

Legal
File

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23201)	
of Reclamation District 1004 to)	Decision 1450
Appropriate from Butte Creek in)	
Colusa County.)	

DECISION APPROVING APPLICATION IN PART

BY THE BOARD:

Reclamation District 1004 having filed Application 23201 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on April 26 and June 13, 1972; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Application 23201 is for a permit to appropriate 140 cubic feet per second (cfs) by direct diversion from September 1 of each year to June 15 of the succeeding year for irrigation and recreation purposes from Butte Creek in Colusa County. The points of diversion are to be located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 12, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 25, T17N, R1W; and SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 14, SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 26, and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 35, T16N, R1W, MDB&M.

Applicant's Project

2. Over the years, the primary activity of Reclamation District 1004 has come to be the irrigation of lands within its boundaries. The District has two sources of water: the Sacramento River under water right filings that exist on the river and under water supply contracts with U. S. Bureau of Reclamation, and Butte Creek. The District claims rights to use the waters of Butte Creek under appropriative rights stemming from use prior to December 19, 1914, riparian rights to the extent of lands that are riparian to Butte Creek, and prescriptive rights to the extent that uses have been made adversely to the rights of others. These uses have continued at substantially their present level for a great many years (RT 6).

3. The District does not intend to enlarge its Butte Creek use or to expand the District facilities. The application was filed to obtain a current priority to the extent available for the uses which have been made under other claims of right from Butte Creek. The diversion will be made at five locations, with capacities listed in order progressing downstream as follows: No. 1, 85 cfs (gravity diversion); No. 2, 100 cfs (gravity diversion); No. 3, 23 cfs (pump); No. 4, 10 cfs (pump); No. 5, 12.5 cfs (pump). The water will be used for irrigation and the flooding of wildfowl ponds on 14,700 acres within the District. Although the summer season has been deleted from the application, the diversions which have been made during the summer months will continue to be made under the rights already claimed (RT 7).

Source and Water Supply

4. Butte Creek rises on the west slope of the Sierra Nevada Mountains in the northeasterly portion of Butte County at elevations exceeding 6,600 feet. The channel of Butte Creek follows a general southwesterly direction for approximately 50 miles to the point of inflow from Western Canal at the Western Dam. Below Western Dam, Butte Creek continues in a southwesterly direction for about 17 miles where Butte Creek becomes Butte Slough. Depending upon water levels and controls, Butte Slough discharges into either or both Sacramento River and Sutter Bypass.

5. Application 23201 specifies the source as Butte Creek. However, of the five points of diversion, only the downstream three are located on Butte Creek. The upper two points of diversion, from which most of the water is diverted, are located on the Reclamation District 1004 levee borrow pit. Water from Butte Creek reaches the borrow pit through an east-west channel. Water is to some extent forced to flow via this east-west channel due to obstructions or low dams in Butte Creek, some of which have been placed there by the applicant. However, the applicant has not requested diversion at the dams. Alteration of flow in Butte Creek by means of these dams or obstructions is one of the principal concerns of the protestants. Therefore, in order that it be made completely clear that this application does not propose diversion from or control of Butte Creek at those points, the source should be corrected to

diversion points 1 and 2 - "unnamed drain also known as Reclamation District 1004 levee borrow pit", diversion points 3, 4, and 5 - "Butte Creek".

6. The flow in Butte Creek below Western Dam is a combination of natural flow, imported water, and return flows from diversions of both. A large part of the flow, particularly during summer and in the fall when duck ponds are being filled, is water discharged into Butte Creek from Western Canal. Western Canal brings water to the Butte Creek area from the Feather River.

Protests

7. A protest by the California Department of Fish and Game has been resolved by a stipulation between the applicant and the Department entered into since the conclusion of the hearing on Application 23201. Any permit issued pursuant to Application 23201 should contain the following term:

"This permit is subject to 'Stipulation Between Applicant Reclamation District 1004 and Protestant California Department of Fish and Game Resolving Protest' filed with the State Water Resources Control Board on January 19, 1973, to the extent such stipulation covers matters within the Board's jurisdiction."

