

V. J. Gretzinger,
Engineer for Calaveras
County Water District

Representing all applicants

Owen E. Wilkinson

Representing the protestants

J. J. Heacock
Senior Hydraulic Engineer)

Representing State
Water Rights Board

A. N. Webb
Assistant Hydraulic Engineer)

DECISION

Substance of the Applications

Applications 17681, 17682, 17683 and 17684 were filed June 28, 1957, by Chester R. Murphy for permits to appropriate water by seasonal storage from four tributaries of Littlejohns Creek in Calaveras County between October 1 of each year and June 1 of the succeeding year for stockwatering purposes as follows:

Application 17681 is for a permit to appropriate 30 acre-feet per annum from McCarthy Creek tributary to Littlejohns Creek at a point within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 26, T2N, R11E, MDB&M*. Water is to be impounded behind an earth dam 19.4 feet high by 300 feet long creating Murphy No. 2 Reservoir with a surface area of 5 acres and a capacity of 30 acre-feet.

Application 17682 is for a permit to appropriate 11 acre-feet per annum from an unnamed stream tributary to Clover Creek thence Littlejohns Creek at a point within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 36, T2N, R11E. Water is to be impounded behind an earth dam 22.2 feet high by 250 feet long creating Murphy No. 6 Reservoir with a surface area of 2 acres and a capacity of 11 acre-feet.

Application 17683 is for a permit to appropriate 15.5 acre-feet per annum from an unnamed creek tributary to McCarthy Creek at a point within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, T2N, R11E.

*All township and range designations are to the Mount Diablo Base and Meridian (MDB&M).

Water is to be impounded behind an earth dam 14.6 feet high by 185 feet long creating Murphy No. 1 Reservoir with a surface area of 3.5 acres and a capacity of 15.5 acre-feet.

Application 17684 is for a permit to appropriate 12 acre-feet per annum from an unnamed stream tributary to McCarthy Creek at a point within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 1, T1N, R11E. Water is to be impounded behind an earth dam 21 feet high by 350 feet long creating Murphy No. 7 Reservoir with a surface area of 2 acres and a capacity of 12 acre-feet.

Application 17685, filed June 28, 1957, by Ella Murphy is for a permit to appropriate 10 acre-feet per annum by storage from an unnamed creek tributary to McCarthy Creek between October 1 of each year and June 1 of the succeeding year for stockwatering purposes. The point of diversion is to be within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 18, T1N, R12E. Water will be impounded behind an earth dam 19.8 feet high by 290 feet long creating East Murphy No. 1 Reservoir with a surface area of 1.5 acres and a capacity of 10 acre-feet.

Application 17704, filed July 8, 1957, by Howard G. Hatler is for a permit to appropriate 30 acre-feet per annum by storage from McCarthy Creek to be collected between October 1 of each year and June 1 of the succeeding year for stockwatering purposes. The point of diversion is to be located within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26, T2N, R11E. Water is to be impounded behind an earth dam 24.8 feet high by 215 feet long creating Hatler No. 1 Reservoir with a surface area of 3.7 acres and a capacity of 30 acre-feet.

Protests

Protests against the approval of the six subject applications were submitted by Edna R. Owen and Irene Owen Wilkinson who claim rights to the use of water from the sources in question by virtue of riparian ownership. The protests are substantially identical asserting that because the protestants' prior Application 16531 was canceled for lack of sufficient unappropriated water, approval of the subject applications would cause injury to said protestants, "...by denying them their rights ...to any water might now exist or be developed in the future". The protestants claim that they or their predecessors in title have diverted water (from Littlejohns Creek) at a point within the S $\frac{1}{2}$ of Section 31, T1N, R10E, for stockwatering and irrigation purposes. The protestants agree that their protest may be disregarded and dismissed if the applicants confine their storage season to the period November 1 to May 31.

Answers to Protests

In answer to the protests the applicants contend that:

(1) The proposed appropriations will cause no injury to the protestants.

(2) The proposed appropriations will not conflict or interfere with any water right the protestants may have on the source in question.

(3) There is not sufficient rainfall in October to cause any runoff in McCarthy Creek and that even in the

exceptional year when runoff does occur it is such a small amount that diversion by the applicants could not injure the protestants, that if they (the applicants) are not allowed to collect the flow during October, "...it would be extremely difficult and expensive to the applicant to redirect the October runoff around or through applicant's dam".

(4) Injury would not result because between the applicants' and protestants' points of diversion, "...are many thousands of acres from which there is drainage water draining into Littlejohns Creek...".

