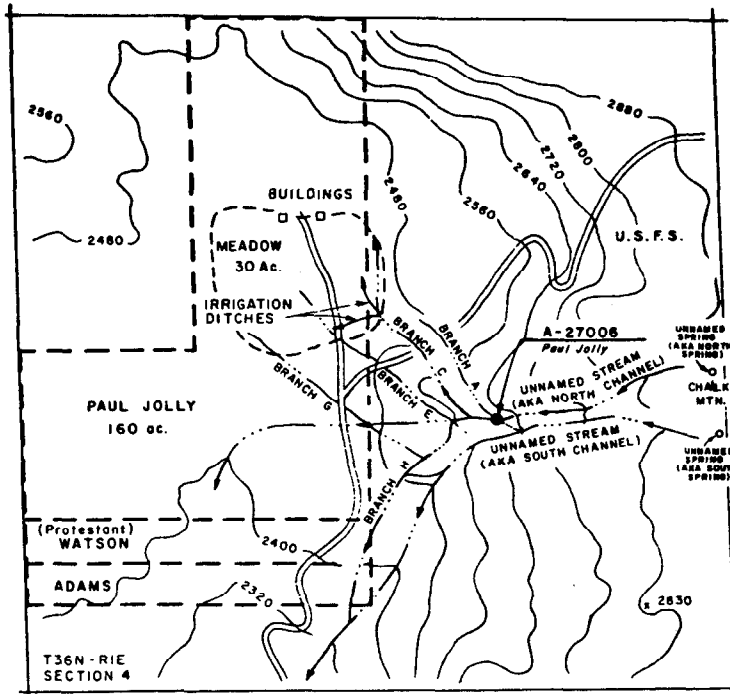


**JOLLY PROJECT  
IN SHASTA COUNTY  
APPLICATION 27006  
DECISION 1606**



**August 1985**



**STATE OF CALIFORNIA**

*George Deukmejian, Governor*

**STATE WATER RESOURCES  
CONTROL BOARD**

*Raymond V. Stone, Chairman*

*Kenneth W. Willis, Vice Chairman*

*Darlene E. Ruiz, Member*

*Edwin H. Finster, Member*

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*Michael A. Campos, Executive Director*

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STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 27006,	)	
PAUL R. and AUDREY V. JOLLY,	)	DECISION 1606
	)	
Applicant,	)	SOURCE: Unnamed Stream
	)	Tributary to
BILL WATSON,	)	Pit River
	)	
Protestant.	)	COUNTY: Shasta

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DECISION APPROVING APPLICATION 27006 IN PART

BY THE BOARD:

1.0 INTRODUCTION

Paul R. and Audrey V. Jolly having submitted Application 27006; protests having been received; a field investigation having been conducted and a report prepared pursuant to Water Code Section 1345 et seq.; a request for hearing having been received from protestant Bill Watson; the applicant, protestant Watson and interested parties having appeared and presented evidence at a hearing on December 11, 1984; the evidence in the record having been duly considered; the Board finds as follows:

2.0 SUBSTANCE OF APPLICATION

Application 27006 was filed by Paul R. and Audrey V. Jolly on September 5, 1981. The applicant requests a permit to divert 0.25 cubic feet per second (cfs) for stockwatering on a year-round basis and 1.53 cfs for irrigation from May 1 through December 15. The water

is to be diverted from a spring-fed stream, tributary to the Pit River in Shasta County.

### 3.0 PROTESTS

Protests against approval of Application 27006 were filed by the United States Bureau of Reclamation, the United States Forest Service, Pacific Gas and Electric Company, the California Department of Fish and Game, Bill W. Watson, and Fred Adams. With the exception of Mr. Watson's protest, all of the protests were resolved prior to the Board hearing.

