

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of)	Source: Bear River
Application 2652 by)	Counties: Placer and
NEVADA IRRIGATION DISTRICT,)	Nevada
Applicant.)	

Decision No. D 914

Decided: November 6, 1958

Appearances at Hearing Held at Sacramento on September 3, October 2, 14, 15, and 17, 1957, by Henry Holsinger, Chairman, W. P. Rowe, Member, and John B. Evans, Member, State Water Rights Board:

Nevada Irrigation District	David Minasian, Attorney
South Sutter Water District	Harry B. Seymour, Attorney
Camp Far West Irrigation District	Martin M. McDonough, Attorney
State Department of Fish and Game	Lucian B. Vandegrift, Deputy Attorney General
United States Bureau of Reclamation	John K. Bennett, Assistant Regional Solicitor
State Department of Water Resources	Russell Kletzing, Associate Attorney, Department of Water Resources

DECISION

History of the Application

Application 2652 was filed on November 22, 1921, by Nevada Irrigation District (hereinafter referred to as "the district") for a permit to appropriate 100,000 acre-feet per annum by storage of the

"flood waters of Bear River" to be collected in South Wolf Creek Reservoir between November 30 of each year and August 1 of the succeeding year for irrigation purposes. The place of use was described as 208,000 acres within the district, of which 154,211 acres were stated to be susceptible of irrigation.

The application, together with numerous other applications of the district, was the subject of a series of hearings held by the former Division of Water Rights in 1922 and 1923. As a result of said hearings, Decision No. D 55 was issued on May 19, 1925, approving certain of the other applications. It was determined that the proposed appropriation under Application 2652 was then unnecessary "as the District appears to have an ample supply to meet the needs as outlined by the State Engineer's Office without it, and action upon this application can await a further showing in the matter." Action on the application was ordered withheld "until further order is entered."

By petition filed on May 12, 1930, the district sought permission to change the place of storage from South Wolf Creek Reservoir to Parker Reservoir located within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 30, T14N, R9E, MDB&M*, and Combie Reservoir located within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 2, T13N, R8E. The aforesaid petition also proposed a change in the description of the place of use to 167,789 acres within the boundaries of the district.

Further hearings were held on Application 2652 and certain other applications and permits of the district in 1931. Decision No. D 474 was issued on March 10, 1941. It was therein determined

*Township references appearing hereinafter are to Mt. Diablo Base and Meridian.

that all protests to the applications under consideration should be disregarded as they had either been withdrawn or dismissed or protestants had failed to appear. That portion of the decision relating to Application 2652 recited that since issuance of Decision No. D 55 conditions had changed in that the district boundaries had been enlarged, and a petition had been filed to serve the enlarged areas and to include the Parker and Combie Reservoir sites on the Bear River as places of storage rather than the reservoir site on South Wolf Creek as was originally intended. It appears from the decision that Combie Reservoir had been constructed; that water was then being stored by the district for subsequent release for irrigation purposes within the district boundaries; and that the Gold Hill distributing system had been purchased by the district from the Pacific Gas and Electric Company. Concerning storage of water at the Parker Dam site, Decision No. D 474 declared that although the district had purchased lands within the proposed reservoir area, it had no plans for immediate construction of the dam. It was therefore ordered that Application 2652 be amended in accordance with the petition previously filed to change the place of use, points of diversion, and places of storage, and that as amended it be approved for an amount of water not to exceed 12,500 acre-feet per annum to be stored in Combie Reservoir, and that action be withheld on the remaining 87,500 acre-feet to be stored in Parker Reservoir until entry of further order. On June 17, 1941, Permit 5803 was issued to the district in accordance with the foregoing order.

No further action was taken concerning that portion of Application 2652 which pertains to Parker Reservoir until the State Water Rights Board, on its own motion, set the matter for hearing on September 3, 1957. The hearing extended through later sessions

convened on October 2, 14, 15, and 17, 1957. The application was consolidated for hearing with Applications 14599, 14704, 14705, and 14804.

