

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21877
of C. Norman Adams to Appropriate
from Dry Creek in San Joaquin County

Decision D 1245

ADOPTED MAR 2 1966

DECISION APPROVING APPLICATION

C. Norman Adams having filed Application 21877 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 21877 is for a permit to appropriate 1.75 cubic feet per second (cfs) by direct diversion from March 1 to November 1 of each year for irrigation purposes from Dry Creek in San Joaquin County. The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T5N, R7E, MDB&M.

2. Dry Creek flows from the junction of its north and south forks approximately 59 miles in a general southwesterly direction to the applicant's point of diversion and continues

from that point approximately 11 miles to enter the Mokelumne River. The applicant proposes to excavate the channel of Coyote Creek, a tributary of Dry Creek, reverse the gradient of the creek, and pump the water from a sump to be excavated one-quarter of a mile upstream on Coyote Creek. Water will be used as a supplementary supply for the irrigation of approximately 170 acres of land. Applicant now holds Permit 12097 (Application 18612) to divert 1.25 cfs from Dry Creek at the same point of diversion.

3. Protestants Fry divert from Dry Creek at a series of pumps located on a channel reservoir formed above a concrete and flashboard dam for the irrigation of approximately 1,145 acres. When the supply of water from Dry Creek is insufficient to meet their needs, they divert from the Mokelumne River at the Dry Creek-Mokelumne River confluence. This water is pumped up the channel of Dry Creek to the pond behind their Dry Creek dam and pumped again at their series of pumps on Dry Creek. During the summer months the Mokelumne River water is purchased from the Bureau of Reclamation. The protestants claim riparian rights to flow of both Dry Creek and the Mokelumne River and hold License 2999 (Application 10531) which confirms a right to divert 1.85 cfs from the Mokelumne River from April 15 to November 15 of each year.

4. At the time of the field investigation on July 28, 1965, the protestants' entire supply was being diverted from the Mokelumne River.

5. The records of streamflow of Dry Creek at U. S. Gaging Station "Dry Creek near Galt" located approximately one mile downstream from the applicant's proposed point of diversion for the period of record (October 1944 through September 1964) show that there is ample water to supply the applicant and protestants during the months of March and April and, in most years, May. During June of most years and thereafter for the rest of the irrigation season, there is not sufficient water to supply them both. However, from the latter or middle part of June until November 1 in most years, the flow of the creek does not reach the protestants, and they will not be harmed by diversions by the applicant during this period. Furthermore, most of the summer flow is return water from irrigation of lands supplied by deep wells and is not subject to riparian rights in Dry Creek.

6. There is unappropriated water available to supply the applicant, and subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

7. The intended use is beneficial.

8. In order to protect the protestants during times when there is not sufficient water for their needs and natural flow in Dry Creek reaches them, the permit should contain a term limiting diversions by the permittee during May and June

to those times when there is an overflow at the protestants' dam on Dry Creek or when there is no continuity of flow to the protestants.

From the foregoing findings, the Board concludes that Application 21877 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 21877 and all relevant information on file therewith, particularly the report of the field investigation made on July 28, 1965, and USGS "Surface Water Records of California," Volume 2, and predecessor publications, for the years 1945 through 1964.

ORDER

IT IS HEREBY ORDERED that Application 21877 be, and it is, approved, 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 1.75 cubic feet per second by direct diversion to be diverted from about March 1 to about November 1 of each year. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

2. Diversion under this permit during the months of May and June shall be made only at such times as there is overflow at protestants' dam located on Dry Creek within the NE $\frac{1}{4}$ of Section 1, T4N, R5E, MDB&M, provided that when there is no flow at the USGS Gaging Station "near Galt" this limitation shall not apply.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Actual construction work shall begin on or before December 1, 1966, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

5. Construction work shall be completed on or before December 1, 1968.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1969.

7. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

8. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights 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.

9. Permittee shall allow representatives of the State Water Rights 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.

10. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1966.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member