### 4.0 PRE-HEARING PROCEDURE

Water Code Sections 1345-1348 specify the procedure to be followed in processing protested applications which request a permit to appropriate 3 cfs or less by direct diversion or 200 acre-feet or less by diversion to storage. In accordance with the statutory procedure, a field investigation of the proposed project was conducted on June 1, 1983 and a staff analysis was prepared and mailed to the parties on July 2, 1984. The staff analysis recommended approval of the application and advised the parties that a permit would be issued unless the Board received a written request for a hearing within 30 days specifying the remaining unresolved issues among the parties.

A request for a hearing dated July 28, 1984 was received from protestant Bill W. Watson and a hearing was scheduled for December 11, 1984. The issues specified in the hearing notice concern: (1) the

direction of the natural stream flow in the several channels in the project vicinity; (2) whether the proposed use of water would infringe upon Mr. Watson's use of water under riparian claim; and (3) whether the proposed use is a reasonable and beneficial use of water. Prior to the hearing, a second staff investigation was conducted on November 27, 1984, of the stream system from which the applicant proposes to divert water.

## 5.0 THE PROPOSED PROJECT

### 5.1 Location

The project is located approximately 40 miles northeast of Redding and about 3 miles southeast of Big Bend. The proposed point of diversion is on Forest Service land and is within the NW1/4 of the SE1/4 of Section 4, T36N, R1E, MDB&M. The proposed place of use is on the applicant's property within the SE1/4 of the NW1/4 and the SE1/4 of the SW1/4 of Section 4, T36N, R1E, MDB&M.

### 5.2 Water Sources

There are two spring areas on Chalk Mountain upstream from the point of diversion, designated as the North Spring area and the South Spring area. A schematic diagram of the stream system which flows from these two spring areas is included herein as Figure 1. There is flow from the two spring areas all year and the flow from each runs into separate unnamed streams designated in this proceeding as the North Channel and the South Channel. Due to the higher elevation of the