The following portions of this decision include a summary and discussion of the evidence presented at the hearing before the Board.

Watershed

Bear River originates near Emigrant Gap in Nevada County on the western slope of the Sierra Nevada in T17N, R12E, at an elevation of about 5,000 feet and flows southwestward to its junction with Feather River about 15 miles south of the City of Marysville. It forms a boundary line between Nevada and Placer Counties and closely parallels the Bear River-American River divide, which lies one to two miles south of the river.

Some 126 square miles of Bear River watershed are tributary to the Parker dam site. The principal tributary streams in this area are Steep Hollow, Greenhorn, and Wolf Creeks, all of which enter Bear River from the north.

Mean annual precipitation within the drainage basin varies from about 18 inches at Feather River on the Sacramento Valley floor to about 65 inches near Lake Spaulding where much of it falls as snow. The climate of the area, like its topography, is varied. At lower elevations the summers are warm and dry with long growing seasons. At higher elevations the growing season is short and nights are cold. Approximately 80 per cent of the seasonal precipitation occurs during the five-month period, November through March.

Water Supply

Bear River is a perennial stream with wide seasonal and annual variations in flow. Above the Parker dam site imports to the Bear River from the Yuba River watershed are made by Pacific Gas and Electric Company through its "Drum System". The imported water is normally rediverted by the company at several points and used for power generation before it reaches Parker dam site. The flow of Bear River below Parker dam site is regulated at Combie and Camp Far West Reservoirs. According to the Water Supply Papers of United States Geological Survey (Staff Exh. 10), there are two gaging stations maintained on Bear River below the Parker dam site; the "Bear River near Auburn" gage is located eight miles north of Auburn 300 feet upstream from the bridge on State Highway 49, and the "Bear River near Wheatland" gage is located at the bridge on U. S. Highway 99E one mile southeast of Wheatland. Flow measured at the "near Auburn" gage includes the natural runoff of Bear River and spillage, if any, from Nevada Irrigation District Combie Reservoir-Gold Hill Canal and from Pacific Gas and Electric Company "Drum System". This gage is located about five miles downstream from Parker dam site and has a catchment basin of 140 square miles, 14 square miles of which contribute to the river below the dam site (NID Exh. 12). The runoff at this gage is tabulated in Table I for the years of published record during those months in which appropriation of water is sought under Application 2652.

The Parker Project

The district's Parker Project contemplates the construction of a dam across Bear River a short distance above the existing Combie Reservoir. The reservoir created by the dam is designed to conserve

Table I

Bear River near Auburn
in Acre-feet

	Dec.	Jan.	Feb.	Mar.	Apr.	May	Totals
1941-42	35,460	60,060	75,460	28,610	59,960	47,380	306,930
43	27,970	100,100	48,710	93,440	31,620	17,230	319,070
44	2,360	8,480	13,370	32,310	13,580	8,160	78,260
1944-45	14,870	13,240	63,520	53,590	42,410	13,970	201,600
46	72,000	55,800	38,730	40,850	32,420	21,050	260,850
47	12,650	611	6,690	47,140	24,170	4,510	95,771
48	1,760	8,790	10,100	8,350	72,740	38,660	140,400
49	2,980	6,270	9,540	44,040	38,120	9,240	110,190
1949-50	3,320	27,570	44,220	37,770	38,780	9,390	161,050
51	91,030	73,670	50,700	60,100	39,080	18,010	332,590
52	43,310	75,400	77,930	62,240	68,170	30,210	357,260
53	6,240	60,020	15,950	23,870	38,730	22,110	166,920
1953-54	<u>10,390</u>	<u>17,450</u>	<u>26,140</u>	<u>48,870</u>	<u>33,770</u>	<u>7,320</u>	<u>143,940</u>
Total	324,340	507,461	481,060	581,180	533,550	247,240	2,674,831
Mean	24,949	39,036	37,005	44,706	41,042	19,018	205,756
Median	12,650	27,570	38,730	44,040	38,730	17,230	166,920

