

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23749)
of Kenneth and Robert Haussler to)
Appropriate from Channel A in) Decision 1473
Yolo County.)
_____)

DECISION APPROVING APPLICATION

BY THE BOARD:

Kenneth and Robert Haussler having filed Application 23749 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on January 29, 1975; applicants and protestants having appeared and presented evidence; the parties having stipulated to leaving the hearing record open to allow Board staff to conduct a monitoring program of Channel A flows; the results of said monitoring program having been furnished to the parties with an opportunity to comment; the evidence received at the hearing and the monitoring program having been duly considered; the Board finds as follows:

Substance of the Application and Project

1. Application 23749 is for a permit to appropriate 6.25 cubic feet per second (cfs) by direct diversion, not to exceed 1,600 acre-feet (af), from May 1 to October 30 of each year for irrigation purposes on applicants' land from Channel A in Yolo County. The points of diversion are to be located within the NW 1/4 of NE 1/4 and the NW 1/4 of NW 1/4, Section 2, T8N, R2E, MDB&M.

1473
S147

2. The applicants' existing irrigation water supply is from wells on applicants' land. Applicants intent is to use Channel A water when available; at other times the existing wells would provide an adequate supply of water, although pumping lifts are increasing.

3. Channel A flows from west to east across applicants' property. Applicant proposes to divert water from Channel A directly through the use of portable pumps, pumping from pools created by earth and wood dams with removable sections for bypassing high flows. Water will be used for the irrigation of a variety of crops on approximately 500 acres of land.

Protestants

4. Protestant Heidrick Farms, Inc., operates the land of all three protestants, either as owner or lessee. Water use on these farms is coordinated. The most upstream of the Heidrick operation is conducted on Harby Farms. This farm is located upstream from the applicant. Wells on Harby Farms' land are used for irrigation and the return flows from that irrigation accrue to Channel A; at other times well water is diverted directly into the Channel for conveyance and use downstream. Applicants' proposed diversion would lie between Harby Farms and the downstream protestants' lands.

The protestants contend that most of the water in Channel A is the pumped groundwater from Harby Farms; that they have a right to convey this water from the upper to lower lands; that such water is needed by the downstream lands; and that the water is not available for appropriation since it has not been abandoned.

5. Protestant Woodland Farms, Ltd., holds License 6320 (Application 12074) to divert water from Willow Slough for irrigation of approximately 10,000 acres. Channel A is tributary to Willow Slough Bypass rather than Willow Slough; however, this protestant appears to base its protest on a claim of riparian right to West Borrow Pit, into which flows Willow Slough Bypass.

6. The United States Bureau of Reclamation (USBR) originally protested the application. This protest was withdrawn when the applicant stipulated to the inclusion of a permit condition that water would not be diverted from Channel A during those periods of July and August when hydraulic continuity exists between Channel A and the Yolo Bypass.

Source of Water in Channel A

7. Channel A is a natural drain that bisects the applicants' property and flows in a northeasterly direction. It has been artificially rerouted to accommodate the building of the Hunt's Food Plant. Channel A has discharged into the Willow Slough Bypass since the latter's construction by the Corps of Engineers in 1948.

8. The water flowing in Channel A comes from several sources. Upstream from the protestant's operations the flow consists of urban runoff from the City of Davis, irrigation return flows from irrigation by wells on farms to the west and possibly return flows from agricultural water imported into the area by Yolo County Flood Control and Water Conservation District. Return irrigation flows from protestants' and applicants' lands add to this flow as Channel A flows toward the Willow Slough Bypass. There was testimony to the effect that until approximately 10 years ago, Channel A contained no water.

Existence of Unappropriated Water

9. The evidence presented at the hearing was inconclusive as to the quantities of water from the various sources in Channel A. It was agreed by the parties that decision on the application be withheld until members of the Board's staff monitored the flows during the then forthcoming (1975) irrigation season.

10. The monitoring program disclosed that there were substantial flows in Channel A from sources other than protestants' operations. During the month of heaviest flows, the following flows were recorded (averages):

| | |
|---|---------|
| Flow upstream of Davis pumping plant | 3.3 cfs |
| City of Davis pumping plant discharge | 0.2 |
| | <hr/> |
| Subtotal -- Flows Upstream of Harby | 3.5 cfs |
| City of Davis Drains on Haussler Property | 0.2 cfs |
| | <hr/> |
| TOTAL | 3.7 cfs |

Disposition of Woodland Farms' Protest

11. Protestant's license was issued in 1961 and covers a diversion point from Willow Slough. It is clear that Channel A is not tributary to Willow Slough and that Channel A had been dry until approximately five years after the license was issued. Based on these facts, the applicants' proposed use will not interfere with protestant's appropriative right.

12. Protestant also claims a riparian right to flows in Channel A since Channel A flows into Willow Slough Bypass which in turn flows into the West Forrow Pit. However, the water in Channel A during the summer months is not water naturally flowing in the watercourse; it is foreign water to which riparian rights do not attach.