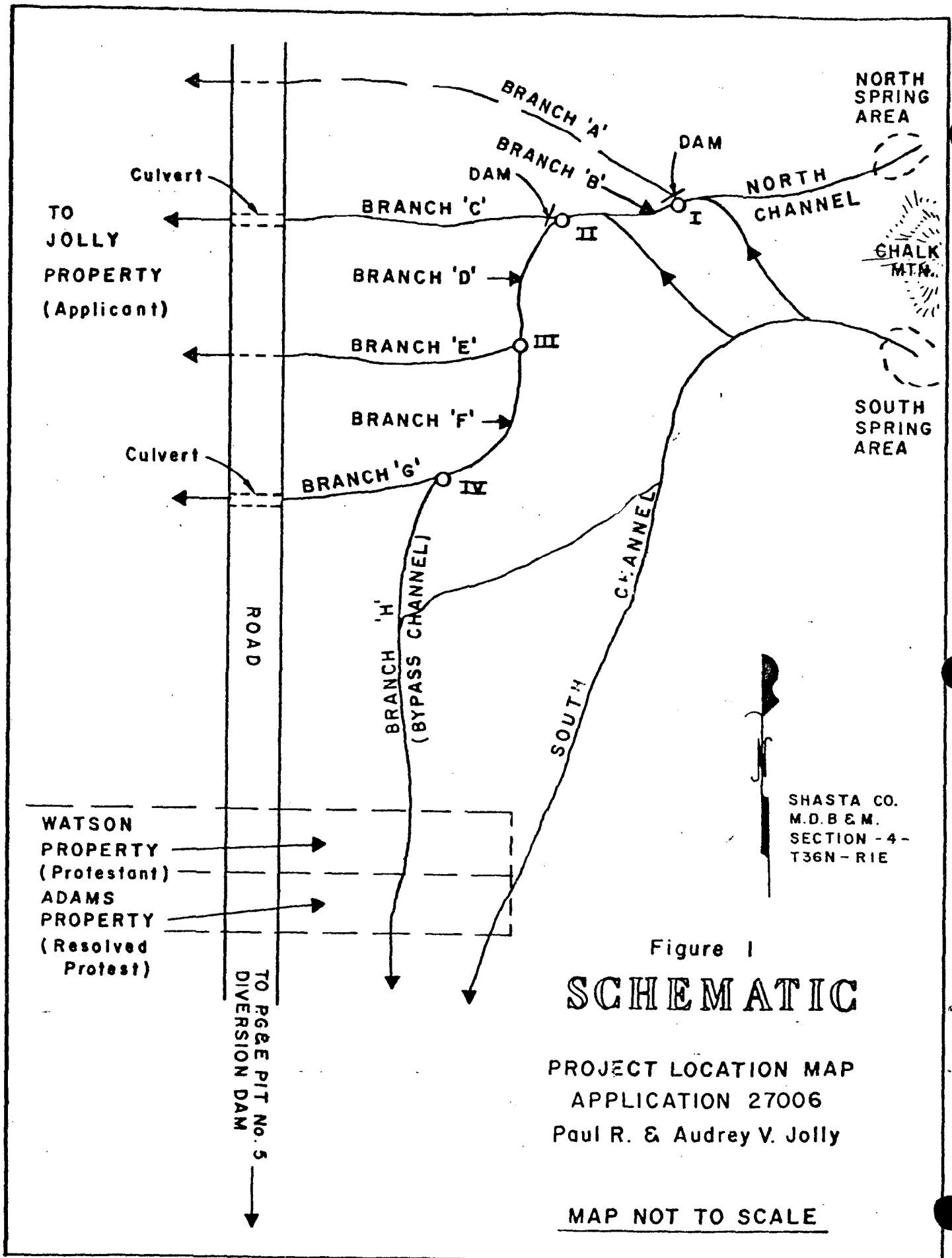


Figure 1  
**SCHEMATIC**

PROJECT LOCATION MAP  
 APPLICATION 27006  
 Paul R. & Audrey V. Jolly

MAP NOT TO SCALE



South Spring area, water runs naturally from the South Channel to the North Channel during times of high flow. The North Channel bifurcates at a point designated as Point I. The channel downstream from this bifurcates at Point II into Branches C and D. Branch D, at Point III, bifurcates into Branches E and F and finally, at Point IV, Branch F bifurcates into Branch G and Branch H, which is also known as the Bypass Channel. A dam located at the head of Branch A (Point I) prevents water from entering that channel and directs the entire flow into Branch B. Similarly, a small check dam at Point II is used to control the flow of water into Branches C and D.

Application 27006 requests a permit to divert at Point II where Branch B bifurcates into Branches C and D. There was conflicting testimony presented regarding the course which water in the North Channel would follow if Branches B through H were left unaltered. (See Section 7 below.)

### 5.3 Use of Water by Applicant

Water diverted into Branch C at Point II is carried by ditches into a meadow which covers about 30 acres. About 15 to 20 acres of this can be irrigated by gravity flow from Branch C. In the past, water from Branch C has been used for irrigation of an apple orchard of approximately three-quarters of an acre, and for irrigation of the meadow in which horses grazed. Mr. Jolly planted several thousand Christmas trees (Douglas fir and white fir) in 1968 and 200 redwood trees in 1969. Due to very dry conditions in the following years, however, almost all of the seedlings died.

If the application is approved Mr. Jolly intends to continue irrigation of the orchard and meadow. Mr. Jolly testified that, depending upon economic conditions, he may raise stock. If Mr. Jolly begins raising stock, water from Branch C will be used for stockwatering and the meadow will be used for grazing. Mr. Jolly also uses water from another spring, which is not the subject of this application, for domestic use, orchard irrigation, and irrigation of a small meadow between the ranch house and the barn.