the runoff of Bear River to supply water for irrigation purposes in Placer County. This reservoir, which will have a capacity of 114,000 acre-feet, is located within both Nevada and Placer Counties (Bear River is the dividing line between the counties) and when full will inundate 1,100 acres. Water controlled by the reservoir is to be regulated through Combie Reservoir into the district's existing facilities. These existing facilities are to be enlarged and a new canal constructed to facilitate the irrigation of an extended service area (R.T., Oct. 14 and 15, page 27). An alternate proposal would convey water from Parker Reservoir through Wise Power House before its use for irrigation (R.T., Oct. 17, pages 5-12).

The project is presently designed to serve water to the entire 41,000 acres of irrigable land of the total of 66,500 acres comprising the district's Placer Division in Placer County. At the present time 12,000 acres of this area are served. However, approximately 50 per cent of the water so used is purchased from Pacific Gas and Electric Company. The Parker Project will eliminate the necessity of these purchases, as well as provide water for lands presently unirrigated (R.T., Oct. 14 and 15, pages 29-31). It is also claimed by the district that Bear River is the only source of water that can be used to serve this division (R.T., Oct. 14, 15, page 31). Approximately 4 acre-feet per acre per season are required for irrigation in the Placer area (R.T., Oct. 14, 15, page 29). This being the case, about 164,000 acre-feet of water would be required to fully irrigate the 41,000 acres in the Placer Division.

Since entry of Decision No. D 474, the district has engaged an engineering firm to obtain a feasibility report of several prospective developments, including Parker Dam (NID Exh. 12); filed

letter dated March 27, 1957, with the Bureau of Reclamation of intent to apply for a loan under the Small Reclamation Projects Act (NID Exh. 3); completed core drillings for foundation exploration; purchased the Parker Dam site; and in addition to the land purchase, expended some \$90,000 on the project. Of this amount, approximately one-half was spent within the year preceding the hearing for the feasibility report.

The California Water Plan

The California Water Plan (Bulletin No. 3, Department of Water Resources, May, 1957, Staff Exh. 4) includes as principal features relating to Bear River the following:

- a. Rollins Reservoir, or suitable alternate, on the middle reaches of Bear River, with a gross storage capacity of 100,000 acre-feet.
- b. The enlargement of Camp Far West Reservoir, or suitable alternate reservoir, at the foothill line of Bear River, to gross storage capacity of 242,000 acre-feet.

The Legislature appropriated money for the California Water Development Program in 1956 and further indicated its interest in the program by adopting a resolution in 1957 (Senate Concurrent Resolution 130, Chapter 296, California Statutes of 1957), requesting the Department of Water Resources to expedite its feasibility investigation of the Yuba and Bear Rivers. The Department is proceeding with the investigation at a pace commensurate with the availability of funds and qualified personnel. It is estimated that the preliminary planning will be completed by December, 1959, with the final report scheduled for completion by December, 1961 (R.T., Vol. II, Oct. 2, page 27).

Although the projects proposed by the applicant are somewhat at variance with the California Water Plan as set forth in Bulletin No. 3, the Department of Water Resources believes that they are susceptible of integration with the Plan. Accordingly, the Department has indicated (R.T., Vol. II, Oct. 2, page 28) that it has no objection to the projects and, in fact encourages their construction providing there is coordination of planning to insure such integration. The Department of Water Resources therefore suggests that any permit granted contain a clause to the effect that:

"Project planning shall be carried on by the Permittee in cooperation with the Department of Water Resources of the State of California for the coordination of the project with respect to comprehensive development of the water resources concerned." (R.T., Vol. II, Oct. 2, page 28)

Stipulations with Department of Fish and Game
and Camp Far West Irrigation District

The district stipulated with the California Department of Fish and Game (R.T., Vol. II, Oct. 2, page 7) that any permit that may be issued under Application 2652 "shall be subject to said applicant allowing five cubic feet per second (5 c.f.s.) of the natural flow to at all times pass down the stream bed of the Bear River beyond said applicant's proposed diversions. It being understood that applicant shall not divert from the Bear River when the natural flow, other than water developed by storage upstream by said applicant or district water diverted into Bear River by said applicant, is five cubic feet per second (5 c.f.s.) or less."

