

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In Matter of Permit 16641)	
issued Pursuant to)	Order: WR 83-10
Application 24315)	Source: Oliver Creek
)	
ROBERT E. AND TOSHIKO KLENNER)	County: Mariposa
)	
Permittee)	
)	

ORDER AMENDING PERMIT CONDITIONS AND DECIDING NOT TO ISSUE A
PRELIMINARY CEASE AND DESIST ORDER

BY THE BOARD:

A hearing having been held on October 19, 1982 by the State Water Resources Control Board (Board) pursuant to Section 1834(b) of the Water Code for the purpose of allowing Robert and Toshiko Klenner to show cause why a Preliminary Cease and Desist Order should not be issued; permittee and other interested persons having appeared and presented evidence; the evidence received at the hearing having been duly considered; agreement to changes in the permit terms having been reached by the parties; the Board finds as follows:

Substance of Permit

1. Permit 16641 (Application 24315) authorizes storage of 49 acre-feet of water per year in an onstream reservoir. Water can be collected from September 1 of each year to June 30 of the succeeding year for the purposes of stockwatering, recreational, fire protection and fish and wildlife enhancement. The dam and place of use are within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 4, T6S, R20E, MDB&M.

Background

2. Application 24315 was filed by James B. Lundquist on March 6, 1973. The application was protested by the Chowchilla Water District (Chowchilla) under its prior right of licensed Application 13175 and by the U.S. Bureau of Reclamation (Bureau) under its prior right of permitted Application 18714 for storage in Buchanan Reservoir on the Chowchilla River. The Buchanan permit is subject to future upstream appropriations for storage in reservoirs not to exceed 10 acre-feet capacity for stockwatering and recreational use. The Klenner reservoir permit is for 49 acre-feet, and the reservoir's capacity is 41 acre-feet.

3. Chowchilla's protest dismissal terms were that applicant Lundquist recognize its prior rights and that suitable release pipes be installed in the dam. As a result of an agreement between Chowchilla and applicant Lundquist Permit 16641 is subject to terms 13 and 20 as follows:

Permit term 13: Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

Permit term 20: This permit is subject to the protest dismissal terms as stated in the protest by the Chowchilla Water District and as agreed to by permittee in his letter dated May 15, 1973, to the extent such agreement covers matter within the Board's jurisdiction.*¹

4. The Bureau's protest requested that applicant Lundquist's reservoir be limited to 10 acre-feet to conform to the reservation amount in the Buchanan Reservoir permit.

Negotiations between the Bureau and applicant Lundquist resulted in dismissal of the Bureau's protest and the inclusion of term 19 as follows:

Upon commencement of storage in Buchanan Reservoir, permittee shall not divert any water if, in the absence of permittee's diversion, hydraulic continuity exists between permittee's diversion point and Buchanan Reservoir, and shall allow all streamflow at his diversion works to pass

¹ The key provision in the agreement is that permittee would install an outlet pipe.

undiminished to the downstream channel. However, permittee may divert water during such times that flood control releases are being made from Buchanan Reservoir.

5. On May 8, 1978 Permit 16641 was assigned to Robert E. and Toshiko Klenner who had purchased the property from James B. Lundquist. The project had been completed prior to the transfer of the property.

6. During a field investigation on September 11, 1980 it was observed that an outlet pipe through the dam, as required by conditions 13 and 20 of Permit 16641, had not been installed. Because an outlet pipe was not installed, permittee could not bypass the streamflow as required by term 19 until the reservoir was full. Therefore, permittee was also in violation of term 19.

7. On March 31, 1981 and again on October 9, 1981 permittee was advised by letter of the violations of the permit. Failing to obtain voluntary compliance, the Division of Water Rights, in accordance with Water Code Section 1834, notified permittee by certified mail on July 28, 1982 of the Board's intent to issue a Preliminary Cease and Desist Order. On August 11, 1982 permittee requested a hearing by the Board.

Discussion

8. During the hearing, Mr. Klenner stated that the dam was built before he purchased the property and that the Board had

never told him what was a suitable facility to release water past the dam. He further stated that there was a pump and pipe available to release water, if required. While the Board occasionally allows a pump installation to meet the requirements of Permit term 13, the agreement referred to in term 20 specifically calls for an outlet pipe.

