

ALSO SEE ORDER 73-41 DENYING PETITION FOR RECONSIDERATION OF ORDER 73-38,
dated 8/16/73 (Appl. 2652) "

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 11626,)
Issued on Application 2652,) Order No.: WR 73-38
NEVADA IRRIGATION DISTRICT) Source: Bear River
Permittee.) Counties: Nevada and Placer

ORDER AMENDING PERMIT AND EXTENDING TIME
TO COMPLETE CONSTRUCTION AND PLACE
WATER TO BENEFICIAL USE

BY BOARD VICE CHAIRMAN ROBIE:

On September 1, 1971, the Nevada Irrigation District, hereinafter referred to as petitioner, filed a petition for extension of time to complete construction and place water to beneficial use under Permit 11626 (Application 2652). A protest was received from the South Sutter Water District, hereinafter referred to as protestant, opposing approval of the petition.

On May 22, 1972, a hearing was held before the State Water Resources Control Board to determine whether an extension of time should be granted and, if so, whether any conditions should be imposed. Petitioner and protestant having appeared at said hearing, evidence having been presented at said hearing and having been duly considered, the Board finds as follows:

1. Application 2652 was filed November 22, 1921, for a permit to appropriate 100,000 acre-feet per annum (afa) of water from the Bear River, by storage, for irrigation purposes. Permit 5803 was issued pursuant to Application 2652 on June 17, 1941

for 12,500 afa of water. Action on the remainder of the application was deferred until further order. Permit 11626, the subject of the petition for extension of time, was issued on December 4, 1958 for the 87,500 afa of water remaining under Application 2652. The water is to be used for irrigation, incidental domestic and recreational purposes. The petitioner had an ample supply of water from other projects from the time Application 2652 was filed until Permit 11626 was issued (Decision D-914 on Application 2652, page 2).

2. On May 22, 1963, the time to complete construction under Permit 11626 was extended to February 1, 1966, and time to complete application of water to beneficial use to July 1, 1971. After the extension of time was granted petitioner commenced construction of Rollins Dam and Reservoir, completing construction early in the year 1966 (RT 8). The reservoir has a capacity of 65,000 acre-feet (af) (RT 19). Also completed is a distribution system which serves Bear River water to approximately 10,000 acres within petitioner's 77,000-acre service area (RT 10, 11). The petitioner now plans to enlarge Rollins Dam to a capacity of 94,445 af. The reservoir will then be able to accommodate the storage of 87,500 afa authorized by Permit 11626 and the storage of 6,945 afa authorized by Permit 5803 (RT 14). Financing of the enlarged reservoir will be accomplished through agreement with the Pacific Gas and Electric Company for the sale of power to be generated at a proposed powerhouse at the dam (RT 66). Petitioner also intends to rehabilitate and increase the capacity of its distribution system to enable it to use all the water now stored at Rollins Reservoir.

3. Protestant completed construction of its Camp Far West Reservoir on the Bear River approximately 12 miles below Rollins Reservoir in the year 1963 (RT 88). It has placed the water stored to beneficial use and is considering requesting a license under its permits (RT 91). It contends that in years of short supply there will not be sufficient water in the Bear River for both projects and the petitioner should not be allowed to expand its facilities under the early priority of Application 2652 (protestant's brief, page 2). Protestant points out the long period of time which elapsed between the time Application 2652 was filed and Permit 11626 was issued and contends that under the present Board's policies and practices Application 2652 would have been canceled. Further, it claims that a further extension of time granted in 1963 was not justified, particularly as its original Parker site was changed to the Rollins site, and Permit 11626 should have been revoked. Further, the protestant claims that there has been no substantial increase in use of water since the last extension which would justify granting a further extension under the Board's guidelines.

Protestant recommends that the present use of water under Permit 11626 should be licensed and further construction and use of water should be made under a new application, or, as an alternative, further expansion of facilities and use of water under Permit 11626 be allowed subject to a release of priority in favor of the protestant as to such additional water.

4. Petitioner contends that the only issue before the Board is petitioner's diligence since the extension of time was

granted and relies, principally, on the following activity since that time to show diligence in the construction of its project and placing water to beneficial use since Permit 11626 was issued.

