

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24799)
to Appropriate from Unnamed Springs)
and an Unnamed Stream in Sierra)
County)

JOHN MICHAEL AND MARLARAY J. STONE)

Applicant,)

ETHEL V. SCANLAN, ET AL)

Protestant)

Decision: 1502

Source: Unnamed Springs and
Unnamed Stream

County: Sierra

DECISION GRANTING PETITION FOR CHANGE
AND
APPROVING AMENDED APPLICATION IN PART

BY THE BOARD:

John Michael and Marlaray J. Stone having filed Application 24799 for a permit to appropriate unappropriated water; protests having been received; one protest having been dismissed upon acceptance of dismissal terms; the applicant and remaining 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 stipulations; a petition for change of point of diversion having been filed; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 24799 requested a permit to appropriate water in Sierra County as follows:

- (a) 1.6 cubic feet per second (cfs) by direct diversion from an unnamed spring tributary to an unnamed stream, thence Grant Ravine, to be diverted from May 1 to October 1 of each year for irrigation purposes.

- (b) 4,350 gallons per day (gpd) by direct diversion from the same source as in the Item (a) supra, to be diverted from January 1 to December 31 of each year for domestic purposes.
- (c) 24 acre-feet per annum (afa) by a combination of offstream storage from the same source as in Item (a) supra, and on-stream storage from an unnamed stream, tributary to Grant Ravine (different than previously referenced unnamed stream) to be collected from November 1 of each year to June 1 of the succeeding year for irrigation, recreation, and fire protection purposes.
- (d) Maximum amount of water to be diverted not to exceed 507 afa.
- (e) The point of diversion from the unnamed spring was to be located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 29, T19N, R9E, MDB&M; the point of diversion to onstream storage from the unnamed stream, which is also a point of rediversion for offstream storage from the unnamed spring, is located within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 29, T19N, R9E, MDB&M.
- (f) The place of use for all diverted water was 40 acres within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 20 and 40 acres within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 29, both sections being in T19N, R9E, MDB&M.

Petition to Change

2. Field investigation of the applicant's project having found that the requested point of diversion from the unnamed spring was not accurately located on the application map, and that said point of diversion was moved upstream to two unnamed springs, a petition for change of point of diversion was filed requesting that the point of diversion from the unnamed spring,

identified in Items 1 (a) and (e) supra, be changed to two unnamed springs tributary to an unnamed stream, thence Grant Ravine, both springs being located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 29, T19N, R9E, MDB&M.

Other Amendments to Application

3. Following field investigation of the project, applicant requested that the application be amended as follows:

- (a) Direct diversion for irrigation purposes, as given in Item 1 (a) supra, be reduced from 1.6 cfs to 0.1 cfs.
- (b) Maximum rate of diversion to offstream storage not to exceed 0.3 cfs.
- (c) Maximum amount of water to be diverted, as given in Paragraph 1(d) supra, be reduced from 507 afa to 55 afa.

Applicant's Project

4. Applicant proposes to divert water from two unnamed springs tributary to an unnamed stream, thence Grant Ravine, thence Indian Creek, thence North Yuba River for domestic use and irrigation of trees and vines within 40 acres of the NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 29, T19N, R9E, MDB&M. Applicant also proposes to divert from said springs to offstream storage in an adjacent unnamed stream tributary to Grant Ravine, to be combined with onstream storage in a proposed 24 acre-foot reservoir for irrigation, recreation, and fire protection purposes.

5. The unnamed springs from which the applicant proposes to divert are located on United States Forest Service property. A use permit has been issued for the diversion and conveyance facilities.

6. Applicant claims an existing riparian right to water sought from the unnamed stream tributary to Grant Ravine but agrees not to exercise said right so long as a permit or license for such use remains in effect.

Protests

7. Application 24799 was protested by the United States Bureau of Reclamation and by the owners of Scanlan Mine.

8. The Bureau of Reclamation claimed that no unappropriated water exists in the Yuba River during most of the irrigation season, therefore, its prior rights for the Central Valley Project would be injured by the requested appropriation. The applicant, however, agreed to the Bureau's submitted protest dismissal term prohibiting diversion of water during the period between June 30 and November 1 when hydraulic continuity exists between applicant's diversion points and the North Yuba River. Subject to inclusion of such term in any permit issued pursuant to this application, the Bureau's protest was dismissed.

9. The owners of Scanlan Mine claim that their riparian right to use of water from Indian Creek and its sources for mining purposes would be injured by the requested appropriation. The owners also hold water right License 1665 issued on Application 7216 for diversion of 2 cfs from Grant Ravine from January 1 to December 31 of each year for mining purposes. Field investigation and the records of the Board indicate that no mining activities or use of water under the license has occurred for many years. Separate action is being taken concerning possible revocation of this license.

Other Downstream Users of Water

10. John F. Barrett holds water right License 9754 issued on Application 18470 for diversion of 2 cfs from Grant Ravine between January 1 and July 1 of each year for mining purposes. The license requires that 3 cfs, or the natural flow if less, be bypassed to maintain fish life. Field investigation and the records of the Board indicate that no water has been used under this license for several years. Licensee received a Notice of Application but did not submit a protest.

11. Mr. D. K. Cable claims a riparian right to use of water for mining purposes at a location known as Halkyard Mine. The record does not disclose any existing diversion by these interests that would be affected by the subject appropriation. Additionally, Mr. Cable indicated that his existing or future operations would not be interfered with if the applicant's requirements were moderate. Such appears to be the case considering the aforementioned amendments to the application.

