

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 16479

Issued on Application 14443

CALIFORNIA DEPARTMENT OF WATER RESOURCES

Permittee

DECISION 1468

DECISION CONFIRMING THAT PROPOSED ADDITION OF
TEMPORARY POINT OF REDIVERSION IS NOT A SUBSTANTIAL CHANGE

BY BOARD MEMBER ADAMS:

The California Department of Water Resources (Permittee) having petitioned the State Water Resources Control Board for the addition of a temporary point of rediversion under Permit 16479; protests having been received; a public hearing having been held before the Board on March 30, 1977; permittee, protestants, and interested parties having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of Petition and Project

1. Permit 16479, in pertinent part, authorizes the permittee to divert 1,360 cubic feet per second by direct diversion from the Feather River from January 1 to December 31 and 3,500,000 acre-feet by storage from September 1 to July 31. The point of diversion is Oroville Dam and points of rediversion include the Delta Water Facilities, California Aqueduct Intake, North Bay Aqueduct Intake, and Del Valle Dam. The purposes of use include irrigation, domestic, municipal, industrial, salinity control, recreational, and fish and wildlife enhancement. The place of use, among other areas, includes substantially the entire area of the Marin Municipal Water District.

2. The purpose of the proposed temporary point of rediversion is to allow the permittee to make emergency delivery of approximately 11,000 af of

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State Water Project water to the Marin Municipal Water District during the current drought conditions. The maximum diversion rate would be 15 cfs (RT 18). Since this water is a portion of the 1977 water supply contract entitlement of the Metropolitan Water District of Southern California that has been released for use in Northern California, it does not constitute an increased appropriation (RT 20). Water will be released from Oroville reservoir and rediverted from Middle River in the Sacramento-San Joaquin Delta at the Mokelumne Aqueduct crossing. The water will then be transported through facilities of the East Bay Municipal Utility District and delivered to the Marin Municipal Water District through a temporary pipeline across the Richmond-San Rafael Bridge (RT 11).

3. The permittee will also utilize another route to make emergency delivery of water to the Richmond-San Rafael Bridge for use within the Marin Municipal Water District. Water will be rediverted from the California Aqueduct into the South Bay Aqueduct, thence into the City of San Francisco's Hetch Hetchy Aqueduct to the City of Hayward system; then it will be carried through East Bay Municipal Utility District facilities and stored in existing reservoirs until needed and until the pipeline across the Richmond-San Rafael Bridge is constructed (RT 12). The permittee has executed agreements with the City of San Francisco, City of Hayward, East Bay Municipal Utility District, and the Marin Municipal Water District for transfer of water by this route (RT 12). Existing points of diversion within the Sacramento-San Joaquin Delta will be utilized. Since the City of Hayward's water transmission system does not have sufficient capacity to accept the total 15 cfs flow to be provided to the Marin Municipal Water District (RT 12), the need for the proposed point of diversion at Middle River is being considered here.

Scope of Board Jurisdiction to Act on Proposed Change

4. Water Code Section 10504.5 states in pertinent part:

*"(a) The recipient of a release from priority or assignment under this part shall, before making any changes determined by the State Water Resources Control Board to be substantial in the project in furtherance of which the release or assignment was made, submit such changes to the State Water Resources Control Board for its approval. The Board shall approve any such change only if it determines that such change will not conflict with the general or coordinated plan or with water quality objectives established pursuant to law."
(Emphasis added.)*

Since the permittee is an assignee of Application 14443 under "this part" (that is, Part 2 of Division 6 of the Water Code), the Board has the duty and authority to determine whether a proposed project change is substantial, and second, if the Board finds that such change is substantial, to determine whether such change will conflict with the general or coordinated plan -- the development and completion of which was the purpose of the original application (Water Code Section 10500), and to determine whether such change will conflict with water quality objectives established pursuant to law.

5. At the Board hearing, the permittee alleged that the proposed change is not substantial and that Permit 16479 Provision 13 authorizes the permittee to deliver this water without any further approval by the Board (RT 9).

6. Whether a change is substantial is a factual determination and such determination must at least consider the following items: amount of diversion, rate of rediversion, the source of the water, use of the water, the point of rediversion, the season of diversion, the rights of legal users of the water from the source, and the effect on the environment.

7. Neither the amount of diversion, rate of rediversion, source of water, nor the use of the water are affected by the proposed change.

8. With respect to the emergency water supply to be rediverted at Middle River, the point of rediversion will be changed from Clifton Court

Forebay, where State Water Project water enters the California Aqueduct, to the crossing of the Middle River by the Mokelumne Aqueduct. The effect of this change will be to reduce the flow of fresh water in Middle River at the point of rediversion. While the permittee alleged at the hearing that the effects of a reduction of such magnitude could not be measured, other parties expressed concern about this alteration of flow in the Delta and about the cumulative impact of this proposed action (RT 15, 29, 41, 43, 44, 45, and 53). Despite this conflict in the evidence, the Board concludes that neither individually nor cumulatively can the proposed diversion be considered substantial.

9. The rights of legal users of water in the Sacramento-San Joaquin Delta, both riparian and appropriative regardless of priority, are superior to the right of the permittee to divert water for use outside the Sacramento-San Joaquin Delta or the watershed of the Sacramento River. However, the water which is proposed to be rediverted is stored water and neither holders of riparian or appropriative rights have any right to stored water.

10. The proposed point of rediversion will have an impact on fish resources in the Delta during the proposed season of diversion. The permittee does not plan to construct fish screens at the proposed intake and does propose to pump water during the months of May, June, and July. The U. S. Fish and Wildlife Service, in a letter dated March 21, 1977, has expressed concern about entrainment of larva and juvenile striped bass in the intake facility. This entrainment is believed by the Service to be exacerbated during the months of May, June, and July when spawning of striped bass occurs. The Service recognized that installation of fish screens is impractical this year. If, however, the diversion were to continue into next year, the Service recommended that a curtailment of pumping take place during May, June, and July of 1978 and that appropriate fish screens be constructed. We conclude that if the proposed

change were to extend beyond 1977 without the measures recommended by the U. S. Fish and Wildlife Service, the rediversion at Middle River would be considered substantial because of its impact on the environment. However, on an emergency basis for one season the above problems cannot be considered substantial.

11. Provision 13 of Permit 16479 states:

"No direct diversion, diversion to storage, or rediversion of stored water from the Feather River or the Sacramento-San Joaquin Delta for beneficial use under this permit other than from the points of diversion or rediversion named in this permit shall be made until a description of the location of each point of diversion and statement of the quantity of water to be diverted is filed with the State Water Resources Control Board."

The permittee alleges that this provision authorizes it to deliver the water to the Marin Municipal Water District by filing a description of the point of diversion and statement of quantity of water to be diverted and that it has complied with said provision. We agree. Since most of the service area of the Marin Municipal Water District is within the place of use of Permit 16479, the permittee presently possesses the right to deliver the water as proposed.

DETERMINATION OF ISSUES

1. The temporary project change proposed by Permittee is not substantial within the meaning of Water Code Section 10504.5.
2. It is unnecessary to consider whether the change will conflict with the general or coordinated plan or with water quality objectives established pursuant to law.

ORDER

IT IS HEREBY ORDERED that:

1. The permittee shall file a request for approval of changes under Water Code Section 10504.5, if by January 30, 1978, it proposes to continue the proposed rediversion after April 30, 1978.

Dated: April 21, 1977

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

/s/ ROY E. DODSON
Roy E. Dodson, Member

/s/ JEAN AUER
Jean Auer, Member