Rollins Dam and Reservoir has been constructed at a cost of approximately \$9,000,000 prior to the completion date set forth in the Board's predecessor's order of May 22, 1963 (RT 7). The order of May 22, 1963 contemplated that expansion of the petitioner's distribution system would be necessary before use of water (petitioner's Exh. 2). Application for a small project loan through the U. S. Bureau of Reclamation for such purposes was timely made, however, the loan required approval of the petitioner's electorate. After approval through an election held in November 1968, a loan of \$4,950,000 was obtained (RT 11, 12, 50). Construction work on the expansion and improvement of petitioner's distribution system commenced early in the year 1969 (RT 12). At the time of the hearing (May 22, 1972) approximately \$300,000 had been spent in the Bear River service area portion of the project (RT 51). Since the hearing petitioner's electorate approved a proposed supplemental loan for \$1.6 million from the federal government for such work (District's letter to the Board dated November 27, 1972). This project is scheduled for completion in the year 1974, at which time approximately 20,000 acres in the south Bear River area will be capable of being served (RT 51, 52). The full use of water for irrigation purposes will be reached by the year 1982 (RT 54).

Since receiving the extension of time the petitioner has hired a consulting engineer who prepared a report on the feasibility of increasing the capacity of Rollins Reservoir and

installing power generation facilities (RT 66, 67). Petitioner has acquired the land necessary to accommodate the expansion of Rollins Reservoir to a capacity of 95,000 af (RT 14). Negotiations are under way with Pacific Gas and Electric Company for sale of power to be developed at the proposed power generation facilities and previous feasibility reports are being updated (RT 66, 67). Recreational facilities have been constructed at Rollins Reservoir which cost \$1.2 million and there are two remaining stages of construction which will cost approximately \$180,000 to complete (RT 13). A water treatment plant is being constructed in the north Auburn area to serve a present community of approximately 4,000 people (RT 55). Construction was almost complete at the time of the hearing (RT 53).

5. Protestant is correct in contending that, under present policy, practices and rules of this Board in respect to diligence, Application 2652 would most likely have been canceled sometime during the approximately 37 years it was held by the petitioner before Permit 11626 was issued. Also, this Board may well have revoked Permit 11626 rather than granting an extension of time in the year 1963. However, we are concerned with the diligence the petitioner has shown in completing construction and placing water to beneficial use since the last extension of time. A discussion of the wisdom of past action or inaction of our predecessors will serve no purpose. Sufficient to say that, while not condoning the liberality that was shown in finding diligence on the part of the petitioner in the past, the petitioner has shown that, considering

the magnitude of the project and the difficulties inherent in such an enterprise, it is now proceeding with diligence and is entitled to an extension of time. However, if during the extension so granted immediate progress toward proceeding with the reservoir enlargement is not forthcoming, the most equitable result, considering all of the facts, is to reduce the permit to the capacity of the existing reservoir.

6. Protestant is also correct in contending that in dry years there will not be sufficient water in the Bear River for both projects to meet their full demands. However, the Camp Far West feasibility report of 1958 recognized (pages IV-6 and IV-7) that "There is, however, an early application of Nevada Irrigation District (the matter before us, Application 2652) pending for the construction of storage facilities in the upper Bear River Basin at the Parker Reservoir site. Disposition and action upon this application will not affect the yields shown in the operation study for the proposed Camp Far West Reservoir, since this study is based on only the waters of the Bear River generated in the lower basin over which the Parker project will have no physical control." When the Nevada Irrigation District revised its project to the Rollins site, approximately eight miles upstream from the Parker site, this had the effect of increasing the drainage area available to South Sutter and increased the average annual yield of South Sutter's project by 11,600 acre-feet (this is reflected in a 1962 addendum to the feasibility report).

It is concluded from the foregoing findings that: Petitioner's time to complete construction work for expansion and rehabilitation of petitioner's diversion system should be extended to December 1, 1974; time to place water to beneficial use should be extended to December 1, 1982; petitioner should be required to submit proof of its financial ability to construct an enlarged dam and reservoir by December 1, 1974, and, upon failure to furnish such proof, Permit 11626 should be reduced to authorize storage of 65,000 afa; and Permit 11626 should be amended to contain terms which have become standard since it was issued.

NOW, THEREFORE, IT IS ORDERED that:

1. Construction work for expansion and rehabilitation of the permittee's diversion system pursuant to Permit 11626 shall be completed on or before December 1, 1974, and the water placed to beneficial use on or before December 1, 1982.

2. Proof of permittee's financial ability to construct an enlarged Rollins Dam and Reservoir be submitted to the Board by December 1, 1974. If such proof is not received by that date the quantity of water authorized to be stored under Permit 11626 shall be reduced to 65,000 acre-feet per annum. The time to commence and

to complete construction of an enlarged Rollins Dam and Reservoir and to place the water developed thereunder to beneficial use shall be established by the Board upon receipt of proof of financial ability to proceed with construction.

3. Term 7 in Permit 11626 be amended and Term 13 added to Permit 11626 as follows:

"7. 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."

"13. 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 may 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 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."

Dated: July 5, 1973

We Concur:

RONALD B. ROBIE

Ronald B. Robie
Vice Chairman

W. W. ADAMS

W. W. Adams, Chairman

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN

W. Don Maughan, Member