

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the matter of Application 26586)

PERCY R. AND FINLEY T. MCMILLAN)

Applicants)

EDGAR AND NORMA BEARD, ET AL)

Protestants)

Decision: 1593

Source: North Fork Little
Cow Creek

County: Shasta

DECISION APPROVING APPLICATION 26586

BY THE BOARD:

Percy R. and Finley T. McMillan having filed Application 26586 for a permit 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 stipulations; the Board having considered all available information, finds as follows:

Substance of the Application

1. Application 26586 is for a permit to appropriate six cubic feet per second (cfs) by direct diversion from November 1 of each year to April 30 of the succeeding year from the North Fork Little Cow Creek for generation of hydroelectric power. The point of diversion is located within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 21, T34N, R1E, MDB&M.

Applicants' Project

2. The applicants' project as described in the application consists of five powerhouses, 3,900 feet of open ditch, and 1,700 feet of 18-inch diameter pipes. The project will utilize a total head of 1,430 feet. Four of the powerhouses are to be constructed in line on the ditch and return the water to Cedar Creek tributary to Little Cow Creek. The penstock for the fifth powerhouse was proposed to branch off the main pipeline and return the water to North Fork Little Cow Creek.

3. At the field investigation the applicants stated they did not intend to construct the powerhouse which would return the water to North Fork Little Cow Creek. This would reduce the project to four powerhouses, 1,200 feet of 18-inch diameter pipe, and utilize a total head of 1,215 feet. The applicants would construct three powerhouses as soon as they obtain all their permits and construct the fourth powerhouse in approximately ten years. Upon completion of the project, applicants will sell the power generated to Pacific Gas and Electric Company.

Protests

4. The application was protested by Edgar and Norma Beard, Charles and Maria Johnson and Clarissa and Dennis Dierksen and Barbara Hale on the basis of an injury to vested rights. The Department of Fish and Game and the Northern California Council of Fly Fishing Clubs protested the application on the basis that the proposed appropriation will not best conserve the public interest and will have an adverse environmental impact.

5. The project is within the North Cow Creek adjudication and the Beards, Johnsons, Dierksens and Hales hold water rights under the decree downstream from the applicants' point of diversion. These rights are described in Judgment and Decree dated October 26, 1931, filed in the Superior Court of California, in and for the County of Shasta, Case No. 5804, Lemm vs. Rutherford. The applicants also hold rights to 1.03 cfs under the decree at the point of diversion listed in Application 26586. The decree is administered by a State Watermaster.

6. The Department of Fish and Game withdrew its protest when the applicants agreed to accept certain terms. The terms are included in the Order.

7. The protest of Northern California Council of Fly Fishing Clubs was also dismissed because the applicants' agreement with Fish and Game satisfied protest dismissal terms specified by the Council that were within the Board's jurisdiction.

Availability of Unappropriated Water

8. The North Cow Creek decree basically allocated water during the irrigation season of May through October. There would be times during the irrigation season when unappropriated water would not be available. However, the season requested by the applicants is from November 1 to April 30. Stream flow records and watermaster reports show that there is unappropriated water in the stream during the season requested. However, there may be times during dry years when the irrigation season will begin earlier than May 1. Senior water rights have to be respected and applicants understand they may have to curtail operations before May 1 in dry years. Permit terms will require this. Distribution of water to all water rights holders on the stream will be administered by the watermaster.

Environmental Consideration

9. The County of Shasta has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) and the State Guidelines.

10. The County of Shasta filed a Notice of Determination on August 11, 1983.

11. The State Board has reviewed and considered the information contained in the Negative Declaration.

Record in this Matter

12. The record documents and other data relied upon in determining this matter are: Application 26586 and all information on file therein, especially the Engineering Staff Analysis of Record dated February 7, 1983; the North Cow Creek Court Reference and relevant information on file therein; topographic maps published by the U. S. Geological Survey covering the area under consideration.

Conclusion

13. From the foregoing findings, the Board concludes that Application 26586 should be approved and a permit issued to the applicants subject to the order following.

ORDER

IT IS HEREBY ORDERED that Application 26586 be approved and that a permit be issued to the applicants subject to vested rights. The permit shall contain all applicable standard permit terms (6, 7, 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 six cubic feet per second to be diverted from November 1 to April 30 of each year.
2. Construction work shall be completed by December 1, 1993.
3. Complete application of the water to the authorized use shall be made by December 1, 1994.
4. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.
5. Rights under this permit are, and shall be, subject to existing rights determined by the North Cow Creek Judgment and Decree, Superior Court, Shasta County, Case No. 5804 insofar as said decreed rights are maintained and such other rights as may presently exist.
6. Diversion of water under this permit shall be subject to control by the State Watermaster.

* The Board keeps a list of standard permit terms. copies of these are obtainable upon request.

7. Permittee shall comply with the following provisions which are derived from the agreement between permittee and Department of Fish and Game, dated December 24, 1981:

- a. For the protection of fish and wildlife, permittee shall during the period from November 1 through April 30 bypass a minimum of three cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period.
- b. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flows required by the conditions of this permit. Said measuring device shall be properly maintained.
- c. In accordance with Section 1603 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility is the responsibility of permittee.
- d. In order to prevent fish stranding, increases in the amount diverted shall be made gradually at a rate not to exceed 30 percent of the streamflow per hour.
- e. The Central Valley Regional Water Quality Control Board shall be notified and advised of the project design and proposed construction methods at least 30 days prior to initiation of construction.
- f. Instream construction shall be confined to the low flow period, generally from July through September.
- g. Permittee shall, for the life of the project, allow access without prior notification to agents of the California Department of Fish and Game for the purpose of ensuring proper operation and maintenance of fish and wildlife protective measures.
- h. If unforeseen damages occur to fish or wildlife because of project construction and/or operation, permittee shall modify project facilities or operations as deemed necessary by the State Water Resources Control Board upon the advice of the California Department of Fish and Game to offset said damages.

8. Water diverted under this permit is for nonconsumptive use and is to be released to Cedar Creek within NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 19, T34N, R1E, MDB&M.

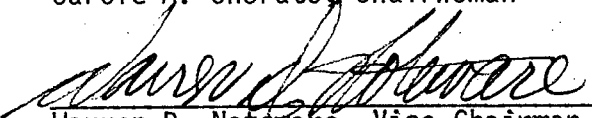
9. All rights and privileges to appropriate water for power purposes under this permit and any subsequently issued license are subject to depletions resulting from future upstream appropriation for domestic and stockwatering uses within the watershed. Such rights and privileges may also be subject to future upstream appropriations for uses within the watershed other than domestic and stockwatering if and to the extent the Board determines, pursuant to Water Code Sections 100 and 275, the continued exercise of the appropriation for power purposes is unreasonable in light of such proposed uses. Any such determination shall be made only after notice to permittee or licensee of an application for any such future upstream appropriation and the opportunity to be heard; provided, that a hearing, if requested, may be consolidated with the hearing on such applications.

10. No water shall be used under this permit until all necessary federal, state and local approvals have been obtained, including compliance with any applicable Federal Energy Regulatory Commission requirements.

Dated: November 17, 1983



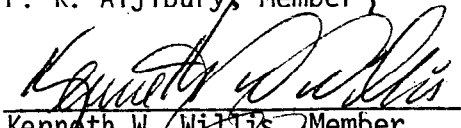
Carole A. Onorato, Chairwoman



Warren D. Noteware, Vice-Chairman



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Kenneth W. Willis, Member