9. The March 31, 1981 letter to Mr. & Mrs. Klenner told them of the violations of Permit 16641 and asked if they would install the required outlet pipe. The October 9, 1981 letter to Mr. & Mrs. Klenner stated that Chowchilla would accept nothing but an outlet pipe and that the permit required an outlet pipe through the dam.

10. During the hearing, Mr. McKinzie, representing Chowchilla, stated that dismissal of Chowchilla's protest was on the basis of a suitable release pipe being installed in the dam as required by permit term 20. Mr. McKinzie stated that Chowchilla's position remains that a release pipe be placed in the dam and that a pump or siphon was unacceptable.

11. After the hearing, Mr. Klenner and Mr. McKinzie met to discuss a resolution to the problem. Mr. McKinzie's letter of February 22, 1983 describes a tentative compromise which would be acceptable to Chowchilla. Mr. Klenner accepted these conditions.

12. Division letters of March 9 and April 8, 1983 to Robert E. Klenner, permittee; Jack L. McKinzie, Chowchilla; Michael A. Catino, Bureau; recommended that terms 13, 19 and 20 of Permit 16641 be revised as indicated below subject to acceptance by the Board.

(a) Revised Term 13:

Permittee shall install and maintain a 12-inch, outlet pipe in his dam with the invert not less than 3* feet below the existing spillway elevation.*²

(b) Revised Term 19:

On March 1 of each year, if no flood control releases have been made from Buchanan Reservoir since September 1 of the prior year, permittee shall open the gate and maintain an open outlet pipe until September 1 or until such time that hydraulic continuity no longer exists between permittee's dam and Buchanan Reservoir, whichever occurs first.

(c) Revised Term 20:

Permittee shall install the outlet pipe required in term 13 the first year after 1983 that cumulative inflow to Buchanan Reservoir from September 1 to March 1 of the succeeding year is less than 35,000 acre-feet.

Conclusions

13. A preliminary Cease and Desist Order should not be issued to Robert E. and Toshiko Klenner.

² This level corresponds to about 23 acre-feet in storage.

14. Conditions 13, 19 and 20 of Permit 16641 should be revised as stated above.

ORDER

15. NOW, THEREFORE, IT IS ORDERED that Terms 13, 19 and 20 of Permit 16641 be revised to read as follows:

Term 13:

Permittee shall install and maintain a 12-inch, outlet pipe in his dam with the invert not less than 3 $\frac{1}{2}$ feet below the existing spillway elevation.

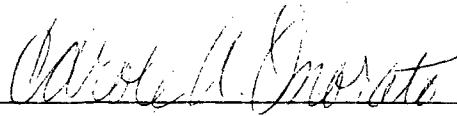
Term 19:

On March 1 of each year, if no flood control releases have been made from Buchanan Reservoir since September 1 of the prior year, permittee shall open the gate and maintain an open outlet pipe until September 1 or until such time that hydraulic continuity no longer exists between permittee's dam and Buchanan Reservoir, whichever occurs first.

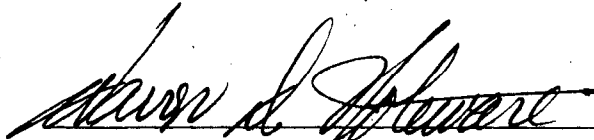
Term 20:

Permittee shall install the outlet pipe required in term 13 the first year after 1983, that cumulative inflow to Buchanan Reservoir from September 1 to March 1 is less than 35,000 acre-feet.

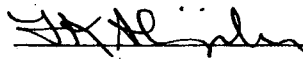
Dated: June 16, 1983



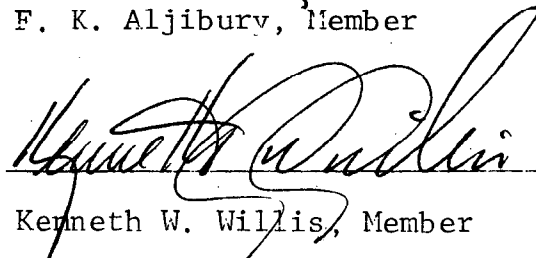
Carole A. Onorato, Chairwoman



Warren D. Noteware, Vice Chairman



F. K. Aljibury, Member



Kenneth W. Willis, Member