

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Applications 18546 )  
and 18549 of Charley and Neva Bottemiller, )  
Application 18547 of Kenneth B. and Mary )  
E. Kessel, Application 18548 of Zura E. )  
and Maud A. Bells, Applications 18553 and )  
and 18554 of Shady Brook Estates, and )  
Application 18602 of R. J. and Edith F. )  
Baunhausser and F. J. and Jean Davis to )  
Appropriate from Sullivan Creek and an )  
Unnamed Stream Tributary to Sullivan Creek )  
in Tuolumne County )

Decision D 1036

ADOPTED SEP 16 '61

DECISION APPROVING APPLICATIONS IN PART

Application 18546 was filed on February 20, 1959, by Charley and Neva Bottemiller for a permit to appropriate 0.22 cubic foot per second by direct diversion year-round for domestic and irrigation purposes from an unnamed stream tributary to Sullivan Creek in Tuolumne County. The points of diversion are to be located within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 8, T2N, R16E, MDB&M.

Application 18547 was filed on February 20, 1959, by Kenneth B. and Mary E. Kessel for a permit to appropriate 0.18 cubic foot per second by direct diversion year-round and 13 acre-feet per annum by storage from January 1 to May 15 from

an unnamed stream tributary to Sullivan Creek for domestic, irrigation, and recreational purposes. The points of diversions are to be located within NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 8, T2N, R16E, MDB&M.

Application 18548 was filed on February 24, 1959, by Zura E. and Maud A. Bells for a permit to appropriate 0.06 cubic foot per second by direct diversion year-round from Sullivan Creek for irrigation, domestic, recreational, and fire protection purposes. The point of diversion is to be located within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 7, T2N, R16E.

Application 18549 was filed on February 24, 1959, by Charley and Neva Bottemiller for a permit to appropriate 0.3 cubic foot per second by direct diversion year-round and 2 acre-foot per annum by storage between January 1 and March 1 from unnamed stream tributary to Sullivan Creek for irrigation and domestic purposes. Four points of diversion are to be located within NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 7 and NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 8, T2N, R16E, MDB&M.

Application 18553 was filed on February 26, 1959, by Shady Brook Estates for a permit to appropriate 0.08 cubic foot per second by direct diversion year-round from an unnamed stream tributary to Sullivan Creek for domestic and fish culture purposes. The point of diversion is to be located within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 8, T2N, R16E, MDB&M.

Application 18554 was filed on February 26, 1959, by Shady Brook Estates for a permit to appropriate 0.25 cubic foot

per second by direct diversion from April 1 to October 15 and 10 acre-feet per annum by storage to be collected from January 1 to April 1 from an unnamed stream tributary to Sullivan Creek for irrigation and recreational purposes. The point of diversion is to be located within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 8, T2N, R16E, MDB&M.

Application 18602 was filed on March 20, 1959, by R. J. and Edith F. Baunhausser and F. J. and Jean Davis for a permit to appropriate 0.65 cubic foot per second by direct diversion year-round and 20 acre-feet per annum by storage from October 1 of each year to May 1 of the succeeding year from Sullivan Creek for domestic, stockwatering, and recreational purposes. The point of diversion is to be located within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 4, T2N, R16E, MDB&M.

Pacific Gas and Electric Company and Randal F. Dickey protested all the applications; Nathan P. and Claribel A. Barbour protested Applications 18547 and 18548.

The applicants and protestants having been duly notified, a public hearing was held in Sonora, California, on October 26, 1960, by Board Chairman Kent Silverthorne. The applicants and protestants appeared and presented evidence.

The subject applications were consolidated for the purpose of hearing with Applications 18381, 18552, and 18558 filed by James D. and Ione F. Hadley, T. P. Bacon, and Lloyd L. Longeway, respectively, on the same sources. No appearance was

made by or on behalf of the applicants in support of Applications 18381, 18552, and 18558, and the same are covered by a separate order by the Board.

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

1. Water surplus to the needs of the protestants and other users occurs in Sullivan Creek and its tributaries during the winter and spring months.

2. The protestants have no objection to the appropriations proposed by the applicants as they relate to the use of water during the season from November 1 to May 31.

3. Protestant R. F. Dickey located on Sullivan Creek below all of the applicants, diverting under claimed riparian and pre-1914 appropriative rights, has been unable to irrigate his orchard and permanent pasture during the last 2 years due to lack of water. His irrigation season is from the latter part of May until the latter part of September. The summer flow has been so low as to be unsafe for domestic use.

