

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 18601)
of R. J. and Edith F. Baunhausser)
to Appropriate from Turnback Creek)
in Tuolumne County)

Decision D 1023

ADOPTED JUL 19 61

DECISION APPROVING APPLICATION IN PART

Application 18601 was filed on March 3, 1959, to appropriate 0.25 cubic foot per second by direct diversion, year-round, and 30 acre-feet per annum by storage to be collected between November 1 of each year and May 15 of the succeeding year by means of three separate onstream reservoirs, each of a capacity of 10 acre-feet, one of which has already been constructed, from Turnback Creek in Tuolumne County, for domestic, recreation, fish culture, and stockwatering purposes. Points of diversion are to be located in NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 16, and SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 9, all in T2N, R16E, MDB&M. Protests were filed by ten downstream users and the Department of Fish and Game.

A public hearing was held on October 25, 1960, in Sonora, California, by Chairman Kent Silverthorne, at which time appearances were made by the applicants and protestants of record, William Gerber and Edward McDow. Harry Hoefler was recognized at the time of the hearing as a protestant. The Bureau of Indian Affairs made a special appearance for the

purpose of submitting evidence as to the property and water rights held by the Tuolumne Rancheria, an Indian reservation.

Evidence introduced at the hearing having been duly considered, the Board finds as follows:

1. The applicants have eliminated domestic use as one of the purposes of their project.

2. The Department of Fish and Game made an unconditional withdrawal of its protest prior to the hearing.

3. Certain of the protestants agreed to the withdrawal of their protests provided that the portion of the application relating to direct diversion be deleted and provided that any permit issued pursuant to the application contain the following condition:

"Between May 15 and November 1 of each year permittee shall allow an amount of water to pass over, around, or through the reservoirs constructed pursuant to this permit in such a manner that the flow immediately below the lowermost reservoir shall be at least as great as the natural flow of Turnback Creek immediately above the uppermost reservoir."

Applicants accepted the foregoing provisions.

4. Water is present in Turnback Creek surplus to the needs of all of the protestants and Tuolumne Indian Rancheria at the point of diversion, from November 1 through May 15 in most years.

5. Insofar as the protest of E. M. McDow is directed toward an alleged interference with a spring by the applicants' existing dam, the matter is not within the jurisdiction of the Board.

6. There is unappropriated water available to supply the applicants for the storage feature of their project, 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 13601 should be approved in part and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following order:

IT IS HEREBY ORDERED that Application 18601 be, and the same is, approved in part, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 30 acre-feet per annum by storage to be collected from about November 1 of each year to about May 15 of the succeeding year.

2. Between May 15 and November 1 of each year, permittees shall allow an amount of water to pass over, around, or through the reservoirs constructed pursuant to this permit in such a manner that the flow immediately below the lowermost reservoir shall be at least as great as the natural flow of Turnback Creek immediately above the uppermost reservoir.

3. Permittees shall install and maintain suitable measuring devices above the uppermost reservoir and below the

lowermost reservoir in order to comply with Condition 2 and shall allow representatives of the State Water Rights Board reasonable access thereto.

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

5. Actual construction work shall begin on or before December 1, 1961, and 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, 1963.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1964.

8. 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.

9. 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 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.

IT IS FURTHER ORDERED that the portion of Application 18601 relating to direct diversion is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member