

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23049
of MAPES RANCH, INC., Application 23050
of LOLA TANNER and Application 23142
of McCLELLAND RANCH to Appropriate
from Susan River Sloughs in
Lassen County.

Decision 1392

DECISION APPROVING APPLICATIONS

Mapes Ranch, Inc., Lola Tanner and McClelland Ranch having filed Applications 23049, 23050 and 23142, respectively, for permits to appropriate unappropriated water; protests having been received; the applicants 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:

Substance of Applications

1. Application 23049 (Mapes), as amended, is for a permit to appropriate 13.29 cubic feet per second (cfs) by direct diversion from February 15 to March 1 of each year for irrigation and stockwatering purposes from Tanner Slough and Tule Canal,

tributary to Honey Lake, in Lassen County. The points of diversion are to be located as follows:

Tanner Slough

Diversion No. 58 - South 13° West 2,500 feet from NE Corner of Section 14, T29N, R14E, MDB&M, being within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 14.

Diversion No. 59 - South 29° East 2,640 feet from NW Corner of Section 18, T29N, R15E, MDB&M, being within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 18.

Tule Canal

Diversion No. 79 - North 89° West 1,300 feet from SE Corner of Section 13, T29N, R14E, MDB&M, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 13.

Diversion No. 84 - North 3° East 1,330 feet from SW Corner of Section 20, T29N, R15E, MDB&M, being within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 20.

2. Application 23050 (Tanner) is for a permit to appropriate (1) 5 cfs from Dill Slough and (2) 2.55 cfs from Hartson Slough, both tributary to Honey Lake in Lassen County, by direct diversion from February 15 to March 1 of each year for irrigation and stockwatering purposes. The points of diversion are to be located as follows:

1. Diversion No. 97 - North 30° East 2,280 feet from SW Corner of Section 25, T29N, R14E, MDB&M, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 25.
2. Diversions Nos. 106 and 107 - South 70° East 2,000 feet from NW Corner of Section 35, T29N, R14E, MDB&M, being within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 35.

3. Application 23142 (McClelland), as amended, is for a permit to appropriate 10.75 cfs by direct diversion from February 15 to March 1 of each year for irrigation and stockwatering

purposes from Susan River and Tule Canal, tributary to Honey Lake, in Lassen County. The points of diversion are to be located as follows:

Diversion No. 70 - North 39° West 2,070 feet from SE Corner of Section 15, T29N, R14E, MDB&M, being within NW¼ of SE¼ of said Section 15.

Diversion No. 75 - North 80° East 2,640 feet from SW Corner of Section 14, T29N, R14E, MDB&M, being within SE¼ of SW¼ of said Section 14.

Diversion No. 77 - North 72° West 1,400 feet from SE Corner of Section 14, T29N, R14E, MDB&M, being within SW¼ of SE¼ of said Section 14.

Diversion No. 78 - South 88° East 1,520 feet from NW Corner of Section 24, T29N, R14E, MDB&M, being within NE¼ of NW¼ of said Section 24.

Protests

4. The Department of Fish and Game protested Applications 23049, 23050 and 23142, but authorized dismissal of its protests if the applicants agreed to the inclusion of the following term in any permits issued:

"This permit is subject to prior rights of the California Department of Fish and Game for diversion to storage during the authorized diversion period as specified in Licenses 4474 and 4475 (Applications 13750 and 13751).

"Rights under this permit are and shall be subject to existing rights determined by Susan River Decree No. 4573, Superior Court, Lassen County, and such other rights as may presently exist insofar as said existing and adjudicated rights are maintained."

The applicants agreed to the term specified by Fish and Game so these protests may be dismissed. The term agreed to will be included in permits issued pursuant to Applications 23049 and

23142. Fish and Game License Nos. 4474 and 4475 will not be referred to in the permit issued pursuant to Application 23050 because diversions from Dill and Hartson sloughs will not affect diversions under the licenses.

5. Edward P. Dorsey protested Application 23050 on the ground that the proposed appropriation would interfere with his diversions of water for irrigation during the same season. Mr. Dorsey has a right to divert water for irrigation purposes during the season beginning March 1 as determined in the case of Fleming v. Bennett; therefore the proposed diversion during the season from February 15 to March 1 cannot interfere with Mr. Dorsey's right and his protest must be dismissed.

