

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 19222 )  
of Pat Lowery and Joseph Elvidge )  
to appropriate from Deer Creek in )  
Trinity County )

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Decision D 1029

ADOPTED AUG 17 '61

DECISION APPROVING APPLICATION IN PART

Pat Lowery and Joseph Elvidge having filed Application 19222 for a permit to appropriate unappropriated water; protests having been received; the applicants and protestants 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 19222 is for a permit to appropriate 0.5 cubic foot per second (cfs) by direct diversion, year-round, for mining and domestic use from Deer Creek, tributary to Trinity River, in Trinity County. The point of diversion is to be located within the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of projected Section 31, Township 34 North, Range 12 West, Mount Diablo Base and Meridian.

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2. Deer Creek heads near Monument Peak at about elevation 5,200 feet and flows in a general northwesterly direction about three miles to its confluence with the Trinity River at about elevation 1,200 feet. Applicants' point of diversion is located about half a mile upstream from this confluence. The protestants' point of diversion is located about half way between the applicants' point of diversion and the Trinity River.

3. The applicants are presently diverting water by means of a small rock dam which has been placed across Deer Creek into an earth ditch which takes the water by gravity about 1,500 feet to a wooden flume and thence a wooden tank. The water is piped from the tank for present mining or domestic use.

4. All protestants derive their water supplies from a common diversion system under a claim of use begun prior to 1900. Water is diverted by means of a wood and rock dam into a pipeline which conveys the water across the Trinity River. All use of water by protestants is on the north side of the Trinity River. Their combined use of water consists of the irrigation of about seven acres, use at a dog kennel, and for domestic purposes at four homes, two house trailers, two grocery stores, service station, cafe, and two small motels. The total requirements of protestants as estimated in accordance with the values in Title 23, California Administrative Code, Section 657, would approximate 0.1 cubic foot per second computed on a continuous flow basis. This figure is used only to give a general approximation of the requirements of the

protestants and is in no way intended as a determination of or limitation upon their rights.

5. In order to carry on their mining activities during the season from December through the succeeding June which is unrestricted by the Fish and Game Code, the applicants require a continuous flow of 0.25 cfs at the lower end of their earth ditch, which requires a diversion of 0.5 cfs because of transmission losses. For their reduced mining operations and domestic requirements from July through November, the applicants require a diversion of one-fourth this rate of flow.

6. At the time of the field investigation in the month of September in the critical water year 1960, although applicants' diversion ditch was diverting nearly all Deer Creek water, nevertheless about 0.25 cfs was being diverted into protestants' pipe and about another 0.1 cfs was continuing on down Deer Creek. The water arriving at the protestants' point of diversion is the result of seepage from the applicants' earth ditch as well as natural inflow. The fact that the protestants' diversion pipe contains many holes accounts in part for loss of pressure complained of by protestants from time to time.

7. A limitation on the quantity of water to be diverted by applicants from July through November should insure availability of an ample supply of water in Deer Creek to satisfy the prior vested rights of protestants, assuming they prevent unreasonable transmission losses in their own diversion system.

8. There is unappropriated water available to supply the applicants, and subject to suitable limitations and conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19222 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 19222 and all relevant information on file therewith, particularly the report dated February 28, 1961, on the field investigation made on September 21, 1960.

IT IS HEREBY ORDERED that Application 19222 be, and the same is, approved, 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 0.5 cubic foot per second by direct diversion to be diverted December 1 of each year and June 30 of the succeeding year, and shall not exceed 0.125 cubic foot per second by direct diversion to be diverted between July 1 and November 30 of each year. At no time between December 1 of each year and June 30 of the succeeding year shall more water be diverted than is required to produce 0.25 cubic foot per second at the permittees' place of use.

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

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

4. Progress reports shall be filed promptly by permittee 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 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, except to the extent expressly approved, Application 19222 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.

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Kent Silverthorne, Chairman

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Ralph J. McGill, Member

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W. A. Alexander, Member