

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25056)
of the East Bay Municipal Utility)
District to Appropriate from the)
Mokelumne River in San Joaquin)
County.)

Decision 1480

DECISION APPROVING APPLICATION 25056

By Board Member Adams:

The East Bay Municipal Utility District (applicant) having filed Application 25056 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before Board member Adams on August 16, 1977; the applicant and protestant having appeared and presented evidence; the evidence received into the record having been duly considered; the Board finds as follows:

Substance of Application 25056

1. Application 25056 is for a permit to appropriate 1,200 cubic feet per second (cfs) by direct diversion during the period from October 1 to July 31 of each year (500,000 acre-feet annually) and to appropriate 353,000 acre-feet annually (afa) to storage during the period from December 1 to July 1 of each year. Both the direct diversion and the storage diversion are for power purposes. The source of water is the Mokelumne River. The points of diversion are within the SE $\frac{1}{4}$ of Section 6, T4N, R9E, MDB&M.

Applicants Project

2. Applicant has constructed Camanche Dam under Permit 10478 (Application 13156) on the Mokelumne River. Applicant proposes to construct a powerplant at its Camanche Dam to generate power from releases the applicant is required to make under Permit 10478 such as releases for downstream appropriators, for fish and wildlife, for other uses, and of inflow during non-storage months. No water will be stored for the purpose of this power application that is not already stored under Permit 10478.

Protests

3. A protest was filed by Don & Frances Stapelberg. Applicant sent a letter to the Stapelbergs recognizing their prior right under License 1226 (Application 4215). The Stapelbergs then withdrew their protest. Protests were also filed by Harry Walker II and by El Rio Vineyards, which was represented by Harry Walker II. Harry Walker II and El Rio Vineyards will be collectively referred to as "protestants" hereinafter.

4. Protestants claim a riparian right to the use of water from the Mokelumne River; protestants have also filed Application 24386 (June 4, 1973) to appropriate 11.14 cfs by direct diversion and to appropriate 49.62 afa to storage with an annual use limitation of 844.61 acre-feet. The Board has not taken action on Application 24386.

a. Protestant contends that approval of Application 25056 will interfere with his vested rights. This contention concerns the issue of whether there is unappropriated water

available to supply the applicant and will be considered infra.

b. Protestant, also contends, that the Board should not act on the instant application until the Board has acted on protestant's application. This contention is without merit, because Board action on Application 24386 is irrelevant to Board action on Application 25056: If, and to the extent that, protestant's priority of the application is approved, the resulting entitlement would be senior to that derived from the instant application. We point out that the applicant - a public agency - has prepared a final Environmental Impact Report for Application 25056. However, as lead agency the Board is required to prepare for the protestant's project the appropriate environmental document. Consequently, the Board is able to act more quickly on Application 25056 than on Application 24386.

Existence of Unappropriated Water

5. Decision 858 of this Board's predecessor in function found that there was unappropriated water available to supply the applicant to the extent later authorized by Permit 10478. Permit 10478 authorizes diversion of 353,000 acre-feet per annum by storage in Camanche Reservoir from December 1 of each year to July 1 of the succeeding year for municipal purposes.

6. Approval of Application 25056 would not authorize diversion to storage of any water not already authorized to be stored under Permit 10478 and would not change the season of diversion to storage. Accordingly, there is unappropriated water to supply the applicant's proposed use of water for power.

7. The direct diversion authorized by Permit 10478 differs in several respects from the direct diversion sought by Application 25056.

a. Permit 10478 authorizes a direct diversion of 194 cfs; Application 25056 requests a direct diversion of 1,200 cfs.

b. Permit 10478 authorizes direct diversion from December 1 of each year to July 1 of each succeeding year; Application 25056 requests a direct diversion period from October 1 of each year to July 31 of each succeeding year.

8. Despite the apparent difference between the rates of diversions and the season of diversion authorized by Permit 10478 and requested by Application 25056, approval of Application 25056 will not change the flow in the Mokelumne River below Camanche Dam.

a. Permit 10478 requires the District to bypass inflows into Camanche Reservoir from July 2 to November 30 of each year. The average quantity of water bypassed during each non-storage month is illustrated in Table 1. The corresponding bypassed flow for the month of October - the month with the lowest bypassed flow - is about 150 cubic feet per second. For November, it is about 390 cubic feet per second: For July it is about 570 cubic feet per second.

b. Consequently, on an average basis for the three non-storage months, a flow of 1,200 cubic feet per second for direct diversion is not available. However, USGS records indicate that this flow of water is available in some wet years during the non-storage months and during the storage months in normal years.

Since the flow of the Mokelumne River will not be altered by the approval of Application 25056 and since the requested direct diversion amount is available in some years, the Board concludes that there is unappropriated water available to supply the applicant's requested use.

8. The intended use is beneficial.

Findings Concerning the California Environmental Quality Act

9. Applicant prepared a Final Environmental Impact Report (EIR) on the proposed project, which was approved on February 9, 1977.

10. The Final EIR identified the following short-term adverse impacts associated with the project.

a) Increased noise, traffic, dust and other similar impacts normally associated with construction activities;

b) Potential sediment problems in the Mokelumne River because of necessary excavation and pile driving; and

c) Adverse impacts of sedimentation on fishlife in the Mokelumne River and on the operation of the Mokelumne Hatchery.