#### 6.0 PROTESTANT'S USE OF WATER

Protestant Bill Watson purchased his property in 1978. He subsequently built a house and has been diverting water for domestic use by gravity flow from Branch H using a 3/4-inch PVC pipeline. In addition to year-round domestic use, Mr. Watson uses water for irrigation of a small garden and for fire protection in the summer. At the time of the hearing, Mr. Watson was building another house on his property and water from Branch H was being used in the construction.

There are no other sources of water on Mr. Watson's property. In the past, however, when the water in Branch H has dried up for brief periods during the summer, Mr. Watson has received water from his neighbor, Mr. Fred Adams, who holds a permit under Application 27050 to divert water from the South Channel shown on Figure 1. Mr. Adams

testified that he would be willing to share water diverted through his pipeline with Mr. Watson on a regular basis, provided that Mr. Watson shares evenly in the costs and labor necessary to maintain the diversion system. Mr. Watson has chosen not to rely upon Mr. Adam's system to date due to his preference to receive water directly from Branch H under claim of riparian right. Mr. Watson opposes issuance of a permit on Application 27006 because diversion of water by the applicant would reduce or eliminate the flow in Branch H as it enters the Watson property.

## 7.0 ANALYSIS OF STREAM SYSTEM AND ALLEGED RIPARIAN RIGHTS

### 7.1 Branch A Flow

The evidence in the record indicates that the flow from the North Channel once entered Branch A under the natural conditions in existence before any man-made alterations. However, over 60 years ago, a Mr. Baker, predecessor in interest to the applicant, blocked the flow into Branch A at Point I with a log and earthen dam which prevented the water from entering Branch A. The alteration was intended to prevent flooding of the barn and house on the applicant's property during periods of high flow. The conclusion that Branch A is the natural channel of the stream is supported by the fact that the stream channel of Branch A is deep and well eroded.

### 7.2 Flows In Branches B, C and D

The dam on Branch A at Point I causes the water to proceed down the channel designated as Branch B until it reaches Branch C at Point II.

The applicant testified that he has diverted the flow into Branch C on a regular basis from 1967 to 1980 and that he believes Branch C was used for irrigation prior to that time. The applicant's practice has been to block Branch B at Point II and direct the flow into Branch C during the irrigation season. During the remainder of the year, Branch C has been blocked off and the water has flowed through Branch D.

In July of 1978, protestant Watson noticed the flow in the stream crossing his property was cut off suddenly. Upon investigation, he discovered that the applicant's tenant had diverted the entire flow into Branch C upstream to irrigate his orchard.

7.3 Branch E Flow

At Point III, flow through Branch D continues into Branch E during high flow periods only. Neither the applicant nor protestant Watson is using it in any way. Low flows at Point III follow Branch F to Point IV.

7.4 Branch G and H Flows

From Point IV, Branch G crosses the lower portion of applicant's property. The applicant's place of use, however, is at a higher elevation than Branch G which would make irrigation difficult. During a field investigation in 1982 on another application, staff engineer Keith Bieg noticed evidence of recent digging near point IV. The water was flowing into Branch H to Mr. Watson's property rather than

into Branch G to the applicant's property. Conflicting evidence was presented at the hearing regarding the direction which water would flow at Point IV during low flow periods if the stream channel at that point were left unaltered. Mr. Bieg believes that the water would flow to Branch G, and Mr. Watson believes it would flow to Branch H. During periods of heavy run-off, the evidence established that water flows in both channels. Mr. Watson believes that Branch H is a natural channel which receives the flow of both the North Channel and the South Channel. At the place where Branch H crosses Mr. Adams' property, it is about 35 feet deep indicating that the channel has been there for some time.

7.5 Conclusions Regarding Direction of Flow in the Stream System and Alleged Riparian Rights

Protestant Watson believes that the diversion of water requested by the applicant will interfere with Mr. Watson's use of water under claim of riparian right. The applicant's position is that Mr. Watson does not have a riparian right since Branch C, not Branch H, should be regarded as the "natural" channel for water originating in the North Spring area.

