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STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the matter of Application )	Source: South Fork Dry Creek
15732 by Paul N. Anderson. )	County: Placer

Decision No. D 909

Decided: June 25, 1958

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In attendance at investigation conducted by the former  
Division of Water Resources on May 12, 1955:

Paul N. Anderson	)	Applicant
R. L. Hopkins	)	Representing the protestant Nevada Irrigation District
Office Engineer	)	
W. H. Shinn	)	
Placer County Representative	)	
Charles H. West	)	Protestant
Alexander Heitman	)	Interested Party
K. L. Woodward	)	Representing the State Engineer
Senior Hydraulic Engineer	)	
Division of Water Resources	)	
J. V. Scammon	)	Associate Hydrographer Division of Water Resources
Associate Hydrographer	)	
Division of Water Resources	)	

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DECISION

Substance of the Application

The application is for a permit to appropriate 2.58 cubic feet per second, year-round, from South Fork Dry Creek, tributary via Dry Creek to Coon Creek, at numerous but undescribed points along its



course through Section 21, T13N, R8E, MDB&M, the water to be used for irrigation during the months of April to November, both inclusive, and for domestic purposes throughout the year. The land upon which the water is to be used aggregates 206 acres. It is to be subdivided in 40 lots of approximately equal size of about 5 acres per lot. The applicant intends that the lots will be sold and that each purchaser will be assigned a proportionate share in the application and will divert independently. The proposed place of use consists of the  $S\frac{1}{2}$  of  $N\frac{1}{2}$  and 46 acres within the  $N\frac{1}{2}$  of  $S\frac{1}{2}$  of the same Section 21. The application is silent as to the existence of any water right or source of water supply other than the one sought under the application. The applicant asserts ownership of the land at the several diversion points and the land upon which the water is to be used.

#### Protests

The Nevada Irrigation District protests the application, stating as the basis of its protest:

"This would mean a reduction in our irrigation water supply on Coon Creek and the Camp Far West System."

It bases its claim of the right to use water from the source in question upon:

"Prior use, prescription, and the fact that the water is the property of the protestants."

The District describes its point of diversion as being located within the  $SW\frac{1}{4}$   $SW\frac{1}{4}$  of Section 13, T13N, R7E, MDB&M, and states as to the extent of its present and past use:

"Diversion has been continuous at District's point of diversion since 1947. Frequently this creek is supplemented by water from the District's Dry Creek Siphon, which is located above the applicant's points of diversion. This water serves lands adjacent to Coon Creek and diversions into the Camp Far West Canal."

Charles H. West and Elsa Weber West also protest the application, stating that they divert from Coon Creek under Application 14351, Permit 8711, at points within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 33, T13N, R5E, MDB&M, that they irrigate about 75 acres, that water shortages have necessitated rotation with other users, that from June 1 to about November 1 there is no more than enough water in Coon Creek for the exercise of existing rights.

#### Answers

In answer to the protest by Nevada Irrigation District the applicant denies that his proposed appropriation would injure that entity or cause any shortage of supply in Coon Creek or in the Camp Far West system, denies that Nevada Irrigation District has any rights to the water he seeks to appropriate, states that District's Dry Creek siphon is not located above protestant's proposed diversions but only above some of them, said siphon crossing South Fork Dry Creek on his property, alleges that said siphon discharges into South Fork Dry Creek only occasionally in connection with the cleaning of pipelines, avers that his ranch has long been used for raising cattle and that the water of South Fork Dry Creek has been used for the watering of cattle for more than 45 years.

In answer to the West protest, the applicant denies that the appropriation he seeks will reduce those protestants' water supply or invade their rights, alleges that in the 20-mile reach between his project and the Wests' property there are numerous "feeder streams, underwater supplies and springs" which will ensure sufficiency of supply.

### Field Investigation

The applicant and the protestants with the approval of the former Division of Water Resources (predecessor of the State Water Rights Board) stipulated to proceedings in lieu of hearing as was allowed under the rules of the Division and a field investigation was conducted on May 12, 1955, by K. L. Woodward and J. V. Scammon, engineers for the Division. The applicant and the protestants were present or represented during the investigation.