8. Of the remaining 16 protests, 14 are on behalf of diverters whose only concern is the availability of water for flooding of waterfowl ponds. These protestants were referred to collectively at the hearing as the "duck clubs" and will be so referred to herein. The duck clubs' concern is that the applicant will divert part of the water the clubs receive under agreements which provide for its release from Western Canal into Butte

Creek for later rediversion. These rediversions are all made upstream from the lower three points of diversion of the District. If any permit issued to Reclamation District 1004 does not include any right to alter the division of the flow of Butte Creek to increase flow from Butte Creek through the Cross Channel to the upper two diversions on the Reclamation District 1004 levee borrow pit and is limited to the District's historical diversion levels, the rights of the duck clubs should not be affected.

9. Butte Slough Irrigation Company and Central Gun Club, the remaining two protestants, are concerned principally with availability of water during the irrigation season. Their diversions are located on Butte Slough at the Sacramento River outfall gates and at various points in Sutter bypass. Records of the Butte Slough gaging stations show that during the irrigation season, there have been substantial flows at these points, historically. Since the applicant wishes to divert only to the extent of its historical use, it appears these protestants will not be affected by issuance of a permit restricted to such use.

Availability of Unappropriated Water

10. As the water covered by Application 23201 is already claimed by the applicant under other rights, the availability of unappropriated water is not an issue. The applicant's purpose in filing the application was to record the District's use of water and place upstream users on notice as well as establish a 1968 priority as against later applicants. Any permit issued

pursuant to Application 23201 should contain the following term to make it clear that a doubling-up of use is not authorized:

"The rates of diversion and quantities of water diverted under this permit and any license issued pursuant thereto, shall be inclusive of and not in addition to those diversions to which permittee or others may be entitled under other rights for use on the authorized place of use. Failure of permittee to make his diversions and use of water in compliance with terms and conditions of the permit will be cause for its revocation."

Quantities of Water and Seasons of Diversion to be Allowed

11. The District has clearly stated its intent, in both the application and in its testimony at the hearing, to apply only for water to cover its existing uses and practice. Therefore, to the extent the District's practice has been for a lesser season, rate of diversion, or quantity of water diverted than that applied for, any permit issued should be in accordance with the District's practice.

12. Insofar as the diversion season for irrigation purposes is concerned, the latest delivery date for irrigation has been September 15 (RT 117, RT 130). After September 15 the diversion is for duck clubs (RT 118). According to the records of the District's Butte Creek diversions (Applicant's Exhibit 5A) for years 1959-1969, irrigation diversions rarely began before April. This is in accordance with testimony by the District's manager (RT 120).

13. The maximum calendar month diversion during the portion of the irrigation season covered by the application (April 1 to June 15 and September 1 to September 15) shown in Exhibit 5A was 6,710 acre-feet (af) in 1964. This is an average

diversion rate of 108 cfs during the month. Although the maximum 30-day average historical diversion may have exceeded this rate, it is not likely to be exceeded again since the May and June diversions in other years are considerably less than in 1964. A diversion rate allowance of 110 cfs for irrigation purposes appears reasonable. In 1964 the total quantity diverted during the irrigation season to be allowed, assuming all the September diversion was for irrigation purposes and one-half the June diversion occurred before mid-month, was 14,215 af. Therefore, allowance of 15,000 af annual diversion for irrigation purposes is recommended.

14. For duck pond flooding purposes, the maximum diversion was in December 1958 when 7,714 af were diverted, exclusive of diversion at River Miles, .02E, .9R, or 4.3R (RT 25). After allowing for possible diversions at those points, the applicant's engineer estimated a maximum total diversion need at all five diversion points of 140 cfs. This appears to be a reasonable estimate. The quantity of water required for maintenance of duck ponds is three af per acre (RT 121). On that basis, the annual quantity of water required for the 2,500 acres of ponds is 7,500 af. However, the diversion records show that, usually, diversion is considerably more, so the three-af-per-acre-requirement probably does not include initial filling. Historically, according to Exhibit 5A, the maximum October-January diversion in the 1959-1969 period was a little less than 21,000 af. Therefore, this quantity should be allowed. No diversions for duck

pond use have been made later than January so the season for that use should be September 15 through January 31.

