

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22739
of Usibelli Coal Mines, Inc.,
to Appropriate from Maxwell Creek
and an Unnamed Stream
in Napa County

Decision 1347

DECISION APPROVING APPLICATION

Usibelli Coal Mines, Inc., having filed Application 22739 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 for 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:

1. Application 22739 is for a permit to appropriate a total of 620 acre-feet per annum (afa) by storage from October 1 of each year to May 1 of the succeeding year from Maxwell Creek and an unnamed stream in Napa County for irrigation purposes. The maximum rate of diversion from Maxwell Creek to storage on the unnamed stream is to be 4.5 cubic feet per second (cfs). The points of diversion are to

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be located within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 35, T9N, R5W, MDB&M, and the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26, T9N, R5W, MDB&M, respectively.

2. Applicant's project consists of diversion works on Maxwell Creek which will allow pumping through a 2,350 foot pipeline to a reservoir on the unnamed stream. The reservoir will be an enlargement of two existing adjacent reservoirs, each less than 50 acre-feet capacity, and will be formed by an earth dam 23 feet high and 3,200 feet long with a capacity of 620 acre-feet. The two existing reservoirs presently collect runoff from the watershed of the unnamed stream.

3. Applicant has Permits 13122 (Application 18405) and 13123 (Application 18647) to divert from Maxwell Creek and store 2,000 afa at the site occupied by the existing reservoirs during the period from November 1 to March 1 of the succeeding year. Application 22739 was apparently filed to cover storage of water from the unnamed stream and to include October and April in the season of diversion. Since the quantity requested under Application 22739 is sufficient for the project, and since the only apparent advantage in retaining the existing permits is their priority, a condition will be included in the order providing that the quantity appropriated pursuant to Application 22739 is not in addition to the quantity already allowed in Permits 13122 and 13123 (see Condition 2 of the Order following).

4. Application 22739 was protested by the Department of Fish and Game, United States Bureau of Reclamation, Solano County Flood Control and Water Conservation District and several users immediately downstream from applicant's point of diversion.

The protests of the Bureau of Reclamation and the Solano County District were dismissed when the applicant agreed to the conditions contained in Conditions 13 and 14 of the Order. The protest of the Department of Fish and Game was dismissed when applicant agreed to Condition 12 of the Order which requires applicant to bypass 2 cfs or the natural flow, whichever is less, at the proposed point of diversion on Maxwell Creek during the months of March and April.

5. Maxwell Creek commences within the NW $\frac{1}{4}$ of Section 1, T8N, R5W, MDB&M, and flows in a generally northerly direction to its confluence with Burton Creek. The proposed point of diversion on Maxwell Creek is about 1 $\frac{1}{4}$ miles upstream from this confluence. The unnamed stream which flows directly into applicant's reservoir drains a small watershed just west of the reservoir.

The flow of Maxwell Creek in the vicinity of the proposed point of diversion has only been measured on a few occasions. On July 13, 1960, the flow was 0.13 cfs; on May 3, 1967, 4 cfs and on June 11, 1969, 2 cfs. Evidence introduced by the applicant on the prior applications indicates that the flow of Maxwell Creek above the proposed point of diversion, on an annual basis, is about 2,500 acre-feet in a dry year, and that approximately 1,800 afa are required to meet downstream rights. Therefore, on an annual basis there is probably sufficient unappropriated water for the applicant even during a dry year. It is estimated that 100 to 150 afa will be collected from the unnamed stream.

During the months of March and April, the 2 cfs bypass required by the Department of Fish and Game should adequately meet the requirements of the immediate downstream protestants. Also, while the flow in Maxwell Creek is probably low during October and November, downstream protestants generally cease to use water by the end of September. Inclusion of October in the permit issued to applicant would allow storage of any water resulting from early storms.

6. Unappropriated water is available to supply the applicant, 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22739 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Applications 22739, 18405 and 18647 and all relevant information on file therewith, particularly the report of field investigation made June 11, 1969.

ORDER

IT IS HEREBY ORDERED that Application 22739 be, and it is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 620 acre-feet per annum by storage to be collected from about October 1 of each year to about May 1 of the succeeding year. The maximum rate of diversion to offstream storage from Maxwell Creek shall not exceed 4.5 cfs.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. The quantity appropriated from Maxwell Creek under this permit shall not be in addition to the quantities appropriated under Permit 13122 (Application 18405) and Permit 13123 (Application 18647).

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Actual construction work shall begin on or before June 1, 1970 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1972.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

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

8. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives can not be achieved solely through the control of waste discharges.

9. Permittee shall allow representatives of the State Water Resources Control 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.

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

11. Construction of the enlargement of the dam shall not be commenced until the Department of Water Resources has approved the plans and specifications.

12. For the protection and preservation of fish life the permittee shall bypass at the point of diversion on Maxwell Creek two (2) cubic feet per second or the natural flow, whichever is less, during March and April. The provisions of this paragraph are based upon a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of fish life.

13. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Monticello Reservoir in Decision D 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Monticello Reservoir.

14. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the natural stream channel or provide other satisfactory means of releasing water to the downstream channel to comply with the above condition or to satisfy downstream prior rights.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Santa Barbara, California.

Dated: October 16, 1969

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member

RONALD B. ROBIE
Ronald B. Robie, Member