

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the matter of Application 16771)
by Theodore, Warren and)
Charles Galletti, dba Galletti Brothers,) Decision No. D 944
to appropriate from an unnamed stream)
in Mendocino County)
ADOPTED DEC 17 '59

Substance of the Application

Application 16771 was filed on December 6, 1955, for a permit to appropriate 1.38 cubic feet per second (cfs) by direct diversion between April 1 and October 31 of each year and 20 acre-feet per annum (afa) by offstream storage, at a rate of diversion to offstream storage not to exceed 45 gallons per minute, to be collected between November 1 of each year and June 1 of the succeeding year from an unnamed stream tributary to the Pacific Ocean for irrigation and stockwatering purposes. The point of diversion is to be located within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 12, T14N, R17W, MDB&M*. Water is to be siphoned from a sump in the stream channel and transported via 1600 feet of 2-inch pipe to a 20 acre-foot reservoir within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 12. Water is to be used for irrigation of 70 acres within Section 12, and 40 acres within Section 13, T14N, R17W.

* All township references hereinafter mentioned refer to Mount Diablo Base and Meridian (MDB&M).

Protest

Protest against Application 16771 was submitted by E. A. Cox. The protestant, a downstream property owner, claims a riparian right to the use of water from the stream; that he and his predecessors in interest have for some ten years used 1.35 cubic feet per second for the subirrigation of 20 acres of clover and pasture and for the watering of 300 head of sheep and some cattle; and that approval of Application 16771 will deprive him of a water supply. The stream meanders through the protestant's property within the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 12, T14N, R17W.

Answer to Protest

The applicants, in answer to the protest, state that they have observed the area which the protestant claims to sub-irrigate and that no irrigation works, pipes, dams, or any other means of irrigation is evident; that no irrigation whatsoever is being carried on by the protestant and that other sources of water for stock are available.

Hearing

Application 16771 was completed in accordance with the provisions of the Water Code and applicable rules and regulations and was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, before Mr. Ralph J. McGill, Member of the State Water Rights Board, on June 17, 1958, in Ukiah, California. The applicants, protestant and other interested parties were duly notified of the hearing.

Following is a summary of the evidence produced at the hearing, together with certain additional stream flow data subsequently obtained by engineers of the Board's staff and included in the record by stipulation of the parties at the hearing.

Watershed

According to the United States Geological Survey, Navarro Quadrangle, 7½-minute series, dated 1943, (Staff Exh. 5) the unnamed stream rises in the NE¼ of SE¼ of Section 12, T14N, R17W, and flows in a westerly direction about 0.5 mile to the applicants' proposed point of diversion, thence in a northwesterly direction about 0.1 mile to the protestant's property and thence in a northwesterly to westerly direction for about 0.75 mile where it discharges into the Pacific Ocean.

The watershed above the applicants' proposed point of diversion consists of approximately 200 acres of brush and timberland ranging in elevation from about 200 feet to about 1,000 feet. The only parties owning property in the watershed are the applicants and protestant (R.T. pp. 10, 12, 13).

Water Supply

At a field investigation on October 8, 1956, by an engineer of the Board's staff, the flow of the unnamed stream at the proposed point of diversion was 0.074 cubic foot per second (R.T. p. 49, Staff Exh. 3) and the applicants and protestant indicated that this was about the average low flow of the stream (Staff Exh. 3). On July 2, September 14 and October 15, 1958, the flow

of the unnamed stream at the same point as measured by engineers of the Board's staff, was 0.149 cfs, 0.059 cfs and 0.058 cfs, respectively. The investigating engineer noted on October 15, 1958, that 0.03 cfs was wasting into the ocean. The flow of the stream on March 24, 1959, as measured by a staff engineer at the applicants' point of diversion was 0.08 cfs (Staff Exh. 1). Of the aforementioned measurements the maximum flow was 0.149 cfs on July 2, 1958, and in fact was almost twice the flow occurring on March 24, 1959, some three months earlier in the season. This difference, of course, is understandable in view of the unusually dry winter and spring which occurred during the 1958-59 season. Other than the fact that the applicants and protestant agree that the low flow period generally occurs during July, August, September and possibly October, there is little other hydrologic data available (R.T. pp. 42, 74).

