

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24966)
to Appropriate from John's Gulch)

MICHAEL AND BEVERLY MAC GINNIS,)

Applicant,)

CLEMENT FAMILY TRUST and)
DENNIS AND PAMELA HANKE,)

Protestant.)

Decision: 1504

Source: John's Gulch

County: Shasta

DECISION APPROVING APPLICATION

Michael and Beverly MacGinniss having filed Application 24966 for a permit to appropriate unappropriated water; protests having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided 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 the Application

1. Application 24966 is for a permit to appropriate 375 gallons per day (gpd) by direct diversion from January 1 to December 31 of each year for domestic purposes from John's Gulch in Shasta County. The point of diversion is located within the SE1/4 of NW1/4 projected Section 23, T33N, R7W, MDB&M.

The point of diversion is not located where originally specified in the application, rather it is about 150 feet downstream. No other diversions occur in this reach. It is considered a minor correction and renote of the application is unnecessary.

Applicants' Project

2. The applicants propose to divert water from John's Gulch at an existing diversion dam and convey that water by gravity in a buried pipeline about 1200 feet long through a regulating tank to their residence. The water will be used for domestic purposes within the residence. The applicants have a well on their property that is adequate to supply their needs; however, the well water has a high mineral content, an objectionable odor and stains plumbing fixtures.

Protests

3. Application 24966 was protested by the Clement Family Trust; and Dennis and Pamela Hanke. The Clement Family Trust owns the land lying between the applicants' point of diversion and place of use. The protest was based on claimed infringement of their riparian rights. Upon review of the proposed project, the protest was withdrawn.

4. Dennis and Pamela Hanke alleged interference with their downstream prior vested rights which are riparian and appropriative. The Hanks hold License 8223 issued on Application 20394 which confirms a right to divert 3,500 gpd year round from John's Gulch for domestic purposes. Maximum annual use at time of license was 1.2 afa. The Hanke point of diversion lies about 600 feet downstream from the applicant's point of diversion on Clement Family Trust property.

Availability of Water

5. There are no records of flow for John's Gulch. John's Gulch is a short, steep stream tributary to Clear Creek

thence the Sacramento River. It has a watershed area of about 450 acres varying between 1400 feet and 3600 feet in elevation. Runoff has been estimated at 1000 afa. Early reports for License 8223 indicate that water is available year round at the Hanke point of diversion.

6. Diminished flow reaching the Hanke property in recent years resulted in a complaint to this Board by Hanke's predecessor, Kerrigan, and litigation in the Superior Court of Shasta County^{1/}. An investigation pursuant to the complaint concluded that the cause of diminished flow was increased vegetation consumption and large losses from defendant Paulson's pipeline. Defendant Paulson diverts water from John's Gulch upstream from the applicants and the protestants. The court concluded that defendant Paulson had a prescriptive right to divert water from John's Gulch to the extent of his beneficial use, which it determined was 7,500 gpd. The court enjoined him from diverting more than 7,500 gpd at any time when such diversion would impair plaintiff Kerrigan's riparian or appropriative rights^{2/}. The applicant was a defendant in this litigation and the court further enjoined the applicant from diverting water except in accordance with a Board water right entitlement. The court has retained jurisdiction in this case and any affected party may seek compliance with the judgment of the court.

Existence of Unappropriated Water

7. The flow in John's Gulch is normally adequate to satisfy prior rights and Application 24966. Applicants have

^{1/} Kerrigan, et al. v. Paulson, et al., Shasta County Superior Court No. 52537.

^{2/} See Memorandum Decision in Kerrigan, et al. v. Paulson, et al., supra.

agreed not to divert water unless there is surface flow passing protestant Hanke's point of diversion. To assure compliance, applicants have agreed to install a meter on their pipeline to measure the quantity of water diverted and to report diversions to the Board.

8. Prior Board decisions on the Sacramento River and streams tributary thereto have found no unappropriated water available during the summer months. However, John's Gulch does not have surface hydraulic continuity with Clear Creek during this period and the year round diversion season can be approved.

9. 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.

10. The intended use is beneficial.

Environmental Considerations

11. This Board decision authorizes the following activity: Direct diversion of water for domestic use in one residence from an existing diversion dam through a one-inch gravity pipeline. Such activity constitutes only a minor modification to land, and such activity is thereby exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) in accordance with Section 15104, Chapter 3, Title 14, California Administrative Code.

Other Considerations

13. The applicants are also defendants in the above referenced litigation and are under a permanent injunction preventing diversion of water from John's Gulch, until such time as this Board grants a permit.

14. The records, documents and other data relied upon in determining the matter are: the file of Application 24966 and all relevant information on file therewith including the Engineering Staff Analysis dated December 15, 1978.

ORDER

IT IS HEREBY ORDERED that Application 24966 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, 8, 9, 10, 11, 12, 13^{3/} in addition to the following limitations (written substantially as below):

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 375 gallons per day to be diverted from January 1 to December 31 of each year.

2. The equivalent of the continuous flow allowance for any 7-day period may be diverted in a shorter time, provided there be no interference with other vested rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed.

^{3/} The Board maintains a list of Standard permit terms.

Copies of these are available upon request.

3. Standard time allowances (Permit Terms 7, 8 and 9) for perfecting a right to use water will apply to this permit: Two years to begin construction; until December 1, 1982 to complete construction; until December 1, 1983 to complete use of water.

4. This permit shall not be construed as conferring upon the permittee's right of access to the point of diversion.

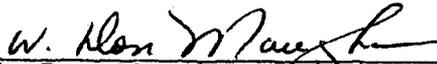
5. This permit is subject to the terms of the memorandum decision in the case entitled Kerrigan, et al., v. Paulson, et al., Shasta County Superior Court No. 52537, dated January 6, 1977 to the extent such decision covers matters within the Board's jurisdiction.

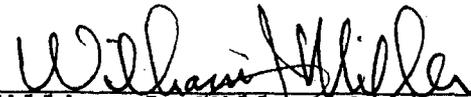
6. The State Water Resources Control Board reserves jurisdiction over this permit to impose any appropriate conditions at some future date to conform the permit to court orders pursuant to the court's continuing jurisdiction in Kerrigan, et al., v. Paulson, et al., Shasta County Superior Court No. 52537. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

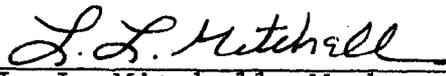
7. No water shall be diverted under this permit unless there is surface flow passing the point of diversion under License 8223 (Application 20394) located 400 feet north and 830 feet east of the $W\frac{1}{4}$ corner of projected Section 23, T33N, R7W, MDB&M, being within $SW\frac{1}{4}$ of $NW\frac{1}{4}$ of said Section 23.

8. Permittee shall install and maintain a meter which will measure and record the quantity of water diverted. Permittee shall file with his annual progress reports to the Board records showing diversions under this permit.

Dated: MAY 17 1979


W. Don Maughan, Chairman


William J. Miller, Member


L. L. Mitchell, Member


Carla M. Bard, Member

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