Unappropriated Water Available to Applicants

6. Specific stream flow data at the applicants' points of diversion are not available; however stream flow data at other points on the Susan River stream system and from watermaster service reports for the area provide evidence of substantial flows in excess of vested rights at the applicants' points of diversion during the period from February 15 to March 1 in most years.

7. Unappropriated water is available to supply the applicants, 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.

Beneficial Use of Water

8. All applicants propose to use the water to pre-irrigate their lands so as to permit more efficient use of water diverted

under decreed rights beginning on March 1. The question arises whether or not this is a reasonable beneficial use of water. The Supreme Court has said:

"... What is a beneficial use, of course, depends upon the facts and circumstances of each case. What may be reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (Tulare District v. Lindsay-Strathmore District, 3 Cal.2d 489, 567.)

The proposed season of diversion is prior to the date of the last killing frost in most years. The topography of the proposed place of use, the type of soil and the wild flooding method of applying water will result in some of the water ponding and wasting. Taking all factors into consideration, the proposed use will be of some benefit but must be rated toward the lower end of the scale of reasonable beneficial uses. The Constitution requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable; therefore permits granted pursuant to these applications will be made subject to future appropriations for higher beneficial uses.

Adjudicated Prior Rights

9. Protestant Dorsey and the applicants claim, in effect, that at the time Fleming v. Bennett was decided they had rights to divert during the season proposed, February 15 - March 1, which should have been included in their decreed rights. If it should be

judicially determined by supplemental decree or in an independent action that the decreed rights include the period February 15 - March 1, any permits issued to applicants will be subject to such decreed prior rights.

From the foregoing findings, the Board concludes that Applications 23049, 23050 and 23142 should be approved and that permits should be issued to the applicants 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:

1. Files of Applications 13750, 13751, 15032, 23049, 23050, 23142 and Statement of Water Diversion and Use S 4921.
2. "Water Resources Data for California, Part 1. Surface Water Records, Volume 2: Northern Great Basin and Central Valley," 1969 and previous editions.
3. Department of Water Resources Bulletin No. 130-68, Hydrologic Data, Volume 2: Northeastern California, Surface Water Flow, and previous editions.
4. Department of Water Resources Bulletin No. 177-70, Watermaster Service in Northern California, and previous editions.
5. U. S. Department of Commerce Weather Bureau "Climatological Data, California" for the period of published record.
6. Susan River Judgment and Decree, No. 4573, April 18, 1940, Superior Court, Lassen County.
7. Topographic maps published by the United States Geological Survey covering the area under consideration.

8. Susan River Court Reference Report on Water Supply and Use of Water on Susan River and Tributaries, Lassen County, California, February 1936, State Department of Public Works, Division of Water Resources.

ORDER

IT IS HEREBY ORDERED that Applications 23049, 23050 and 23142 be, and they are, approved, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated under permits issued pursuant to Applications 23049, 23050 and 23142 shall be limited to the quantities which can be beneficially used and shall not exceed 13.29 cubic feet per second (cfs), 7.55 cfs and 10.75 cfs, respectively, by direct diversion to be diverted from February 15 to March 1 of each year.

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

3. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1973.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

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

7. 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.

8. 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 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.

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. This permit shall be subject to any rights subsequently acquired to divert water for a more reasonable or higher beneficial use as determined by the State Water Resources Control Board or a court.

11. Rights under this permit are, and shall be subject to existing rights determined by the Susan River Adjudication, Superior Court, Lassen County, No. 4573, or any supplemental decree, and such other rights as may presently exist insofar as said existing and adjudicated rights are maintained.

12. This permit is subject to prior rights of the California Department of Fish and Game for diversion to storage during the authorized diversion period as specified in Licenses 4474 and 4475 (Applications 13750 and 13751). (To be included in permits issued pursuant to Applications 23049 and 23142 only.)

13. Before diverting any water pursuant to this permit, permittee shall install suitable measuring devices at each point of diversion that provide a continuous record of flows in order that an accurate record can be made of the quantity of water taken under control and placed to beneficial use.

Adopted as the decision and order of the State Water
Resources Control Board at a meeting duly called and held at
Sacramento, California.

Dated: February 17, 1972

ABSENT

E. F. Dibble, Acting Chairman

NORMAN B. HUME

Norman B. Hume, Member

RONALD B. ROBIE

Ronald B. Robie, Member

W. W. ADAMS

W. W. Adams, Member