Availability of Unappropriated Water

12. The watersheds contributing to the requested points of diversion are relatively small, steep, heavily wooded areas. The two unnamed springs flow perennially, however, the unnamed stream to which they are tributary generally ceases to maintain surface flow into Grant Ravine during the summer. The requested quantities, as amended, should be reasonably available from the specified sources.

13. Full use of water for mining use under License 9754 (Barrett), including bypass requirements, and use by Scanlan Mine would require a flow of 7 cfs or more in Grant Ravine prior to July 1 of each year and about 2 cfs thereafter. The record indicates that flows of such magnitude may exist only during wet periods. Therefore, resumption of large scale mining operations would appear to also necessitate other sources of water. Such water might be obtained under riparian claim or by appropriation from the Board. Of these, except for downstream riparian diversions, the current application would either have no impact by reason of geographical location or have a higher appropriative priority. Any permit issued on the current application would be subject to all valid riparian diversions as well as other prior vested rights.

14. The maximum rate of diversion under the requested appropriation, as amended, would be about 6% of the flow necessary in Grant Ravine to allow full diversion under Licenses 1665 and 9754 or riparian equivalents. It is unlikely that approval of Application 24799 would significantly affect diversions made under those rights. When flows in the applicant's sources are sufficient to reach Grant Ravine, it is probable that ample flow exists in the Ravine.

Environmental Considerations

15. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and the State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

Other Considerations

16. The petition to change the point of direct diversion from an unnamed spring to two upstream unnamed springs does not cause any apparent change in impact upon other users of water.

17. The requested quantity of water, as amended, is not sufficient to irrigate 80 acres of trees and vines as originally proposed. Domestic structures, the proposed reservoir, and most of the relatively flat portion of the 80 acre property are all located within the 40 acres of the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 29, T19N, R9E, MDB&M. The place of use should be limited to said 40 acres. The applicant has agreed to this limitation.

18. Applicant's intended use of water is beneficial, the requested quantities, as amended, are reasonable, and unappropriated water is available. Water may be diverted without causing substantial injury to other lawful users of water provided the aforementioned protest dismissal term is included in the permit.

From the foregoing findings the Board concludes that the petition to change the points of diversion for Application 24799 should be granted,

and that Application 24799, as amended, should be approved in part and that a permit 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 this matter are: the files of Applications 24799, 18470, and 7216, particularly the "Report of Field Investigation and Engineering Staff Analysis of Record" for Application 24799.

ORDER

IT IS HEREBY ORDERED that the petition to change the points of diversion under Application 24799 be granted and Application 24799 is amended as follows:

1. The points of diversion or rediversion are to be located as follows:
 - (a) Unnamed spring - north 3,100 feet and east 2,900 feet from the southwest corner of Section 29, T19N, R9E, MDB&M; being within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 29.
 - (b) Unnamed spring - north 2,900 feet and east 2,900 feet from the southwest corner of Section 29, T19N, R9E, MDB&M; being within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 29.
 - (c) Unnamed stream - south 650 feet and east 400 feet from the north quarter corner of Section 29, T19N, R9E, MDB&M; being within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 29.

IT IS HEREBY FURTHER ORDERED that amended Application 24799 be approved in part and that a permit be issued to the applicant subject to vested rights. The permit shall contain standard permit terms 6, 10, 11, 12 and 13.* In addition the following conditions will be included:

* The Board maintains a list of standard permit terms. Copies are available upon request.

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed:

A. By direct diversion:

(1) 0.1 cubic foot per second from May 1 to October 1 of each year for irrigation purposes;

(2) 4,350 gallons per day from January 1 to December 31 of each year for domestic purposes; and

B. By storage, 24 acre-feet per annum to be collected from November 1 of each year to June 1 of the succeeding year for irrigation, recreation, and fire protection purposes.

The total amount of water to be taken from the sources for all uses shall not exceed 55 acre-feet per water year of October 1 to September 30.

2. The maximum rate of diversion to offstream storage shall not exceed 0.3 cubic feet per second.

3. Construction work shall be completed on or before December 1, 1982, and complete application of the water to the proposed use shall be made on or before December 1, 1983.

4. During the period between June 30 and November 1, if in the absence of permittee's diversion, hydraulic continuity would exist between permittee's diversion points and the North Yuba River, permittee shall not divert water but shall open his diversion works and allow the water to flow undiminished downstream.

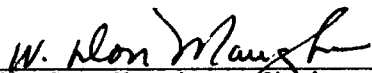
5. Permittee shall not exercise any other existing right to the use of water named herein so long as this permit or any license issued pursuant thereto remains in effect.

6. The equivalent of the continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there is no interference with other vested rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed.

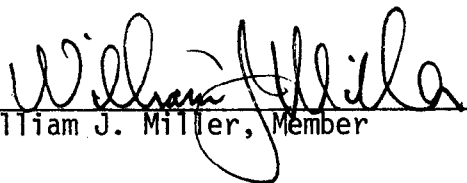
7. The place where water is put to beneficial use shall be the 40 acres within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 29, T19N, R9E, MDB&M.

8. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

Dated: MAY 17 1979



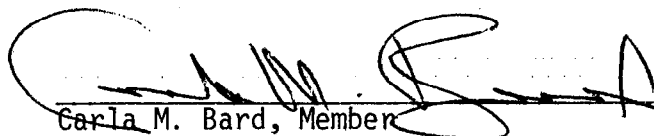
W. Don Maughan, Chairman



William J. Miller, Member



L. L. Mitchell, Member



Carla M. Bard, Member

