

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application  
25886 to Appropriate from Cow  
Creek

ROBERT S. TOENJES

Applicant

WILLIAM A. & LOUISE ALLEN, ET AL.

Protestants

Decision: 1566

Source: Cow Creek

County: Shasta

DECISION APPROVING APPLICATION 25886

BY THE BOARD:

Robert S. Toenjes having filed Application 25886 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 by Section 737 of Title 23, California Administrative Code; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the evidence received at the investigation having been duly considered; the Board finds as follows:

Substance of Application

1. Application 25886 is for 0.5 cubic foot per second (cfs) from April 1 to June 15 and September 1 to September 30 for irrigation, and 1,200 gallons per day from January 1 to June 15 and September 1 to December 31 for stockwatering. The point of diversion is on Cow Creek about six miles above its confluence with the Sacramento River. It is located with the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 8, T13N, R3W, MDB&M.

Applicant's Project

2. The applicant proposes to install a 35-horsepower (hp) pump in Cow Creek and lay approximately 600 feet of 8-inch aluminum pipe to irrigate 40 acres of alfalfa adjacent to the creek. Water will also be for watering

approximately 80 head of stock. The 35-hp pump will afford an energy cost savings as the applicant is presently pumping from a 300-foot well with a 75-hp pump. He will use the well for irrigation during the period from June 15 to September 1, and at other times when there may be no water available under this priority to supplement the diversion from Cow Creek.

Protests

3. The application was protested by William A. & Louise Allen, David Fitzpatrick, Morag Fraser, R. J. & Nancy T. Brown, Joseph H. & Elaine V. Nachreiner and Ralph A. & Mary K. Hoffman.

4. The protest of Ralph A. and Mary K. Hoffman was dismissed when they failed to respond to correspondence from the Board.

5. One protestant stated there was not enough water for fish. The Department of Fish and Game was contacted and indicated that flows were adequate. The Department requested that standard permit term 63 be imposed on any permit issued which would give the Department authority to require that a fish screen be installed on the pump intake.

6. The flow records from the U. S. Geological Survey gaging station on Cow Creek near Millville will be discussed later in this decision. This station is downstream from all protestants. One protestant expressed the belief that the flow records from this gaging station were not accurate. The protestant would not accept them as a basis for determining availability of unappropriated water. The U. S. Geological Survey stated that the control at the Cow Creek station is good and that the measured flows are accurate.

7. Cow Creek has been adjudicated and all rights are set forth in the Shasta Superior Court, Judgment and Decree No. 38577, entered on August 25, 1969. All protestants have decreed rights and allege that there is insufficient flow in Cow Creek for these rights.

8. The applicant's response was:

- (a) Ample water is available during April, May and the first half of June.
- (b) From June 15 to August 31 water will be supplied from the existing well.
- (c) During periods of deficiency in September and October, water will be supplied by the existing well.

Availability of Unappropriated Water

9. The USGS Gaging Station is approximately three miles below the applicant's proposed point of diversion. The drainage basin upstream from the gaging station is 425 square miles. The average annual rainfall varies from 30 inches near Millville to 60 inches at the head of the basin.

10. Total decreed rights below applicant are 28.86 cfs and decreed rights below the gaging station are 7.6 cfs. During the 12 year period 1967-1978 flow at the U. S. Geological Survey station averaged 294 cfs during the last half of June and 49 cfs during September.

11. Flow records for the period of 1967 through 1978, indicate that except for the extremely dry year of 1977, there was adequate water to satisfy prior rights, and to have satisfied Application 25886 for the requested season.

Environmental Considerations

12. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 2100, et seq.) and the State Guidelines. The Board determines that the project as proposed, will not cause any significant adverse effect on the environment.

Conclusions

13. From the foregoing findings, the Board concludes that Application 25886 should be approved and a permit issued to the applicant subject to the conditions in the order following:

ORDER

IT IS HEREBY ORDERED that Application 25886 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (6, 7, 8, 9, 10, 11, 12 and 13)\* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed: (a) 0.5 cubic foot per second by direct diversion from April 1 to June 15 and September 1 to September 30 of each year for irrigation purposes, (b) 1,200 gallons per day by direct diversion from January 1 to June 15 and September 1 to December 31 of each year for stockwatering purposes. The maximum amount diverted under this permit for all uses shall not exceed 106 acre-feet per year.

2. Rights under this permit are, and shall be, subject to existing rights determined by the Cow Creek Adjudication, Superior Court, Shasta County, No. 38577 insofar as said adjudicated rights are maintained and such other rights as may presently exist.

3. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

4. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to the results of a comprehensive analysis of the availability of unappropriated water in the Sacramento River Basin. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing.

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\*The Board maintains a list of standard permit terms. Copies may be obtained upon request.

5. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

6. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water. The Board shall advise permittee of the probability of imminent curtailment of diversions as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Central Valley Project or the State Water Project operators. The Board shall notify the permittee of curtailment of diversions when it finds that no water is available for diversion under this permit.

For the purpose of initially determining supplemental Project water required for inbasin entitlements, the following definitions shall apply:

a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

b. Supplemental Project water is defined as water imported to the basin by the Projects, and water released from Project storage, which is in excess of water required for Project export and Project inbasin deliveries. Notice of curtailment of diversion under this term shall not be issued by the Board until:

1. Project operators jointly develop and demonstrate to the Board a reasonably accurate method of calculating supplemental Project water.

2. The Board has approved the method of calculating supplemental Project water and has confirmed the definitions of inbasin entitlements and supplemental Project water after public hearing.

3. The Project operators have notified the Board that the release of supplemental Project water is imminent or has occurred. Such notice should include the times and amounts of releases or potential releases.

4. The Board finds that supplemental Project water has been released or will be released.

7. The State Water Resources Control Board retains continuing authority over this permit to require permittee to develop and implement a water conservation program, after notice and opportunity for hearing.

SEPTEMBER 18 1980

Dated:

/S/ Carla M. Bard  
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Carla M. Bard, Chairwoman

/S/ William J. Miller  
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William J. Miller, Vice-Chairman

/S/ L. L. Mitchell  
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L.L. Mitchell, Member

/S/ Jill B. Dunlap  
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Jill B. Dunlap, Member

Absent  
\_\_\_\_\_  
F. K. Aljibury, Member