(5) The applicants as upper riparian owners have superior rights to those of the protestants.

Field Investigation

The applicants and protestants, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules and a field investigation was conducted on February 10, 1958, by J. J. Heacock and A. N. Webb, engineers of the Board. The applicants and protestants were represented during the investigation.

Records Relied Upon

The records relied upon in support of this decision are Applications 11642, 11760, 12957, 12965, 13170, 13897, 17681, 17682, 17683, 17684, 17685 and 17704, and all relevant

information on file therewith, with particular reference to the report of the field investigation made on February 10, 1958, Applications 17681, 17682, 17683, 17684, 17685 and 17704; United States Geological Survey, "Copperopolis", "Farmington", and "San Andreas" quadrangles, 15 minute series; Bulletin No. 5, Department of Public Works, "Flow in California Streams", dated 1923; Bulletin No. 11, State Water Resources Board, "San Joaquin County Investigation", dated June, 1955; Bulletin No. 1, State Water Resources Board, "Water Resources of California", dated 1951.

Description of Watershed

The sources involved in the subject applications are small tributaries of Littlejohns Creek originating in the foothill area of southwestern Calaveras County. Littlejohns Creek rises in Section 9, T2N, R12E, and flows about 16 stream miles in a southerly direction thence westerly for over 40 miles to its confluence with the San Joaquin River near Stockton. In general, the watersheds above the proposed storage dams are rolling hills with moderate slopes having a light covering of scattered oaks and thin soil mantle. The areas of the contributing watersheds under each application scales from the aforementioned quadrangles as follows:

<u>Applications</u>	17681	17682	17683	17684	17685	17704
<u>Area in Acres</u>	204	70	115	45	70	192
<u>Total area -</u>	1.09 square miles					

All of the reservoirs are constructed. Murphy No. 2 (Application 17681) is located on McCarthy Creek and Murphy No. 1, (Application 17683), Murphy No. 7 (Application 17684), East Murphy No. 1 (Application 17685), and Hatler No. 1 (Application 17704) are located on unnamed tributaries of McCarthy Creek. Murphy No. 6 (Application 17682) is on an unnamed stream tributary to Clover Creek. Both McCarthy and Clover Creeks flow in a southeasterly direction from their origin and join Littlejohns Creek from the northwest. The confluence of McCarthy Creek with Littlejohns Creek is located within the SW $\frac{1}{4}$ of Section 9, T1N, R12E, and Clover Creek enters Littlejohns Creek about 2 miles upstream within the NW $\frac{1}{4}$ of Section 5, T1N, R12E. The protestants' property is located approximately 26 stream miles below the confluence of McCarthy and Littlejohns Creeks.

Water Supply

According to Table 2 of the United States Department of Commerce, Weather Bureau, "Climatological Data-California", Annual Summaries for the years 1942 through 1952, the mean annual precipitation at San Andreas, near the locale of the applicants' proposed projects is 30.07 inches. Table I of this decision sets forth the monthly precipitation at San Andreas for the period 1942 through 1952 which is the period of certain available streamflow records for Littlejohns Creek near Farmington.

TABLE I
 Monthly Precipitation at San Andreas
 (in inches)

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
1942	7.10	3.50	2.47	5.82	3.09	0.00	0.00	0.00	0.00
1943	7.88	3.84	7.98	2.65	.10	.20	0.00	0.00	0.00
1944	3.64	5.66	2.43	2.71	.69	0.00	0.00	0.00	.45
1945	.43	7.49	6.11	.74	.96	.40	0.00	T	.18
1946	1.52	1.96	4.50	0.00	1.55	0.00	T	0.00	.09
1947	1.14	2.24	2.12	.50	.30	.48	0.00	0.00	0.00
1948	1.25	3.05	6.11	6.61	3.00	.03	0.00	T	0.00
1949	3.03	3.84	6.92	T	.66	0.00	.02	.06	T
1950	8.42	4.45	4.14	2.52	.45	0.00	0.00	0.00	0.00
1951	6.51	3.14	3.13	1.29	1.73	T	0.00	0.00	0.00
1952	8.69	3.32	6.64	1.84	.17	.08	.05	0.00	.27
AVERAGE	4.51	3.86	4.78	2.24	1.15	.11	.006	.005	.09
MEDIAN	3.64	3.50	4.50	1.84	.69	.015	.00	.00	.00

At the time of the field investigation on February 10, 1958, McCarthy Creek was flowing approximately ten cubic feet per second (cfs) at the State Highway No. 4 bridge, within the NE $\frac{1}{4}$ of Section 7, T1N, R12E. This bridge is located downstream from all of the storage dams on McCarthy Creek and tributaries thereto with the exception of the unnamed stream under Application 17685, which joins McCarthy Creek approximately one stream mile below the bridge. According to the investigation report the concensus of the parties present at the investigation, who were familiar with McCarthy Creek, was that the creek ceased to flow at the bridge in June and did not start flowing again in the fall until there was an accumulation of three or four inches of rainfall over the tributary watershed.

