

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 19207
and 19472 of F. Heise Land and
Livestock Company to Appropriate from
West Fork Carson River in Alpine County

ADOPTED JUN 30 1964

Decision D 1184

1184

DECISION APPROVING APPLICATIONS

F. Heise Land and Livestock Company having filed Applications 19207 and 19472 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Rights Board in Markleeville, California, on November 14, 1961, before Board Member William A. Alexander; the applicant and protestants having been duly notified of said hearing; evidence having been offered and received at said hearing; the Board, having considered the evidence, finds as follows:

1. Application 19207 is for a permit to appropriate by diversion to storage 300 acre-feet per annum from the West Fork Carson River at a point in the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, T11N, R19E, MDB&M. Water would be diverted near Woodfords through Snowshoe Thompson Ditch No. 1 between April 1 and June 1 to offstream storage for later irrigation use.

2. Application 19472 was filed by the same applicant for storage of an additional 110 acre-feet per annum. Season

and points of diversion, rediversion and storage, and purpose of use are the same as in Application 19207.

3. Appropriative rights on West Fork Carson River involving diversions in California for use in Nevada as well as California were adjudicated in the 1920's and are set forth in a decree known as the Price Decree which was filed December 10, 1921, in the Superior Court in Alpine County. The Price Decree includes rights to divert through various ditches, including Snowshoe Thompson No. 1, the Millich Ditch, and the Ellis (Ellis-Dudley) Ditch. Several years ago a spring freshet of West Fork Carson River washed out the diversion works of these three ditches, and in lieu of reconstructing all three diversion works, a short section of Snowshoe Thompson No. 1 Ditch near its point of diversion was enlarged. It now carries Millich and Ellis Ditch decreed rights as well as Snowshoe Thompson No. 1 water for a short distance through a ditch with an estimated capacity of about 45 to 50 cubic feet per second (cfs). The decreed rights to be diverted through these three ditches total 36.17 cfs for April and 32.53 cfs during May.

4. About half a mile below its head, the enlarged Snowshoe Thompson No. 1 divides, one part forming the headworks of the Millich Ditch (RT 25). Following a southeasterly course for another mile, the Snowshoe Thompson Ditch No. 1 again divides into north and south branches. The south branch continues south and east another mile until it empties into Indian Creek. The water sought under the subject applications would follow the south

branch of Snowshoe Thompson No. 1 until it empties into Indian Creek whence it would be rediverted about 0.3 mile downstream into another ditch along the right bank. This latter ditch carries the water for storage about one mile to Harvey Reservoir, an enlarged natural depression.

5. The capacity of Harvey Reservoir was increased to about 150 acre-feet subsequent to the time of entry of the Price Decree. In recent years the applicant has been using this reservoir for regulation of direct diversion rights adjudicated by the Price Decree. (See Staff 4, Items 15, 16, 17, and 27). Applicant plans to increase the reservoir's capacity to 410 acre-feet and use the water for supplementary irrigation of about 735 acres below the dams and across Indian Creek in Diamond Valley.

6. The protest of Fred Dressler is based on alleged interference with rights derived from the Price Decree to divert 9.62 cfs during the month of April from the West Fork Carson River through the Millich Ditch to Indian Creek, then down Indian Creek to Mud Lake Reservoir. Subsequent to the hearing the protestant and the applicant entered into a written agreement as a result of which this protest has been withdrawn.

7. Truckee-Carson Irrigation District as operator of the Newlands Project of the United States filed a written protest on behalf of appropriative rights dating from 1903 for irrigation of 125,000 acres of land in Nevada, involving the use of Lahontan Reservoir. The District did not appear at the hearing. At a previous hearing on applications for diversion of West Carson River

water, the District indicated that there would be no basis for its protests if water sufficient for the requested permits in addition to water for existing California rights and usage is apportioned to California by the terms of the anticipated California-Nevada Compact. An interstate water compact, duly ratified by Congress, would establish firmly and finally the fair share of the waters of the Carson River allotted to California for use in California under California law. The applicant is placed on notice that any permits issued to it, being junior to established California rights on the Carson River, would be among the first California water rights to be subject to possible loss or modification, depending on compact terms. See Hinderlider v. La Plata & Cherry Creek Ditch Co. (1938) 304 U. S. 92, 58 S.Ct. 803.

8. The proposed use is beneficial.

9. Unappropriated water is available, 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.

From the foregoing findings, the Board concludes that Applications 19207 and 19472 should be approved, and that permits should be issued to the applicant subject to the limitations and conditions in the following Order.

ORDER

IT IS HEREBY ORDERED that Applications 19207 and 19472 be, and the same are, approved, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated under Application 19207 shall be limited to the amount which can be beneficially used and shall not exceed 300 acre-feet per annum to be collected between April 1 and June 1 of each year.

1a. The amount of water to be appropriated under Application 19472 shall be limited to the amount which can be beneficially used and shall not exceed 110 acre-feet per annum to be collected between about April 1 and about June 1 of each year.

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

3. Construction work shall be completed on or before December 1, 1966.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

6. All rights and privileges under these permits including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights 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.

7. Permittee shall allow representatives of the State Water Rights 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 these permits.

8. Permittee shall install and maintain suitable measuring devices, if and when such devices are deemed necessary by the Board and installation notice is given to the permittee, such devices to be located (1) on the south branch of Snowshoe Thompson Ditch No. 1 immediately upstream from its junction with Indian Creek near the easterly boundary of Lot 15 of Section 5, T10N, R20E, MDB&M, and (2) on the diversion ditch leading to Harvey Reservoir immediately downstream from Indian Creek, within Lot 13 of Section 4, T10N, R20E, MDB&M, in order that measurements can be made of the rate of flow of water into and out of Indian Creek to said Harvey Reservoir.

9. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

10. A separate application for approval of plans and specifications for construction of the dam described in this approved water right application shall be filed with and approved by the Department of Water Resources prior to commencement of construction of the dam.

11. In accordance with an agreement between permittee and the Department of Fish and Game, permittee shall, during the period from April 1 to June 1 of each year, bypass a minimum of

30 cubic feet per second or the natural flow of the stream whenever it is less than 30 cubic feet per second at the point of diversion on West Fork Carson River to maintain fishlife.

12. These permits do not authorize collection of water to storage during the period from June 1 of each year to April 1 of the following year to offset evaporation and seepage losses or for any other purpose.

13. Rights under these permits are and shall be subject to (1) rights determined by the decree dated November 29, 1921, by Judge L. T. Price of the Superior Court, Alpine County, in the matter of the West Fork Carson River Adjudication, and (2) such other rights as may presently exist on the stream insofar as said existing and adjudicated rights are maintained.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this day of , 1964.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member