

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22966
of Edwin Sharp to Appropriate from
Lone Tree Creek in San Joaquin
County.

Decision 1343

DECISION APPROVING APPLICATION

Edwin Sharp having filed Application 22966 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 Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

1. Application 22966 is for a permit to appropriate 0.8 cubic foot per second (cfs) by direct diversion from February 15 to July 1 and from October 1 to November 15 of each year for irrigation purposes from Lone Tree Creek, tributary to French Camp Slough thence the Sacramento-San Joaquin Delta, in San Joaquin County. The point of diversion is to be located within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 21, T1S, R8E, MDB&M.

2. The applicant is presently irrigating his acreage by pumping groundwater and intends to continue pumping groundwater when unappropriated water is unavailable in Lone Tree Creek.

3. The application was protested by two downstream irrigators who own 60 acres of 160 acres covered under License 1895 (Application 6264). The licensees divert 2 cfs at a point about 3 miles below the applicant from April 1 to November 30 of each year for the irrigation of the 160 acres.

4. Lone Tree Creek rises in the foothills north of Oakdale and has a drainage area of approximately 70 square miles above protestants' point of diversion. The water in the creek results from direct runoff from precipitation and from irrigation return flow. During the summer months the streamflow is maintained by return flow and waste waters from lands within the Oakdale and South San Joaquin Irrigation Districts.

5. During the years 1960 and 1961 the Board recorded the flow in Lone Tree Creek at a point approximately one mile downstream from protestants' point of diversion. For the months of April, May and June the mean flow for the two years was approximately 8.8 cfs. For the month of October the mean flow for the two years was approximately 6.5 cfs. There is no source of water of any consequence between the protestants

and the downstream recorder. On July 10, 1968, approximately 5 cfs was available at protestants' point of diversion of which about one-half was being diverted by them.

6. In 1963 the Board approved an application to divert 2.25 cfs from Lone Tree Creek during the months of April, May, June and October. At that time the Board found that unappropriated water was available in the creek. No subsequent right to divert from Lone Tree Creek has been granted by the Board.

7. Unappropriated water is 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.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22966 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.

The records, documents, and other data relied upon in determining the matter are: Application 22966 and all relevant information on file therewith, particularly the report of the field investigation made on July 10, 1968.

ORDER

IT IS HEREBY ORDERED that Application 22966 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 0.8 cubic foot per second by direct diversion to be diverted from about February 15 to about July 1 and from about October 1 to about November 15 of each year. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights, provided that no more than 290 acre-feet be diverted in any one calendar year.

2. 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.

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, 1970, and shall thereafter be prosecuted

with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1971.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1972.

7. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control 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 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.

9. 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.

10. 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 which 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.

11. 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 Resources Control Board at a meeting duly called and
held at Long Beach, California.

Dated: September 18, 1969

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member

RONALD B. ROBIE
Ronald B. Robie, Member