Appendix D of Bulletin No. 11, State Water Resources Board, "San Joaquin County Investigation", dated June, 1955, sets forth the flow of Littlejohns Creek at Farmington for the periods 1942-44 and 1946-52. Table II of this decision contains the streamflow records at that station as reported in Bulletin No. 11. A comparison of the precipitation during the month of October, the only month during which the protestants object to the proposed diversion, in the upper watershed, as set forth in Table I, with the runoff at Farmington, as set forth in Table II, reveals that, little if any relationship exists. The flow of Littlejohns Creek at Farmington during the summer and fall months is undoubtedly return flow and drainage water from irrigation of adjacent lands and not dependent upon the antecedent rainfall. Protestants Owen's and Wilkinson's point of diversion is about six stream miles above the Farmington Recorder Station. -9-

TABLE II
 Littlejohns Creek at Farmington
 (in acre-feet)

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1942										370	900	1960
1943	14130	11340	33850	3020	250	240	250*	250*	240*	120*	120*	120*
1944	120*	21170	17010	360	330	230	80	0	0	**	**	**
1945	**	**	**	**	**	**	**	**	**	**	**	**
1946	**	**	153	306	480	631	703	939	915	400	510	970
1947	240	500	3890	180	790	**	**	**	**	**	**	**
1948	250	19	2990	5130	450	600	630	630	650	370	70	0
1949	60	1080	12180	320	570	570	470	500	340	32	95	12
1950	18960	11680	2680	1070	330	290	250	230	170	90	14820	36440
1951	18430	**	10220	1050	530	180	180	180	180	180	120	6140
1952	37030	15070	37250	2400	**	**	**	**	**	**	**	**
AVERAGE	11150	8690	13380	1540	466	392	366	390	356	224	2380	6520
MEDIAN	7190	11340	10220	1050	465	290	250	250	240	180	120	970

* estimated
 ** no record

According to Table 91 of Bulletin No. 5, Division of Engineering and Irrigation, "Flow in California Streams", dated 1923, the estimated mean seasonal runoff per square mile of Littlejohns Creek watershed, is 201 acre-feet. The estimated maximum and minimum runoff per square mile is 709 and 10 acre-feet, respectively. The distribution of seasonal runoff by months, according to Bulletin No. 5 is as follows:

January	-	34.2%	July	-	0.3%
February	-	25.2%	August	-	0.0%
March	-	23.7%	September	-	0.1%
April	-	5.5%	October	-	0.6%
May	-	2.6%	November	-	1.6%
June	-	1.0%	December	-	5.2%

Upon the assumption that the watersheds above the applicants' points of diversion contributes about the same per unit of watershed area as Littlejohns Creek as a whole and that the monthly distribution of runoff of those watersheds is also approximately the same, the flows in acre-feet reaching the several points of diversion during October should be approximately as follows:

<u>Application</u>	<u>Mean</u>	<u>Maximum</u>	<u>Minimum</u>
17681	.38	1.34	.019
17682	.13	.47	.007
17683	.22	.75	.011
17684	.08	.30	.004
17685	.13	.47	.007
17704	.36	1.27	.018

Applicants' Projects

According to the field investigation report, all of the dams, except Murphy No. 7, were completed and in use prior to 1957. Murphy No. 7 was subsequently constructed. None of the dams have outlet pipes.

The reservoir under Application 17681 was full at the time of the investigation and about 1.5 cfs were spilling. Seepage below the dam amounted to about 10 gallons per minute (gpm).

The reservoir under Application 17682 was full at the time of the investigation and about 0.2 cfs was spilling. Seepage below the dam amounted to about 10 gpm.

The reservoir under Application 17683 was full at the time of the investigation and was spilling about 0.4 cfs. Seepage below the dam amounted to about 2 gpm.

Water surface in the reservoir included under Application 17684 at the time of the investigation was 4.4 feet below the spillway crest. Inflow into the reservoir was about 0.025 cfs and seepage below the dam was about 1 gpm.

The reservoir under Application 17685 was full at the time of the investigation and about 0.1 cfs was spilling. Seepage below the dam amounted to about 5 gpm.

