

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23470)
of John P. and Zita C. Garbero to) Decision 1374
Appropriate from an Unnamed Stream)
in Nevada County.)

DECISION APPROVING APPLICATION IN PART

John P. and Zita C. Garbero having filed Application 23470 for a permit to appropriate unappropriated water; protests having been received; the applicants 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:

Substance of the Application

1. Application 23470 is for a permit to appropriate 0.25 cubic foot per second by direct diversion from May 15 to October 30 of each year and 10 acre-feet per annum by storage from December 1 of each year to April 1 of the succeeding year for irrigation, stockwatering and recreational purposes from an unnamed stream in Nevada County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 6, T15N, R8E, MDB&M.

Applicants' Project

2. The applicants have commenced the construction of an earth fill dam on the unnamed stream approximately one-half mile above its confluence with Clear Creek to provide for the storage

proposed by Application 23470. Clear Creek flows into Squirrel Creek, thence Deer Creek, and eventually the Yuba River.

There are springs that rise on the applicants' land above the reservoir site, some of which have been developed to increase their flow. Under the direct diversion feature of Application 23470 the applicants propose to divert either at the springs or at the reservoir for the irrigation of a maximum of 30 acres.

Protestants

3. Protestant Nevada Irrigation District (hereinafter referred to as the "District") diverts from Squirrel Creek under claimed pre-1914 appropriative rights initiated by the Excelsior Water and Power Company.

4. The United States Bureau of Reclamation (hereinafter referred to as the "Bureau") has filed a petition for assignment of State Applications 20713 and 20714 to divert from the Yuba River for its proposed Marysville Project. The Bureau has no objection to the approval of Application 23470 if any permit issued pursuant thereto prohibits the permittees from diverting during the period between June 1 and October 1 when hydraulic continuity exists between the permittees' diversion point and Deer Creek.

Water Supply

5. There is a continuity of flow between the applicants' lower spring area and Clear Creek during the summer months. There will be a flow into the applicants' reservoir from the springs of approximately 0.04 cubic foot per second during the summer months.

There is ample water in the unnamed stream and sources to which it is tributary during the winter months to provide for the applicants' proposed storage and the prior rights of the District and others.

Prior Rights of District to Summer Flows

6. An Early decision (Decision D 543) by the Board's predecessor found no surplus water in Squirrel Creek below its Clear Creek junction during the irrigation season due to the prior rights of Nevada Irrigation District which were initiated by the Excelsior Water and Power Company. There has been no showing of a change in circumstances to justify a different conclusion at this time. Presently, the District often diverts the entire flow of Squirrel Creek below the Clear Creek junction.

Disposition of Bureau's Protest

7. Approval of Application 23470 for winter storage only will remove the Bureau's objections to its approval, and the question of the Bureau's standing as a protestant and other issues raised by the protest become moot.

Availability of Unappropriated Water

8. Unappropriated water is available to supply the applicants from December 1 of each year to April 1 of the succeeding year 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. There is no unappropriated water available from May 15 to October 30 of each year.

9. The intended uses are beneficial.

From the foregoing findings, the Board concludes that Application 23470 should be approved in part and that a permit should be issued to the applicants 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 23470, 13449 (Decision D 688) and 11237 (Decision D 543) and all relevant information on file therewith, particularly the report of the field investigation on Application 23470 made on October 27, 1970; and U.S.G.S. topographic maps of the area involved.

ORDER

IT IS HEREBY ORDERED that Application 23470 be, and it is, approved in part, and that a permit be issued to the applicants 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 10 acre-feet per annum by storage to be collected from December 1 of each year to April 1 of the succeeding year.

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

3. Construction work shall be completed on or before

4. Complete application of the water to the proposed use shall be made on or before

5. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

6. 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 Resources Control 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.

7. 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 in water quality control plans 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 cannot be achieved solely through the control of waste discharges.

8. 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.

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

Dated: May 6, 1971

KERRY W. MULLIGAN

Kerry W. Mulligan, Chairman

E. F. DIBBLE

E. F. Dibble, Vice Chairman

NORMAN B. HUME

Norman B. Hume, Member

RONALD B. ROBIE

Ronald B. Robie, Member

W. W. ADAMS

W. W. Adams, Member