The district stipulated with Camp Far West Irrigation District (N.I.D. Exh. 14) that the following conditions may be included in any permit or license issued pursuant to Application 2652 in so far as it applies to storage at Parker Reservoir.

(a) The collection season shall terminate on June 1 of each season, and shall not begin in any season until storage rights at Lake Combie under Permit No. 5803 have been satisfied.

(b) During the collection season, Nevada shall not divert water which is necessary to provide (i) the full direct irrigation diversion requirements of Camp Far West, under its existing rights, and (ii) 5,000 acre-feet of storage in Camp Far West Reservoir as of June 1 under Camp Far West's licenses for such storage.

Discussion

The history of Application 2652 is unusual in a number of respects. It is fundamental that one who does not propose to commence development of a project promptly and to proceed diligently to complete it and to make beneficial use of water, cannot reserve water for future use by filing an application and securing indefinite deferment of action thereon. Yet the previous actions and decisions of the Board's predecessors concerning this application permitted such a reservation of water for a period in excess of 35 years. No direct attack having been made upon those decisions, the Board accepts them as valid for the purposes of this proceeding without thereby indicating approval thereof. The effect of the long delay upon the priority of the district's right to appropriate water at Parker Reservoir is a matter concerning which the Board expresses no opinion.

All protests having been previously dismissed or withdrawn, the application is eligible for approval provided it appears at the present time that unappropriated water will probably be available to satisfy the applicant; that the intended uses are beneficial; that the applicant is now prepared to proceed with due diligence to perfect the proposed appropriation within a reasonable time; and that the project is in the public interest. The Board finds in favor of the applicant upon each of the foregoing issues and concludes that a

permit should be issued to the district authorizing it to appropriate water at Parker Reservoir in the manner proposed in Application 2652 as amended, subject to the usual terms and conditions, to the condition proposed by the Department of Water Resources, and to the conditions agreed to between applicant, the Department of Fish and Game, and Camp Far West Irrigation District.

ORDER

IT IS HEREBY ORDERED that that portion of Application 2652 for a permit to appropriate water at Parker Reservoir site be, and the same is hereby approved and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 87,500 acre-feet per annum by storage to be collected from about November 30 of each year to about June 1 of the succeeding year.

2. The maximum amount herein stated may in license be reduced if investigation so warrants.

3. Actual construction work shall begin on or before September 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1962.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights

Board until license is issued.

7. 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 Rights 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.

8. Project planning shall be carried on by permittee in cooperation with the Department of Water Resources of the State of California for the coordination of the project with respect to comprehensive development of the water resources of Bear River.

9. Permittee shall at all times allow five (5) cubic feet per second of the natural flow to pass down the stream bed of Bear River below permittee's diversions for the purpose of maintaining fish life. permittee shall not divert from Bear River when the natural flow, other than water developed by storage upstream by permittee, or foreign water diverted into Bear River watershed by permittee, is five (5) cubic feet per second or less.

10. The collection season shall terminate on June 1 of each season, and shall not begin in any season until storage rights at Lake Combie under Permit No. 5803 have been satisfied.

11. During the collection season, permittee shall not divert water which is necessary to provide (i) the full direct irrigation diversion requirements of Camp Far West Irrigation District, under its existing rights, and (ii) 5,000 acre-feet of storage in Camp Far West Reservoir as of June 1 under Camp Far West Irrigation District's licenses for such storage.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this 6th day of November, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member*

*John B. Evans, Member, State Water Rights Board, resigned as of January 15, 1958. Ralph J. McGill has been appointed to fill the vacancy created by the resignation of Mr. Evans.