Applicants' Project as Amended

During the hearing on June 17, 1958, counsel for the applicants stated that the amount of direct diversion named in the application would be reduced to 100 gallons per minute (0.223 cfs) and that the area to be irrigated would be limited in any one year to an unspecified 30 acres of the 110 acres named in the application (R.T. pp. 8, 11 and 12).

Protestant's Project

The protestant has two fenced pastures comprising about 20 acres through which the stream flows (R.T. p. 65) from State

Highway 1 downstream to the ocean. The water is used for subirrigation of the pastures and for watering of stock (Staff Exh. 1). No diversion from the natural stream channel is made by the protestant (R.T. p. 74). About 300 (R.T. p. 66 - about 500 head) head of sheep are rotated in eight pastures owned by the protestant, including the two fenced pastures through which the stream flows (R.T. p. 66). According to the protestant these two pastures are essential to his sheep ranch operation as the feed stays green longer in these pastures than in the others due to their location along the stream (R.T. pp. 66-68). Other sources of water are available for watering the protestant's sheep in the remaining pastures (R.T. pp. 67, 72, and 82).

Discussion

The evidence is very limited as to the availability of unappropriated water in the stream in question. Five stream flow measurements made in October, 1956, July, September, and October, 1958, and March, 1959, revealed that although some flow apparently exists at the proposed point of diversion throughout the irrigation season and on one occasion water was observed wasting into the ocean, the record does not support a finding that water in sufficient quantity is available over and above the reasonable needs of the protestant during the irrigation season to justify approval of the direct diversion features of the applications. There is undoubtedly considerable runoff during the winter months and the proposed diversion to storage should cause no problem to the downstream requirements of the protestant, provided such

diversion does not extend into the normal dry period. The season of diversion to storage as requested -- November 1 of each year to June 1 of the succeeding year -- appears to be greater than the period that excess flow would normally be expected to occur, accordingly a reduction in this season is in order. There is no evident necessity for diversion to storage beyond the beginning of the irrigation season which normally occurs in that area around the first of April. Ample opportunity exists for the applicants to accumulate the requested storage prior to that date.

Applicants Galletti claim (Paragraph 12 - Application 16771) that water from the source has been used upon the subject property and also for stockwatering purposes for over 20 years under claim of riparian right. The riparian right exists solely by reason of location of the land with respect to the water supply. With certain exceptions and limitations each owner thereof has a right which is correlative with the right of each other riparian owner to share in the reasonable beneficial use of the natural flow of water which passes his land. To the extent such right exists it is not dependent upon issuance of a permit to the applicant.

Conclusions

The evidence indicates and the Board finds that unappropriated water does not ordinarily exist in the stream in question during the proposed irrigation season and that Application 16771, insofar as it relates to direct diversion or

diversion to storage during that period, should be denied. As to diversion to storage between November 1 of each year and March 31 of the succeeding year, the Board finds that unappropriated water frequently occurs and that the water may be taken and used in the manner proposed by the applicants without interference with the exercise of any prior rights.

Order

Application 16771 for a permit to appropriate unappropriated water having been filed with the former Division of Water Resources, protest thereto having been filed, jurisdiction of water rights including the subject applications having been subsequently transferred to the State Water Rights Board, a public hearing having been held, evidence having been received and considered by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16771 be, and the same is, hereby approved in part, and it is ordered that a permit be issued to applicants subject to vested rights and to the following terms and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 20 acre-feet per annum by storage to be collected from about November 1 of each year to about March 31 of the succeeding year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Complete application of the water to the proposed use shall be made not later than December 1, 1961.

4. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights Board until license is issued.

5. 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 Rights Board in accordance with the 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.

Insofar as the application relates to diversion to storage between April 1 and June 1 of each year and to direct diversion the same is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at _____, California, on this _____ day of _____, 19__.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member