11. The Final EIR identified the following long-term adverse impacts associated with the project.

- a) Adverse visual impact of the proposed powerhouse, and
- b) adverse visual impacts of the proposed transmission line.

12. The applicant describes its proposed measures to mitigate the short-term impacts on pages 20-21 of the Final EIR, where it states in part:

- a) Requirements for the strict control of construction noise and dust, and the control of construction debris and litter. Strict enforcement of all local and regional ordinances pertaining to these items would be included.

- b) Prohibiting construction activities within the river channel at times when such activity would be detrimental to fishlife or the operation of the hatchery. This would be coordinated with Department of Fish and Game personnel.

- c) Restricting construction to weekdays as much as possible to minimize possible effects of turbidity or noise on recreational use along the Mokelumne River downstream of Camanche Dam.

d) Compliance with governmental controls regarding emissions resulting from the operation of construction equipment.

e) Traffic would be limited to essential equipment only. No equipment would be allowed to block major highways. Requirements to provide flagmen and/ or other controls when working near highways would be included in the contract specifications.

f) Any feature of the construction project whose presence may be a danger or a threat to the physical safety of local residents or visitors would be secured or removed at the end of each work day.

g) Erosion controls would be used as necessary during the rainy season.

h) Vegetation will be removed only as necessary to construct the power house and access roads, erect transmission towers, string conductors, and for related activities. Landscaping and revegetation of exposed soil would take place as soon as possible.

i) Other environmental and engineering requirements would be contained in any needed construction permits or agreements, including the required Department of Fish and Game streambed alteration agreement.

13. The applicant proposes to mitigate the long term adverse impacts as follows:

a) The proposed powerhouse will be placed below final grade and therefore the adverse visual impact minimized.

b) The necessary transmission line will be located in existing rights of-way and existing lines will be used to the extent practicable.

14. The Board concludes that the applicant has mitigated or avoided the short-term adverse impacts and that the long-term adverse impacts are mitigated to the extent feasible. The adverse visual appearance of a transmission line is in part an unavoidable consequence of this project. Any water quality problems associated with excavation and pile driving in the Mokelumne River is within the jurisdiction of the California Regional Water Quality Control Board, Central Valley Region; the Regional Board shall assure protection of the beneficial uses of the Mokelumne River.

From the foregoing findings, the Board concludes that Application 25056 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following:

ORDER

Therefore, it is recommended that Application 25056 be approved and a permit be issued containing the following standard terms:

1. The Water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1,200 cubic feet per second by direct diversion to be diverted from October 1 of each year to July 31 of the succeeding year and 353,000 acre-feet per annum by storage to be collected from December 1 of each year to July 1 of the succeeding year.

2. The total amount of water to be taken from the source shall not exceed 853,000 acre-feet per water year of October 1 to September 30.

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. The amount authorized for appropriation may be reduced in the license if investigation warrants.

5. Actual construction work shall begin on or before two years from date of permit 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, 1981.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

9. 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.

10. Pursuant to California Water Code Section 100, 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.

This 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) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) 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.

11. 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 discharge 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.

12. This permit is subject to the agreement dated January 3, 1961, between permittee and the Department of Fish and Game, to the extent such agreement covers matters within the Board's jurisdiction.

13. The State Water Resources Control Board reserves jurisdiction over this permit for the purpose of conforming the season of diversion to later findings of the Board on prior applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

14. In accordance with Section 1603 and/or Section 1600 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 fish life 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.

15. During the months March through October, inclusive, whenever the mean monthly flows released downstream from Pardee Reservoir or Camanche Reservoir are less than 400 cubic feet per second, mean daily flow shall not be less than 75% of the average monthly rate of flow released past the lower of said dams, except in the event of emergency.

16. No diversion or use of water shall be made under this permit which will in any way interfere with diversion or use

TABLE 1

AVERAGE MONTHLY DRAW DOWN AND FLOW AT CAMANCHE RESERVOIR
1965-1970

	JULY (AF)	AUG. (AF)	SEPT. (AF)	OCT. (AF)	NOV. (AF)
Average draw down at Camanche Reservoir	-11,720	-25,080	-23,880	-20,840	+ 5,920
Average flow below Camanche Dam	45,750	27,784	22,400	-29,858	23,456
Average flow bypassed each non-storage month	34,030	---	---	9,018	23,456

Table 1 shows available bypass flow during Jul , October and November to generate power.

of water for higher uses whether such higher uses are made under either prior or subsequent rights.

17. If for any reason authorization for storage under Permit 10478 is revoked or licensed for a lesser amount, storage under this permit shall be amended accordingly.

18. 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.

19. Use of water under this permit shall not change the timing or quantity of releases from Camanche Reservoir, or the quantity of water stored therein, under the terms of Permit 10478.

Dated: April 20, 1978

WE CONCUR:

/s/ W. W. ADAMS
W. W. Adams, Member

/s/ JOHN E. BRYSON
John E. Bryson, Chairman

/s/ W. DON MAUGHAN
W. Don Maughan, Vice Chairman