

Legal

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23666)
and 23677 of Franks Brothers and Rice)
Livestock Company, Respectively, to)
Appropriate from Joseph Creek in)
Modoc County.)

Decision 1429

DECISION DENYING APPLICATIONS

BY THE BOARD:

Franks Brothers and Rice Livestock Company having filed Applications 23666 and 23677, respectively, for a permit to appropriate unappropriated water; protests having been received; the applicants and protestant 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 Applications

1. Application 23666 is for a permit to appropriate 2 cubic feet per second (cfs) by direct diversion from March 1 to March 31 of each year for irrigation purposes from Joseph Creek, a tributary of the North Fork Pit River in Modoc County.

1429



RECYCLED PAPER

The points of diversion are to be located within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 33, T44N, R14E, MDB&M.

Application 23677 is identical to Application 23666 except for points of diversion and place of use. The points of diversion are to be located within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$, and NW $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 34, and NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 33, T44N, R14E, MDB&M.

Applicants' Projects

2. Applications 23666 and 23677 were filed to extend the applicants' diversion season under court-decreed rights to include the month of March. Under the terms of the North Fork Pit River decree, hereinafter referred to as the decree, (Superior Court, Modoc County, No. 4074) entered December 14, 1939, the applicants' diversion season for irrigation is from April 1 to September 30 of each year. Diversions are to be made at existing structures and through ditches designated in the decree. No further construction work is contemplated by the applications.

Protestant

3. Applications 23666 and 23677 were protested by the U. S. Bureau of Indian Affairs on behalf of the XL Ranch Indian Reservation. The XL Ranch Indian Reservation was allocated 1.30 cfs of water from Joseph Creek for the irrigation of 62.8 acres of land. The protestant claims that the approval of Applications 23666 and 23677 would result in an unauthorized modification of the decree, and the rights of all parties subject to the decree who are not allowed to divert during the month of March should be taken into consideration.

Beneficial Use of Water

4. Both of the applicants propose to use the water to irrigate natural pasture during the month of March. The question arises whether or not this is a reasonable beneficial use of water. The use of water in this State must be both reasonable and beneficial [Calif. Const. Art. XIV, Sec. 3; Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist., 3 Cal2d 489; 45 P2d 972 (1935); Joslin v. Marin Municipal Water District, 67 Cal.2d 132; 60 Cal.Rptr. 377 (1967)]. When the investigation of water supply and use of water in the North Fork Pit River area was made by the staff of the Board's predecessor prior to the adjudication which resulted in the decree, a study was made of climatic conditions affecting agricultural practices in the area. It was found that the active growing season for that area did not generally commence until about April 15. The court adopted this finding on page 11, paragraph 17 of the decree, as follows:

"Records of temperature at Alturas show the mean minimum temperatures for the months from October to April, inclusive, to be below freezing. For the remaining months of the year the monthly mean minimum temperatures range from 34 to 45 degrees and the monthly mean maximum temperatures range from 68 to 89 degrees. The highest recorded temperature at Alturas was 105 degrees and the lowest was minus 32 degrees, a range of 137 degrees. As determined by the dates between killing frosts the average length of the growing season is about 72 days. These frosts, however, do not cause permanent injury to the predominating crops grown in the area and the growing season for such crops extends from about April fifteenth to September fifteenth, a period of about 150 days."



Based upon this finding, the court limited the irrigation rights of the parties to the period between April 1 and September 30 of each year. Records of temperatures in the area for the years 1963-1972 show that the average minimum temperatures in March have not changed materially since issuance of the decree. The average minimum temperature at Alturas during this period in March was 23.3 degrees. Due to the higher elevation, the average temperature at the applicants' place of use is about two degrees colder than at Alturas.

5. Irrigating pasture a considerable period of time prior to the active growing season would not be a reasonable beneficial use of water. It follows that use of water for irrigation of applicants' lands during March would not comply with Art. XIV, Section 3 of the California Constitution which requires, among other things, that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented.

From the foregoing findings, the Board concludes that Applications 23666 and 23677 should be denied.

The records, documents, and other data relied upon in determining the matter are: Applications 23666 and 23677, North Fork Pit River Adjudication, Judgment and Decree (Superior Court, Modoc County No. 4074) and all relevant information on file therewith, particularly the report of field investigation made September 28, 1972.



ORDER

IT IS HEREBY ORDERED that Applications 23666 and 23677
be denied.

Dated: October 4, 1973

W. W. ADAMS

W. W. Adams, Chairman

RONALD B. ROBIE

Ronald B. Robie, Vice Chairman

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN

W. Don Maughan, Member