As shown in Figure 1, there are numerous channels through which surface run-off and water originating at the North Spring may flow. During periods of very high runoff, water may be present in all channels shown as well as in other minor or temporary channels. The evidence presented at the hearing indicates that under natural conditions, however, the water originating at the North Spring area

flowed down Branch A. The flow of water from the North Spring area to Branches B through H is primarily, if not entirely, due to the fact that many years ago a dam was constructed at Point I, which blocked water from entering Branch A.

From 1967 to 1980, and probably for many years before, the quantity of water entering Branches C through H from the North Spring area has depended largely upon man's actions in directing the flow toward a particular channel. During the irrigation season, most of the flow has been directed toward Branch C, and during periods of high runoff the water has been directed toward the lower channels.

Persons who own land adjoining a watercourse may divert a reasonable amount of water for beneficial use on the parcel of property which abuts the watercourse. As a general rule, riparian rights exist only in natural watercourses and only in waters naturally flowing therein. Chowchilla Farms v. Martin, 219 Cal. 1, 19, 25 Pac. 2d 435 (1933). The California Supreme Court ruled in the Chowchilla Farms case, however, that a channel which has existed for a considerable period of time, and which has been used under such circumstances that the matter of its creation is not material, may acquire the attributes of a natural channel to which riparian rights attach. (219 Cal. at 19.)

Application 27006 is for a permit to divert water which originates at the North Spring area. The evidence in the record indicates that this water would naturally have flowed through Branch A, and not to either Branch C or Branch H. The fact that water from the spring has flowed

to the applicant's property through Branch C or to Protestant Watson's property through Branch H is due solely to the fact that the natural flow was altered. Riparian rights do not attach to waters which do not naturally flow in the stream channel in question.

Despite the long-existence of Channels C and H, the Board cannot conclude that either has acquired the attributes of a natural channel with respect to water from the North Spring area. Branch C has received the majority of water during the irrigation season, but only when a diversion dam was in place at or near Point II. The flow to Branch H from the North Spring area has been cut off during the periods when Branch C receives water. In view of the extent to which the flow into each channel has been regulated and frequently cut-off entirely due to human actions, the evidence establishes that neither Branch C nor Branch H have attained the attributes of a natural channel with respect to the water originating at the North Spring. Therefore, in determining if water is available for appropriation by the applicant, the Board will not recognize Mr. Watson's alleged riparian right to water originating in the North Spring area.

#### 8.0 AVAILABILITY OF WATER FOR APPROPRIATION

There are no other legal users of water from the North Spring area in the vicinity of the proposed project. Restrictions on the availability of water due to prior rights downstream were addressed in Board Decision 1594. In Decision 1594, the Board determined that there is generally no water available for appropriation in the

Sacramento-San Joaquin Delta Watershed from June 15 through August 31 due to the prior rights of Delta riparians and the need to protect other beneficial uses. The Board also determined that permits to appropriate less than 1.0 cfs by direct diversion should specify a fixed season of diversion which would exclude the period of June 15 through August 31.

In this instance, however, the staff investigation concluded that there was no hydraulic continuity between the North Spring area and the Pit River during the irrigation season of most years. The United States Bureau of Reclamation and Pacific Gas and Electric company concurred in this determination and subsequently withdrew their protests. Based on the lack of hydraulic continuity with the downstream watershed during the irrigation season, and the absence of other legal users of water in the immediate vicinity of the applicant's project, the Board concludes that there will ordinarily be water available for appropriation throughout the proposed irrigation season of May 1 through December 15.

#### 9.0 QUANTITY OF WATER AND SEASON OF DIVERSION

Application 27006 requests direct diversion rights of 1.53 cfs for irrigation and 0.25 cfs for stockwatering. The applicant plans to irrigate approximately 20 acres. The soil in the area of the applicant's project is extremely permeable, thereby justifying a duty of water of 1 cfs for 30 acres. The appropriate rate of direct diversion for irrigation of the 20 acres involved in this instance is



0.67 cfs. An additional allotment of 0.25 cfs should be made to cover the proposed stockwatering use and ditch loss.

