

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 24439 and
24440)

LOUIS D. AND DOROTHY BUGNI)

Applicants)

SUTTER EXTENSION WATER DISTRICT, ET AL.)

Protestants)

Decision: 1519

Source : Snake River

County : Sutter

DECISION APPROVING APPLICATIONS 24439 AND 24440 IN PART AND
APPROVING PETITION TO CHANGE THE POINT OF DIVERSION
UNDER APPLICATION 24439

BY THE BOARD

Louis D. and Dorothy Bugni having filed Applications 24439 and 24440 for permits to appropriate unappropriated water, protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided by Section 737, Title 23, California Administrative Code; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; a petition to change the point of diversion under Application 24439 having been filed; the Board, having considered all available information, finds as follows:

Substance of the Applications and the Petition

1. Applications 24439 and 24440 are both for permits to appropriate two cubic feet per second (cfs) by direct diversion from March 1 to November 15 from Snake River tributary to East Interception Canal thence Wadsworth Canal thence East Borrow Pit of Sutter By-pass. The total maximum diversion under each application shall not exceed 600 acre-feet per annum (afa). The points of diversion are located within: Application 24439, SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 28; Application 24440, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T17N, R2E, MDB&M.

2. The petition requests approval of a new pumping installation located about 800 feet north of the point described in Application 24439. The discrepancy was discovered during the field investigation and the petition was filed on advice from staff.

3. The applicants propose to pump water from two points on Snake River to irrigate 159 acres of rice located within Sections 28 and 33, T17N, R2E, MDB&M. Concrete diversion dams placed in Snake River near the points of diversion are fitted with flashboards as needed to form adequate pools from which to pump water.

Protests

4. The applications were protested by Reclamation District 2054, Albert Thomasen, Sutter Extension Water District (SEWD) and the U. S. Bureau of Reclamation (Bureau). The protest of Reclamation District 2054 was withdrawn as the result of an agreement with the applicants.

5. Mr. Thomasen holds licensed Application 15649 which allows diversion of three cfs from May 1 to October 1 from Wadsworth Canal for irrigation of 95 acres. The point of diversion is located more than 10 miles downstream from the applicants. Mr. Thomasen stated that the appropriations would deprive him of water he requires for irrigation of his land.

6. SEWD protests stated that applicants propose to divert water used by protestant and to which protestant has a legal right based on use begun prior to December 19, 1914. SEWD has two points of diversion on the East Interception Canal about 1,200 feet upstream from its confluence with Snake River and about 10 miles downstream from the applicants. It is possible that sustained pumping draws Snake River water upstream for SEWD diversion. SEWD states there are no conditions under which its protest can be dismissed.

7. The Bureau alleges in its protest that there is not unappropriated water remaining in the Sacramento River during the period of June 30 through October 1, and that additional diversions would infringe on prior rights. The Bureau has stated that its protest can be dismissed if the applicants agree to inclusion of a hydraulic continuity term during this period.

Availability of Unappropriated Water

8. Snake River heads in Butte County east of the Gray Lodge Waterfowl Management area. The upper watershed is a maze of drains and canals and the river itself flows through dredged channels to its confluence with East Interception Canal. Flow in the Snake River during the summer is mostly return flow from upstream irrigation.

9. Past decisions of the Board preclude approval of diversions during the months of July and August; therefore, the applicants were advised of the requirements of Section 760, Chapter 3 of Title 23 (California Administrative Code). On September 3, 1977, the applicants submitted well log records to verify that an alternate source of supply had been obtained for the July-August period.

10. While there are no records of flow in Snake River, a U. S. Geological Survey gaging station located on Wadsworth Canal confirms two conclusions which have been reached in past analysis of applications on the Snake River.

(a) there is water physically available which presently can be diverted without interference with other users upstream of the Sacramento River;

(b) summer flow in the channels in this area is maintained by irrigation return flow.

11. The intended use is beneficial.

Effect of the Proposed Change

12. In effect, the petition would amend the application to reflect the actual project. The new pump installation is on the same source; the old point of diversion has been abandoned. The change does not constitute the initiation of a new right and it will not operate to the injury of any legal user of the water involved.

Environmental Considerations

13. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) and the State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

Record In This Matter

14. The records, documents, and other data relied upon in determining the matter are: Applications 24439 and 24440, and all relevant information on file therewith, particularly the Report of Field Investigation of October 15, 1975. Also important is a letter dated November 3, 1975 which summarized the position of the Division of Water Rights with respect to the effect of Decision 1308 on the availability of unappropriated water during September; also Decisions 1181 and 1308.

Conclusions

15. From the foregoing findings, the Board concludes that Applications 24439 and 24440 should be approved in part, that the petition to change the point of diversion under Application 24439 be approved, and that permits be issued to the applicants subject to the conditions in the order following.

ORDER

IT IS HEREBY ORDERED that Applications 24439 and 24440 be approved in part and that permits be issued to the applicants subject to vested rights. The permits shall contain all applicable standard permit terms (6, 10, 11, 12, and 13)* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed two cubic feet per second to be diverted from March 1 to June 30 and September 1 to November 15 of each year. The maximum amount diverted under this permit shall not exceed 360 acre-feet per year.

2. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

3. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue.

4. 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.

5. Permittees shall file with the Board by December 1 of each year, electric meter records for the river pumps for July and August to verify that no water was diverted from the Snake River during those months.

* The Board maintains a list of standard permit terms. Copies of these are available upon request.

IT IS HEREBY FURTHER ORDERED that the petition for change in point of diversion under Application 24439 be approved and that the point of diversion under that application read as follows:

North 1240 feet from the S $\frac{1}{4}$ corner of Section 28, T17N, R2E, MDB&M, being within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 28.

Dated: August 16, 1979

/S/ W. DON MAUGHAN
W. Don Maughan, Chairman

/S/ L. L. MITCHELL
L. L. Mitchell, Member

/S/ WILLIAM J. MILLER
William J. Miller, Vice Chairman

/S/ CARLA M. BARD
Carla M. Bard, Member