15. With regard to limitation on rates of diversion at each of the five diversion points, the maximum month diversions based on information in Exhibit 5A and testimony of applicant's engineer have been as follows:

For Duck Pond Use - September 15 through January 30

<u>Diversion Point</u>	<u>AF/Month</u>	<u>Average CFS Equivalent</u>	<u>Month-Year</u>
1	2,830	48	Nov. 1964
2	7,714	126	Dec. 1958
3	659	11	Oct. 1959
4	562	10	Nov. 1965
5	34	0.6	Oct. 1965

For Irrigation Use April 1 - June 1 and September 1 - September 15

<u>Diversion Point</u>	<u>AF/Month</u>	<u>Average CFS Equivalent</u>	<u>Month-Year</u>
1	2,000	34	May-June 1968
2	3,800	62	May 1964
3	1,180	20	May 1966
4	608	10	May 1964
5	594	10	May 1970

16. The intended use is beneficial.

Environmental Consideration

17. All environmental reviews required in compliance with the California Environmental Quality Act of 1970 have been completed.

From the foregoing findings, the Board concludes that Application 23201 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

IT IS HEREBY ORDERED that Application 23201 be approved in part 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 diversion for irrigation purposes of 34 cubic feet per second (cfs) from Reclamation District 1004 borrow pit at point 1; 62 cfs from Reclamation District 1004 borrow pit at point 2; 20 cfs from Butte Creek at point 3; 10 cfs from Butte Creek at point 4; and 10 cfs from Butte Creek at point 5, from April 1 to June 15 and from September 1 to September 15, provided that the total diversion from all five points of diversion shall not exceed 110 cfs; and for recreational (duck pond) purposes of 48 cfs from point 1; 126 cfs from point 2; 11 cfs from point 3; 10 cfs from point 4; and 0.6 cfs from point 5, from September 15 to January 31, provided that the total diversion from all five points of diversion shall not exceed 140 cfs.

The maximum amount diverted under this permit for irrigation purposes shall not exceed 15,000 acre-feet per annum (afa), and for recreation (duck pond) purposes shall not exceed 21,000 afa.

2. So long as there is no interference with other rights, junior, as well as senior, permittee may increase his rate of diversion to a maximum of 85 cubic-feet per second (cfs) at point 1; 100 cfs at point 2; 23 cfs at point 3; 10 cfs at

point 4; and 12.5 cfs at point 5, provided that the total quantity diverted in any 30-day period does not exceed 6,600 acre-feet (af) for irrigation purposes and 8,400 af for recreation (duck pond) purposes.

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

4. Complete application of the water to the proposed use shall be made on or before December 1, 1978.

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

6. 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 phreato-phytic 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.

7. 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.

8. 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.

9. 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 Divison 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 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.

10. To the extent that water available for use under this permit is return flow from imported water, this permit shall not be construed as giving any assurance that such return flow will continue.

11. This permit is subject to "Stipulation Between Applicant Reclamation District 1004 and Protestant California Department of Fish and Game Resolving Protest" filed with the State Water Resources Control Board on January 19, 1973, to the extent such stipulation covers matters within the Board's jurisdiction.

12. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Resources Control Board, which are capable of measuring the releases required by clause 11 of this permit, the flows which determine those releases and the allowable spill at Five Points Spill Gate. Said measuring devices shall be properly maintained.

13. The rates of diversion and quantities of water diverted under this permit and any license issued pursuant thereto shall be inclusive of and not in addition to those diversions to which permittee or others may be entitled under other rights for use on the authorized place of use. Failure of permittee to make its diversion and use of water in compliance with terms and conditions of the permit will be cause for its revocation.

Dated: June 19, 1975

W. W. ADAMS

W. W. Adams, Chairman

ABSENT

W. Don Maughan, Vice Chairman

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member