The reservoir under Application 17704 was full at the time of the investigation and about 0.6 cfs was spilling. Seepage below the dam amounted to about 10 gpm.

Other Information

The protestants, Owen and Wilkinson, filed application 16531 on August 17, 1955, to appropriate 3 cubic feet per second from Littlejohns Creek between March 1 and October 1 of each year for irrigation and stockwatering purposes. The proposed point of diversion was to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 31, T1N, R10E, and the 160 acres to be irrigated are located in the S $\frac{1}{2}$ of said Section 31. The application was protested by two downstream users, a field investigation was made on July 22, 1957. Subsequent to the investigation the applicants requested that the application be canceled.

A stipulated judgment was entered on October 31, 1955, in Action No. 58893 in the Superior Court of the State of California, in and for the County of San Joaquin, entitled "J. F. Goodwin Co., a corporation, plaintiff, v. E. D. Wilkinson, Irene Owen Wilkinson, Edna R. Owen, Earl Peterson, J. George Sanguinetti and John Does One to Twenty" wherein the protestants, Owen and Wilkinson, are enjoined from diverting any portion of the surface or underground flow of Littlejohns Creek, except that originating on their own lands, between June 1 and October 31 of each year.

Discussion

According to the report of field investigation made on February 10, 1958, Owen E. Wilkinson, representing the protestants, stated that he did not believe that the appropriations could materially affect them, except possibly in the

month of October. It was his opinion that, since the protestants were enjoined from diverting during October, the applicants should also be denied the right to appropriate during that month. Therefore, the protestants' objection is actually only against appropriation of water during the month of October.

As pointed out in a previous section, "Water Supply", the amount of runoff of McCarthy Creek and tributaries during the month of October is of such small proportions as to be insignificant to the protestants some 26 stream miles downstream from the confluence of McCarthy and Littlejohns Creeks. Furthermore, the protestants are enjoined from diverting the natural flow of Littlejohns Creek during the month of October. Upon the basis of the foregoing information the protest must be considered as without merit.

The existence of unappropriated water during the diversion season, other than the month of October, was not contested by the protestants. From the record it is evident that substantial quantities of water occur in Littlejohns Creek and tributaries during the major portion of the diversion season proposed in the applications. The Board therefore concludes that unappropriated water exists in sufficient quantities in the sources involved to justify the issuance of permits to the applicants for the entire season requested.

Conclusions

The information indicates, and the Board finds, that unappropriated water exists at times in substantial quantities in the sources from which the applicants seek to appropriate and that such water may be taken and used in the manner proposed by the applicants during those times without injury to downstream parties. It is, therefore, the conclusion of the Board that Applications 17681, 17682, 17683, 17684, 17685 and 17704 should be approved and that permits should be issued to the applicants subject to the usual terms and conditions.

ORDER

Applications 17681, 17682, 17683, 17684, 17685 and 17704 for permits to appropriate unappropriated water having been filed with the State Water Rights Board, protests against their approval having been submitted, an investigation having been made by agreement of the parties under Rule 737, said Board having considered all of the available information, and now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 17681, 17682, 17683, 17684, 17685 and 17704 be, and the same are, hereby approved, and it is ordered that permits be issued to the applicants subject to vested rights and the following terms and conditions, to wit:

1. The amount of water appropriated under Application 17681 shall be limited to the amount which can be

beneficially used and shall not exceed 30 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

2. The amount of water appropriated under Application 17682 shall be limited to the amount which can be beneficially used and shall not exceed 11 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

3. The amount of water appropriated under Application 17683 shall be limited to the amount which can be beneficially used and shall not exceed 15.5 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

4. The amount of water appropriated under Application 17684 shall be limited to the amount which can be beneficially used and shall not exceed 12 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

5. The amount of water appropriated under Application 17685 shall be limited to the amount which can be beneficially used and shall not exceed 10 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

6. The amount of water appropriated under Application 17704 shall be limited to the amount which can be beneficially used and shall not exceed 30 acre-feet per annum to be collected from about October 1 of each year to about June 1 of the succeeding year.

7. The maximum amounts herein stated may be reduced in the license if investigation so warrants.

8. Construction work shall be completed on or before December 1, 1958.

9. Complete application of the water to the proposed uses shall be made on or before December 1, 1960.

10. 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.

11. 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 method of use or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 18th day of December, 1958.

/s/ Henry Holsinger
Henry Holsinger, Chairman

/s/ W. P. Rowe
W. P. Rowe, Member

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