the proposed diversion with prior vested rights. However, according to the evidence submitted, release of the first 500 acre-feet or 530 acre-feet, depending on the month, of natural flow will satisfy the needs of known users from Deer Creek downstream from County Line Dam to the Cosumnes River, and maintain the percolation to underground strata to the extent percolation would have occurred naturally. When the flow in Deer Creek at the site of County Line Dam exceeds these amounts, there is surplus flow downstream in the Cosumnes River, Mokelumne River, and the Sacramento-San Joaquin Delta. 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. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20350 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:

ORDER

IT IS HEREBY ORDERED that Application 20350 be, and it is, approved as to that part which is to appropriate water from Deer Creek, 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 90 cubic feet per second by direct diversion to be diverted from about November 1 of each year to about March 31 of each succeeding year and 30,000 acre-feet per annum by storage to be collected from about November 1 of each year to about March 31 of the succeeding year.

The total amount of water appropriated under this permit by direct diversion shall not exceed 4,560 acre-feet per annum.

2. The quantity of water appropriated under this permit for consumptive use shall be limited to a maximum of 24,000 acre-feet per 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 reason.

3. Permittee shall maintain a minimum pool of 15,000 acre-feet in County Line Reservoir for the benefit of recreation and fishery, except that in the event of emergencies or during periods of critical water shortages, as determined by permittee and the Department of Fish and Game, the minimum pool may be reduced to not less than 200 acre-feet. Should this occur, the minimum pool will be restored to 15,000 acre-feet as soon as operational conditions permit.

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

5. Actual construction work shall begin on or before December 1, 1973, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

6. Said construction work shall be completed on or before December 1, 1975.

7. Complete application of the water to the proposed use shall be made on or before December 1, 2000.

8. 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.

9. 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.

10. 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 water 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.

11. 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.

12. Permittee shall 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, in order that water entering the reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights.

13. Upon the request of the Board, permittee shall make such measurements and maintain and furnish to the Board such records and information as may be necessary to determine

compliance with the terms and conditions of this permit, including the recognition of vested rights and for the further purpose of determining the quantities of water placed to beneficial use under the permit both by direct diversion and storage.

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

15. Permittee shall release a minimum of eight cubic feet per second or the unimpaired natural inflow into County Line Reservoir if less than eight cubic feet per second, at all times into the channel of Deer Creek immediately below County Line Dam for existing rights and to maintain riparian habitat along Deer Creek used for wildlife purposes. The provisions of this paragraph are based on a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of wildlife habitat along Deer Creek.

16. The Board reserves continuing jurisdiction over this permit for the purpose of coordinating terms and conditions of the permit with terms and conditions which have been or

which may be included in permits issued pursuant to other applications of the United States in furtherance of the Federal Central Valley Project and applications of the State of California in furtherance of the State Water Project.

17. The Board reserves continuing jurisdiction over this permit for the purpose of formulating or revising terms and conditions relative to salinity control in the Sacramento-San Joaquin Delta.

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

Dated: July 16, 1970

KERRY W. MULLIGAN  
Kerry W. Mulligan, Chairman

E. F. DIBBLE *Absent*  
E. F. Dibble, Vice Chairman

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

W. W. ADAMS  
W. W. Adams, Member