### Records Relied Upon

The records relied upon in support of this decision are Application 15732 and all information on file therewith.

### Information Secured by Field Investigation

Extracts from a memorandum by Associate Hydrographer Scammon, dated April 15, 1955, filed with Application 15732, are as follows:

"...(Assistant Hydraulic Engineer) Johnson and the writer on April 1, 1955, made a cursory inspection of the general area involved under Application 15732....

"Water from South Fork of Dry Creek flowing through Section 21, T13N, R8E...was approximately 0.65 cfs...and appears to come from:

1. Leakage through diversion dam and ditch below...Halsey Power House (approximately 0.25 cfs...)
2. Springs and leakage from the ditch near center of Section 26 (Approximately 0.15 cfs...)
3. Return water from irrigated lands and drainage into small tributary ravines. (Approximately 0.25 cfs...)
4. Water released from...siphon (no release...)

"Use of water from South Fork Dry Creek above proposed Application 15732 is made by about eight or ten owners of small homes along the creek.... Some of these owners when questioned stated that although the creek became very low during the summer they always had been able to pump the small amount required for their needs.

"The...siphon...was found to cross the creek about 300 feet west of a fence...assumed to be on the section line between Sections 21 and 22. The...District spills water from this siphon into South Fork Dry Creek in order to serve certain areas.

"Mr. Jarger, ditch tender...stated the District used the water (passing applicant's proposed point of diversion) during the irrigation season.

"The...works on Dry Creek for The Camp Far West Ditch was visited and the ditch was full and about 30 cfs was spilling over the dam. This water flows into Coon Creek which is also used by Nevada Irrigation District. Information was not obtained regarding the periods when all water in Dry Creek is diverted into Camp Far West Ditch; however, evidence of the...District's effort to capture all water available...is evidenced by the collection ditch and pipe crossing Dry Creek below the dam which diverts return water into this ditch.

"Mr. Gunther, owner of the ranch located...in Section 22, T13N, R6E, stated that generally he paid for water delivered to him from Coon Creek after April 15.

"Protestant West and other diverters below the Camp Far West diversion would appear not to be affected by use from the stream above that point of diversion during the season of short supply. During the early portion of the season lower tributaries probably produce sufficient flow for all use below Highway 99E (U. S. Highway 99E crosses Coon Creek in T13N, R6E, MDB&M.).

"The extent of use by applicant appears to be only for stock water at this time; however, applicant is riparian and has not severed any riparian right by subdividing the property."

The report covering the field investigation of May 12, 1955, contains among other statements the following:

"The investigation included an inspection of the applicant's proposed project, Nevada Irrigation District's diversion dam on South Fork Dry Creek, and a general inspection of the watershed east of U. S. Highway 99.

"South Fork Dry Creek heads in the foothill area of the Sierra Nevada at elevations of about 2,000 feet...near

...Applegate, and flows in a southwesterly direction - a total distance of about 9 miles - to a junction with North Fork Dry Creek near the east line of Section 13, T13N, R7E, MDB&M. The stream continues about 2 miles westerly as Dry Creek proper to a junction with Coon Creek in Section 22 of the same township and range. The diversion dam of Nevada Irrigation District (Camp Far West Dam) is located about  $3/4$  mile downstream from junction of North Fork and South Fork Dry Creek. Below the Coon Creek-Dry Creek confluence, Coon Creek continues southwesterly about 20 miles to R. D. 1001 Drain.

"Because of the low elevation of the watershed, runoff of South Fork Dry Creek is affected very little from snow-melt but is derived principally from rain fall which occurs almost entirely during the late fall, winter, and early spring months.