The season of diversion requested for irrigation is May 1 through December 15. Ordinarily, irrigation will be unnecessary once the autumn rains begin, but an extended irrigation season may be necessary in a dry year. The applicant requested a year-round season of diversion for stockwatering, but the record establishes that the applicant uses water diverted through Branch C for stockwatering only when irrigation is occurring. During the high flow period, Branch C is blocked off in order to prevent flooding in the area of the applicant's barn. When water is not being diverted through Branch C, the applicant can use a spring which is located on his property for stockwatering needs. The season of diversion authorized for stockwatering under the requested permit should be limited to May 1 to December 15, which coincides with the season of diversion for irrigation.

The total annual use of water under the requested permit should not exceed 310 acre-feet per year. Both the season of diversion and the quantity of water allotted under the permit may be reduced at the time of licensing to conform to the applicant's actual use.

## 10.0 ENVIRONMENTAL CONSIDERATIONS

### 10.1 Instream Uses

As discussed in Section 7, the natural direction of flow from the North Spring area was through Branch A before the channel was altered

many years ago. Since that time the water has flowed in Branches B through H, depending in large part upon which channels were intentionally blocked off by people in the area. Due to the many years in which no water has flowed in Branch A, there are no instream uses still associated with that channel.

As a condition of withdrawing its protest, the Department of Fish and Game requested that the applicant be required to bypass into Branch D a minimum of 33 gallons per minute (gpm) or the total stream flow, whenever the total flow is less than 33 gpm. The Department also requested that the applicant be required to install and maintain a device, satisfactory to the Board, to measure the bypass flow. The requested conditions are intended to ensure that water continues to be available for wildlife and "riparian habitat" in the branches of the North Channel downstream from the point where Branch C diverts water to the applicant's property. The applicant agreed to comply with the bypass flow requirement requested by the Department of Fish and Game and the Department's protest was subsequently dismissed.

#### 10.2 Findings Under Environmental Quality Act

The Board finds that this project constitutes only a minor modification to land, water and vegetation and it will have no significant effect on the environment. As lead agency for this project under the provisions of the California Environmental Quality Act (Public Resources Code §21000 et seq.), the Board will file a Notice of Exemption in accordance with Section 15304 of Title 14 of the California Administrative Code.

11.0 CONCLUSIONS

Based on the foregoing findings, the Board concludes that Application 27006 should be approved in part and a permit issued to the applicant subject to the terms and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 27006 be approved for irrigation and stockwatering purposes and that a permit be issued to the applicant, subject to prior rights. The permit shall contain standard permit terms 6, 10, 11, 12, 21, 27\* in addition to the following terms and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed:
  - a. 0.67 cubic foot per second by direct diversion from May 1 to December 15 of each year for irrigation.
  - b. 0.25 cubic foot per second by direct diversion from May 1 to December 15 of each year for stockwatering.

The maximum amount diverted under this permit shall not exceed 310 acre-feet per year.

2. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

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\* A copy of the Board's standard permit terms is available upon request.

3. Construction work shall be completed by December 1, 1988.
4. Complete application for the water to the authorized use shall be made by December 1, 1989.
5. Permittee shall bypass at the point of diversion a minimum of 33 gallons per minute or the natural stream flow whichever is less.
6. This permit shall not be construed as conferring upon the permittee a right of access to the point of diversion and to the point of diversion.
7. Permittee shall install and maintain devices satisfactory to the Board to measure the quantities allocated under this permit.

#### CERTIFICATION


The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 22, 1985.

AYE: Raymond V. Stone  
Darlene E. Ruiz  
Edwin H. Finster  
Eliseo M. Samaniego

NO: None

ABSENT: None

ABSTAIN: None

*for*   
Michael A. Campos  
Executive Director