

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 18027,)
18028, and 18029 of Herbert J. Wickey)
to appropriate from Jackass Creek,)
North Fork Cosumnes River and)
Butte Creek, respectively, in)
El Dorado County)

Decision D 1075

ADOPTED MAR 15 '62

DECISION APPROVING APPLICATIONS IN PART

John A. Jacobsen having filed Applications 18027, 18028, and 18029 for permits to appropriate unappropriated water; protests having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board pursuant to said stipulation; the Board having adopted Decision D 999 on April 10, 1961, approving said applications in part; Herbert J. Wickey having since purchased the property covered by the applications; a Petition for Reconsideration of Decision D 999 having been filed on May 10, 1961, on behalf of Cosumnes Irrigation Association, a partnership, George W. Artz and Hal Ellis (as successors in interest to J. D. Granlees), and E. Clemens Horst Company, all protestants to the said applications, and an Order Granting Reconsideration of Decision D 999 for a limited purpose having been made by the Board on May 26, 1961; the Board having considered the matter pursuant to said order, now finds as follows:

1. Application 18027 is for a permit to appropriate 1.25 cubic feet per second from Jackass Creek in El Dorado County, year-round, for irrigation, domestic, and stockwatering purposes within Sections 2, 3, 10, and 11, T9N, R12E, MDB&M.

2. Application 18028 is for a permit to appropriate 2.5 cubic feet per second from North Fork Cosumnes River in El Dorado County, year-round, for irrigation, domestic, and stockwatering purposes within Sections 2, 3, 10, and 11, T9N, R12E, MDB&M.

3. Application 18029 is for a permit to appropriate 2.5 cubic feet per second, year-round, by direct diversion and 90 acre-feet per annum by storage from November 1 to June 1 of each season, from Butte Creek in El Dorado County.

4. Applicant's point of diversion on Jackass Creek under Application 18027 is approximately 2,000 feet above the confluence of Jackass Creek and the North Fork Cosumnes River. Applicant's point of diversion on the North Fork Cosumnes River under Application 18028 is three-quarters of a mile above this junction. Applicant's points of diversion on Butte Creek under Application 18029 are approximately one-half mile from Butte Creek's confluence with North Fork Cosumnes River, which is approximately one-half mile above the Jackass Creek-North Fork junction. Two storage reservoirs are proposed: Butte Creek Lower Reservoir with 80 acre-feet capacity and Butte Creek Upper Reservoir with 10 acre-feet capacity.

5. Cosumnes Irrigation Association, protestant to all of the applications, diverts from the Cosumnes River approximately

thirty miles downstream from the applicant's points of diversion. It holds License 2629 for 12.5 cubic feet per second and claims pre-1914 appropriative and riparian rights. Its maximum mean monthly diversion has been 25 cubic feet per second.

6. George W. Artz and Hal Ellis, successors in interest to J. D. Granlees, protestant to all the applications, divert from the same point of diversion as the Cosumnes Irrigation Association under claimed pre-1914 appropriative rights, riparian rights, and License 537 for 2 cubic feet per second. This use is for stockwatering and irrigation of 800 acres and is included in the 25 cubic feet per second used by Cosumnes Irrigation Association.

7. E. Clemens Horst, protestant to all the applications, diverts from wells located along the channel of the Cosumnes River at a point below the other protestants under claimed riparian and pre-1914 appropriative rights for the irrigation of 160 acres.

8. In addition to the protestants, there are other users diverting from the Cosumnes River between Michigan Bar and McConnell gaging station under apparent riparian rights. There is insufficient water available after about July 1 to satisfy their entitlement, and they have purchased water from the Bureau of Reclamation to meet their needs during the balance of the irrigation season. Delivery of such water commenced on June 28 in the year 1959 and on July 3 of the year 1960.

9. The Department of Fish and Game withdrew its protest filed against Applications 18028 and 18029 following a stipulation by applicant that any permit issued pursuant to Application 18028

would contain a clause requiring the permittee to release past the point of diversion 5 cubic feet per second or the natural flow, whichever is less, between January 1 and December 31, and that any permit issued pursuant to Application 18029 would contain a clause requiring permittee to release past the point of diversion 0.25 cubic foot per second, or the natural flow, whichever is less, from January 1 to December 31.