"...the flow (of South Fork Dry Creek) is controlled by Lake Theodore in  $SE\frac{1}{4}$  of Section 18, Lake Arthur in  $NW\frac{1}{4}$  of Section 19, T13N, R9E, MDB&M, and the afterbay of Halsey power house in  $NW\frac{1}{4}$  of Section 25, T13N, R8E, MDB&M. These facilities are presently utilized by Pacific Gas and Electric Company in connection with its Drum hydroelectric system and its Boardman Canal which serves domestic, municipal, and irrigation water between Auburn and Roseville. Undoubtedly, such uses antedate the Water Commission Act.

"Water reaching the applicant's proposed point of diversion apparently originates from leakage through the Halsey afterbay dam, springs and leakage from the Pacific Gas and Electric Company ditch extending from the afterbay dam to the Rock Creek Reservoir in Section 28, T13N, R8E, MDB&M, return flow from irrigated lands and drainage in tributary ravines, and release from the District's Dry Creek siphon. On April 1, 1955, the flow reaching the applicant's place was an estimated 0.65 cfs. On May 12, 1955, the flow had increased to about 0.85 cfs.

"No use of water had been made by the applicant prior to the date of investigation, and the property to be served is entirely undeveloped. The land is hilly, rocky, and moderately wooded and does not appear conducive to extensive irrigation under present economic conditions. It is believed that any development by the individual lot holders, so far as irrigation is concerned, would probably extend only to small domestic gardens. Several lots have already been sold, and according to Mr. Anderson, there were no conditions in the sales agreement whereby he is to serve or provide water thereto.

"Nevada Irrigation District apparently diverts all of the flow of Dry Creek at its Camp Far West diversion dam during most of the irrigation season and supplements such flow by releases from the Dry Creek siphon and the Combie-Ophir Canal heading on Bear River. Water is used from this

system to serve an extensive area within the District east of the Town of Sheridan. Mr. Shinn...stated the canal heading on Dry Creek has a capacity of 35 cfs...and that because of the inadequate supply in Dry Creek, the District has installed a pump with a capacity of about 4 cfs at a point some 6 miles downstream from the dam to recover the seepage losses from the canal.

"At the time of the investigation on May 12, the entire flow of Dry Creek was being diverted by the District at the Camp Far West Dam which included a considerable flow coming down the North Fork (Combie-Ophir Canal water). In further support of the District's contention that no unappropriated water exists in Coon Creek, Mr. Shinn stated that the Gunther Ranch in the SW $\frac{1}{4}$  of Section 15, T13N, R6E, MDB&M, diverts from Coon Creek on the basis of a riparian right but that the District charges for any diversion made after April 15 of each year upon the assumption that after that date any water available was provided by and belonged to the District. The District's representatives indicated that the supply reaching the above-mentioned dam sometimes decreases to 4 and 5 cfs during the summer months.

"Unappropriated water would appear to exist only during such time as the flow is in excess of the District's Camp Far West diversion...."

#### Information from Other Sources

The easterly boundary of Nevada Irrigation District as it crosses South Fork Dry Creek is coincident with the east boundary of Section 21, T13N, R8E; the section containing the applicant's proposed place of use; the westerly boundary of the District as it crosses Coon Creek is close to if not coincident with Highway 99E. Distances via stream channel westerly from the District's easterly boundary (at South Fork Dry Creek) scale approximately as follows:

To junction of North and South Forks of Dry Creek	3.5 miles
To Camp Far West diversion dam	4.3 miles
To Gunther property	14.1 miles
To Highway 99E	18.4 miles

A written statement by one Herman Oest (dated November 21, 1957, and filed with Application 15732) reads in part as follows:

"I, Herman Oest, was born in the year 1876 on the 160 acres of land on which I now reside and have lived in this vicinity all my life and I am familiar with the ditch named Camp Far West Ditch...and the ditch named the Wells Ditch....

"I know...that these two ditches were constructed and used prior to December 19, 1914, and have been in continuous use each year since that date, up to about 1940."

#### Discussion

The applicant's stated purpose in seeking to appropriate is to obtain a water supply for irrigation from about April 1 to about November 1 of each year and to obtain a year-round water supply, for domestic purposes, for the described place of use and for the 40 five-acre lots into which he expects that property to be divided. In protesting the application the Nevada Irrigation District contends that diversions as proposed by the applicant would prevent the District from receiving the amounts it is entitled to divert from Coon Creek.

