

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary  
Permit 18529 (Application 27341) )

U. S. BUREAU OF RECLAMATION, )

Permittee. )

ORDER: WR 82-4

SOURCE: Stanislaus River

COUNTIES: Calaveras and  
Tuolumne

ORDER VALIDATING THE ISSUANCE OF  
TEMPORARY PERMIT 18529

BY BOARD VICE CHAIRMAN MITCHELL:

The U. S. Bureau of Reclamation (Bureau) having filed Application 27341 for a temporary urgency permit to divert and use unappropriated water pursuant to Chapter 6.5 (commencing with Section 1425), Part 2, Division 2 of the Water Code; the Board having consulted with the U. S. Bureau of Reclamation, the California Department of Fish and Game, the Oakdale and South San Joaquin Irrigation Districts, the Counties of Calaveras and Tuolumne, and the Central San Joaquin Water Conservation District; Board Vice Chairman Mitchell having concluded from available information that the Bureau was entitled to a temporary permit to divert and use water, subject to review and validation by the Board as provided by Water Code Section 1425; the Board finds as follows:

Substance of the Application

1. Application 27341 is for a temporary permit to divert 1,350 cubic feet per second directly from the Stanislaus River at

Goodwin Dam (within the NE1/4 of Section 10, T1S, R12E, MDB&M) with the total diversion not to exceed 7,500 acre-feet. Water will be used for irrigation and domestic use within the Central San Joaquin Water Conservation District (District).

#### The Project

2. The irrigation requirements of the District are currently met by pumping from an overdrawn groundwater basin.

3. The Bureau has signed a temporary contract with the District to supply up to 7,500 acre-feet to the District during the 1982 irrigation season to supplement groundwater supplies on about 15,000 acres in the District.

4. The water would be diverted at Goodwin Dam, owned by Oakdale and South San Joaquin Irrigation Districts, into the Main Canal for delivery to the service area. These districts have agreed to allow their facilities to be used to deliver the water to the District.

#### Availability of Unappropriated Water

5. New Melones Reservoir currently impounds more than 1,500,000 acre-feet and the impoundment is expected to increase. The Department of Water Resources predicts that the April 1 to July 31 runoff of the Stanislaus River at New Melones will be 172 percent of average. The Bureau is under an injunction pending determination of appeal in United States v. California (U.S.C.A., Ninth Circuit, Nos. 81-4189X, 81-4309X) to reduce the storage level in New Melones Reservoir to 438,000 acre-feet, the level

specified by Board Order WR 80-20, provided that releases not damage downstream properties. The Bureau's operation plan, prepared in response to the court order, currently defines non-damaging flows measured at the Ripon gaging station at about 1,200 cfs.

7. The court order also directs the Bureau to use alternative waterways (that is, alternative to the Stanislaus River channel) where possible to lower the reservoir to the authorized level. The additional diversion from the river of 7,500 acre-feet proposed under Application 27341 will aid in enabling the Bureau to evacuate New Melones Reservoir. The diversion will therefore be one means of implementing the alternative waterways portion of the court order.

8. The diversion will not deprive users from the San Joaquin River and the Delta of water to which they are entitled because the Stanislaus River will be contributing flow at maximum capacity, as determined in the Bureau's operation plan, even though water is diverted under the temporary permit.

#### Need

9. In view of the temporary contract between the Bureau and the District, questions relating to the need for the permitted water are answered with reference to the needs of the District. In other words, given the temporary contract, applicant Bureau is akin to an agent of the District for the purposes of Water Code Section 1425.

10. Most lands within the District are irrigated by pumping water from an overdrawn groundwater basin. Stanislaus River water diverted directly to use within the District under

the temporary permit will reduce demand upon the overdrawn basin. Moreover, the water will be made available by gravity diversion, thereby conserving energy that otherwise would be consumed during the season of peak demand by pumping from the basin. Given the extraordinary availability of water this year to serve beneficial uses by direct diversion, we find that the need to conserve this energy and to reduce the demand on an overdrawn groundwater basin is urgent. We are aware that the District contemplates a long-term contract with the Bureau for a portion of the consumptive use yield of the New Melones project to achieve these objectives. However, as we have noted above, the conditions existing in the Stanislaus River watershed this year are extraordinary, and we accordingly find that the District's use of Stanislaus River water by direct diversion is temporary and will not, under the terms of the permit and its contract with the Bureau, exceed six months. We conclude, therefore, that the applicant is entitled to a temporary permit pursuant to Water Code Section 1425(a).

11. We further find that the Bureau is an applicant, under Applications 27320 and 27321 filed on May 3, 1982, for conventional permits for direct diversion from the Stanislaus River to serve water to the lands of the District and others. The Bureau has stated that it understood that its permitted applications for its New Melones project include the right to directly divert from the Stanislaus River to provide the water service contemplated by the temporary permit and the temporary contract with the District. In Order WR 82-3, adopted May 20, 1982,

we concluded that the Bureau's existing New Melones project permits do not authorize direct diversion for purposes other than hydropower. However, we have no reason to conclude that the Bureau's misinterpretation of the scope of its existing permits was in bad faith. Accordingly, we conclude that the applicant's misunderstanding of its rights under existing permits, the extraordinary availability this year of water for direct diversion from the Stanislaus River during the season of need, together with the opportunity to conserve electrical energy and reduce demand upon an overdrawn basin, constitute unforeseen emergency conditions entitling applicant to a temporary permit pursuant to Water Code Section 1425(b).

Effects of the Proposed Diversion on Fish, Wildlife, and Other Instream Uses

12. The Department of Fish and Game has stated that the proposed diversion will have no adverse effect on fish and wildlife. No stream alteration will take place since the diversion facilities are already in place. The diversion will not operate to reduce the flow in the Stanislaus River because the Bureau will be required, under the court order, to regulate the flow below Goodwin Dam to that flow currently defined as non-damaging in the Bureau's operation plan.

California Environmental Quality Act

13. This Board Order authorizes diversion of water on an emergency basis through existing facilities for a six-month period ending November 16, 1982. Such activity is exempt from the provisions of the California Environmental Quality Act

(Public Resources Code Section 21000, et seq.) in accordance with Section 21080(b) of that Act (actions necessary to prevent or mitigate an emergency).

Action by Board Vice-Chairman Mitchell

14. Staff explained the foregoing situation to Board Vice-Chairman Mitchell and recommended approval of the temporary permit. Mr. Mitchell concurred with staff recommendations on May 21, 1982, and authorized issuance of the temporary permit. On the same day, the Chief of the Division of Water Rights issued Temporary Permit 18529.

NOW, THEREFORE, IT IS ORDERED that issuance of Temporary Permit 18529 is validated.

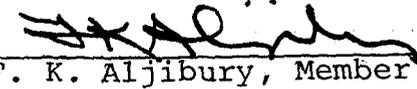
Dated: June 17, 1982

WE CONCUR:

  
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L. L. Mitchell, Vice-Chairman

  
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Carla M. Bard, Chairwoman

  
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Jill B. Dunlap, Member

  
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F. K. Aljibury, Member