Disposition of Heidrick and Lillard Protests

13. These protests claim that most of the water in Channel A as it passes applicants' proposed places of diversion is subject to protestants' superior rights and thus is unavailable for appropriation. The remaining flow is insufficient to support the application, in their view. We find that protestants have the right to recapture their return flows from well irrigation for the benefit of downstream properties and that waters conveyed in Channel A from Harby Farms across the applicants' lands to the downstream operations may not be interfered with. However, those flows in Channel A generated above Harby Farms are abandoned return

flows which are subject to appropriation. Similarly available for use are any return flows from applicants' own operations. Therefore these waters, to the extent physically available, are available for appropriation.

Availability of Unappropriated Water

14. The monitoring program shows that unappropriated water does not appear to be available to satisfy the full amount requested in the application. Also, the sources of Channel A water above Harby Farms are highly variable in amount. The amount available during the month of heaviest flow monitored in 1975 was about 3.7 cfs. However, since the amount available will likely vary from year to year, since the 6.25 cfs requested by the applicants is based on a reasonable duty of 1 cfs to 80 irrigated acres, and since applicant has an alternative source, that amount will be authorized, limited, of course, to those unappropriated flows that are actually available. Applicant may thus use the larger flows that may be available in some years.

The amount of return water flowing into Channel A from Harby farms also fluctuates widely. In order for applicant to know, at any given time, how much water is available for diversion, measuring devices at a point upstream from Harby Farms and on the applicant's property appear necessary. Therefore, the permit issued pursuant to Application 23749 should contain a term requiring the

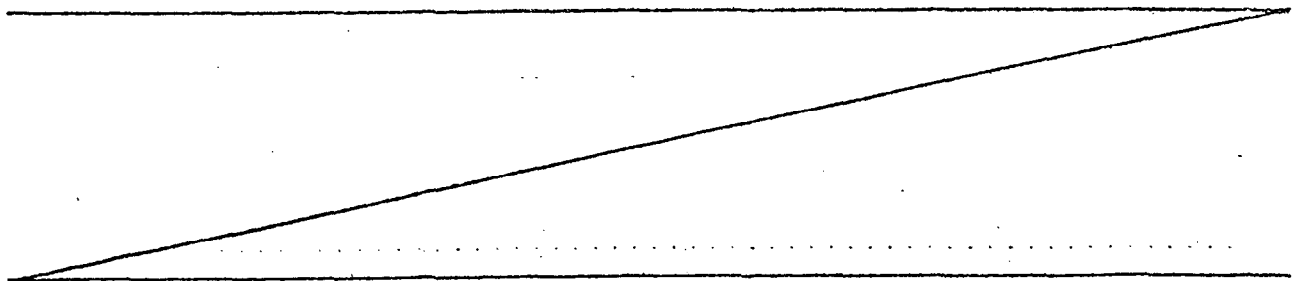
permittee to establish an approved method of measuring the flows of Channel A near the upstream edge of Harby Farms and the flows generated by the City of Davis' drains on applicant's property. In accordance with Section 781, Title 23, California Administrative Code, no permit should be issued until this requirement has been met.

15. Based on the above, it is found that unappropriated water is available to supply the applicants, 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.

16. The intended use is beneficial.

17. All environmental reviews required in compliance with the California Environmental Quality Act have been completed.

From the foregoing findings, the Board concludes that Application 23749 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.



ORDER

IT IS HEREBY ORDERED that Application 23749 be 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 6.25 cubic feet per second by direct diversion from May 1 to October 30 of each year. In no event shall the diversion during a 30-day period exceed the amount available for appropriation under this permit, as indicated by the total flow measured by the devices required by Term 12 of this order. During the period July 1 through August 31, inclusive, if in the absence of permittee's diversion hydraulic continuity would exist between permittee's diversion point and Yolo Bypass, permittee shall open its diversion works and allow the water to flow undiminished downstream.

2. The maximum amount diverted under this permit shall not exceed 1,600 acre-feet per year.

3. The amount authorized for appropriation may be reduced in the license if investigation warrants.

4. The State Water Resources Control Board reserves jurisdiction over this permit for the purpose of conforming the season of diversion to later findings of the Board on prior applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

5. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be

prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

6. Said construction work shall be completed on or before December 1, 1980.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1981.

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

9. All rights and privileges under this permit and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittees without unreasonable draft on the source. Permittees may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water

measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

10. 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 permittees 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.

11. Permittees 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.

12. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Resources Control Board, which are capable of measuring the flows required by the conditions of this permit. One device shall be capable of measuring the flow in Channel A near the upstream edge of Harby Farms property, in the vicinity of the railroad crossing; a second device, or devices, shall be capable of measuring the flow from the City of Davis drains on the applicant's property. Said measuring devices shall be properly maintained.

13. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue.

Dated: September 22, 1977

/s/ JOHN E. BRYSON
John E. Bryson, Chairman

/s/ W. DON MAUGHAN
W. Don Maughan, Vice Chairman

/s/ W. W. ADAMS
W. W. Adams, Member