The applicant is specific as to the total amount desired for irrigation and domestic purposes but is silent as to how much may be required for domestic purposes alone. If the place of use is broken into 40 lots as the applicant plans, domestic requirements may be supposed to approach but not exceed about 0.025 cubic foot per second per lot, or 1 cubic foot per second altogether.

While the Nevada Irrigation District's entitlement to divert from Dry Creek is not known exactly, all of the information before the Board indicates that some such entitlement exists. According to the Herman Oest statement, the Camp Far West Ditch was constructed and in

use prior to December 19, 1914, and said use has been continuous since that time until about 1940 at least; and the report covering the investigation of May 12, 1955, indicates that it is the present practice of the Nevada Irrigation District, in reliance upon its claimed rights, to divert the entire flow of Dry Creek into Camp Far West Ditch from about mid-April to about mid-October for distribution to water users served from that ditch. In the absence of any indication that the Nevada Irrigation District's practice of diverting up to the full capacity of the Camp Far West Ditch is illegal, it is assumed from the available information that said practice is based upon valid rights and that unappropriated water in Dry Creek or in the tributaries that feed it is non-existent during periods extending from about April 15 to about October 15 of each year.

Flows passing the applicant's proposed points of diversion between about October 15 and about April 15 are apparently unappropriated. Such flows insofar as the record indicates are not required for the satisfaction of downstream demands. Such flows however are limited and variable in amount, being affected both by weather and by upstream diversions and releases. On April 1 and May 12, 1955, according to the reports covering the field investigations made on those dates, the flows in question were 0.65 and 0.85 cubic foot per second, respectively.

#### Conclusion

The information indicates and the Board finds that unappropriated water ordinarily exists from about October 15 of each year until about April 15 of the next within the reach from which the applicant seeks to appropriate, that it seldom exists at other times,

that during the periods when it ordinarily exists it may be taken and used beneficially for domestic purposes, in the manner proposed by the applicant, without injury to any other diverter supplied from the same stream system. The information further indicates and the Board further finds that such irrigation as might be accomplished in the manner proposed after October 15 and before April 15 would be of insufficient consequence to constitute beneficial use of water.

In view of all available information it is the conclusion of the Board that Application 15732 insofar as it relates to domestic use between about October 15 of each year and about April 15 of the next, should be approved and permit issued to the applicant with the amounts to be diverted thereunder limited to amounts aggregating not in excess of 1 cubic foot per second; and that Application 15732 insofar as it relates to diversions for irrigation purposes at any time or to domestic purposes between about April 15 and about October 15 should be denied.

#### ORDER

Application 15732 for a permit to appropriate unappropriated water having been filed with the former Division of Water Resources, protests having been filed, an investigation having been made by the Division, jurisdiction of the administration of water rights including the subject application having been subsequently transferred to the State Water Rights Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15732 insofar as it relates to diversions for domestic purposes from about October 15 of each year to about April 15 of the succeeding year be, and the same is

hereby approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used for domestic purposes and shall not exceed one cubic foot per second, which amount may be diverted from about October 15 of each year to about April 15 of the succeeding year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before December 1, 1958, and shall thereafter be prosecuted, with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1963.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1964.

6. 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.

7. All rights and privileges under this permit 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 or unreasonable method of diversion of said water.

IT IS FURTHER ORDERED that Application 15732 insofar as it relates to diversion for irrigation purposes or to diversions for any

purpose between about April 15 and about October 15 of each year be,  
and the same is hereby denied.

Adopted as the decision and order of the State Water Rights  
Board at a meeting duly called and held at Fresno, California, on  
this 25th day of June, 1958.

/s/ Henry Holsinger

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Henry Holsinger, Chairman

/s/ W. P. Rowe

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W. P. Rowe, Member

/s/ Ralph J. McGill

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Ralph J. McGill, Member