10. At the time of the field investigation made on March 16, 1960, the flow of Jackass Creek near the applicant's point of diversion was approximately 2 cubic feet per second and the flow of Butte Creek near the applicant's point of diversion, 3.5 cubic feet per second. There are no flows in these two streams during the months of August and September and, in most years, during the month of July.

11. The monthly mean flows of the North Fork Cosumnes River as computed from the records of the El Dorado gaging station and the monthly mean flows of the Cosumnes River as computed from the records of the Michigan Bar and McConnell gaging stations indicate that there is water in the sources named in these applications in addition to that required by existing users from about October 1 of each year to about July 1 of the following year, but that there is no surplus water from about July 1 to about October 1 in most years.

12. There is unappropriated water available to supply the applicant, providing the season of direct diversion under

Applications 18027 and 18028 and the season of direct diversion and storage under Application 18029 are limited to a period between about October 1 of each year to about July 1 of the succeeding year. 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.

13. The intended use is beneficial.

14. Decision D 999 should be vacated in its entirety, as it is superseded by this decision.

From the foregoing findings, the Board concludes that Applications 18027, 18028, and 18029 should be approved in part, and that permits should be issued to the applicant subject to the terms and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are Applications 18027, 18028, 18029, and 18827, and all relevant information on file therewith, particularly report of field investigation made on March 16, 1960, the United States Geological Survey maps of the area in question, United States Geological Survey Water Supply Papers, Part 11, "Pacific Slope Basins in California," "Water Conditions in California," and also "Report of Sacramento-San Joaquin Water Supervision," both published by the State of California, Department of Water Resources and its predecessor, the Division of Water Resources.

IT IS HEREBY ORDERED that Applications 18027, 18028, and 18029 be, and the same are, approved in part, and that permits be issued to the applicant subject to vested rights and the following terms and conditions:

1a. The amount of water to be appropriated under Application 18027 shall be limited to the amount which can be beneficially used and shall not exceed 1.25 cubic feet per second to be diverted from about October 1 of each year to about July 1 of the succeeding year. The continuous flow allowance of any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

1b. The amount of water to be appropriated under Application 18028 shall be limited to the amount which can be beneficially used and shall not exceed 2.5 cubic feet per second to be diverted from about October 1 of each year to about July 1 of the succeeding year. The equivalent of such continuous flow allowance may be diverted in a shorter time if there be no interference with vested rights.

1c. The amount of water to be appropriated under Application 18029 shall be limited to the amount which can be beneficially used and shall not exceed 2.5 second feet by direct diversion from about October 1 of each year to about July 1 of the succeeding year and 90 acre-feet per annum by storage to be collected from about November 1 of each year to about June 1 of the succeeding year. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

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

3. Actual construction work shall begin on or before December 1, 1962, and 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, 1964.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

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

8. 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 this permit.

The following additional conditions, Nos. 9 through 13, apply only to the permit issued pursuant to Application 18029:

9. This permit does not authorize collection of water to storage during the period from about July 1 to about October 1 to offset evaporation and seepage losses or for any other purpose.

10. Permittee shall install and maintain outlet pipes of adequate capacities in his upper and lower dams as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Rights Board, in order that water entering the reservoirs or collected in the reservoirs during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy the downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

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

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

13. Permittee shall continuously bypass not less than 0.25 cubic foot per second, or the natural flow of Butte Creek when less than 0.25 cubic foot per second for the preservation and enhancement of fish life.

Permit issued pursuant to Application 18028 shall be subject to the following additional condition:

14. Permittee shall continuously bypass not less than 5 cubic feet per second, or the natural flow of the North Fork Cosumnes River when less than 5 cubic feet per second for the preservation and enhancement of fish life.

IT IS FURTHER ORDERED that Decision D 999 be, and the same is, hereby vacated.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1962.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member

5. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

6. Permittee shall at all times bypass for the maintenance of fish life two cubic feet per second or the natural flow of the stream whenever it is less than two cubic feet per second.

7. 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.

8. 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, 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 Sacramento, California, on the day of , 1962.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member