4. Protestant Pacific Gas and Electric Company claims rights dating from year 1852 to storage and direct diversion at its Phoenix Reservoir located below all of the applicants and the other protestants on Sullivan Creek. During the peak irrigation season, the entire flow of Sullivan Creek and its tributaries, together with foreign water from Tuolumne Ditch, is diverted at Phoenix Reservoir into Phoenix Ditch and placed to beneficial use.

5. On May 3, 1960, the flow of Sullivan Creek was 6.8 cubic foot per second at a point below the lowermost protestant and two miles above Phoenix Reservoir.

6. There is unappropriated water available to supply the applicants from November 1 of each year to May 31 of the succeeding year 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. There is no unappropriated water to supply the applicants from June 1 to October 31 and insofar as the applications relate to diversions during this period they should be denied.

8. All of the applicants' projects are constructed except for the project contemplated by Application 18602.

9. The intended uses are beneficial.

From the foregoing findings, the Board concludes that Applications 18546, 18547, 18548, 18549, 18553, 18554, and 18602 should be approved in part, and that permits should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

IT IS HEREBY ORDERED that Applications 18546, 18547, 18548, 18549, 18553, 18554, and 18602 be, and the same are, approved in part, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions.

1. The amount of water to be appropriated under permit issued pursuant to Application 18546 shall be limited to the amount which can be beneficially used and shall not exceed 0.22 cubic foot per second by direct diversion to be diverted from about November 1 of each year to about May 31 of the succeeding year.

2. The amount of water to be appropriated under permit issued pursuant to Application 18547 shall be limited to the amount which can be beneficially used and shall not exceed 0.18 cubic foot per second by direct diversion to be diverted from about November 1 of each year to about May 31 of the succeeding year, and 13 acre-feet per annum by storage to be collected from about January 1 to about May 15 of each year.

3. The amount of water to be appropriated under permit issued pursuant to Application 18548 shall be limited to the amount which can be beneficially used and shall not exceed 0.06 cubic foot per second to be diverted from about November 1 of each year to about May 31 of the succeeding year.

4. The amount of water to be appropriated under permit issued pursuant to Application 18549 shall be limited to the amount which can be beneficially used and shall not exceed 0.3 cubic foot per second by direct diversion to be diverted from about November 1 of each year to about May 31 of the succeeding year, and 2 acre-feet per annum by storage to be collected from about January 1 to about March 1 of each year.

5. The amount of water to be appropriated under permit issued pursuant to Application 18553 shall be limited to the amount which can be beneficially used and shall not exceed 0.08 cubic foot per second to be diverted from about November 1 of each year to about May 31 of the succeeding year.

6. The amount of water to be appropriated under permit issued pursuant to Application 18554 shall be limited to the amount which can be beneficially used and shall not exceed 0.25 cubic foot per second by direct diversion to be diverted from about April 1 to about May 31 of each year, and 10 acre-feet per annum to be collected by storage from about January 1 to about April 1 of each year.

7. The amount of water to be appropriated under permit issued pursuant to Application 18602 shall be limited to the amount which can be beneficially used and shall not exceed 0.65 cubic foot per second by direct diversion to be diverted from about November 1 of each year to about May 31 of the succeeding year, and 20 acre-feet per annum to be collected by storage from about November 1 of each year to about May 1 of the succeeding year.

8. The equivalent of the continuous flow irrigation allowances for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

9. The maximum amounts herein stated may be reduced in the licenses if investigation warrants.

10. Actual construction work pursuant to Application 18602 shall begin on or before June 1, 1962, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

11. Construction work shall be completed on or before December 1, 1964.

12. Complete application of the water to the proposed uses pursuant to all applications included in this Order shall be made on or before December 1, 1965.

13. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights Board until licenses are issued.

14. All rights and privileges under these permits, including methods of diversion, method of use, and quantities 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.

15. Insofar as Applications 18547, 18549, 18554, and 18602 are concerned permittees shall install and maintain an outlet pipe of adequate capacity in their dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Rights Board, in order that water entering the reservoirs or collected in the reservoirs during and after the current storage season may be released into the

downstream channel to the extent necessary to satisfy the downstream prior rights and/or to the extent that appropriation of said water is not authorized under the permits.

16. Insofar as Applications 18547, 18549, 18554, and 18602 are concerned the permits do not authorize collection of water to storage during the period outside of the collection season specified in Paragraphs 2, 4, 6 and 7 to offset evaporation and seepage losses.

17. Permittees shall allow representatives of the State Water Rights Board and other parties as may be authorized from time to time by said Board reasonable access to project works to determine compliance with the terms of the permits.

IT IS FURTHER ORDERED that, except to the extent expressly approved, Applications 18546, 18547, 18548, 18549, 18553, 18554, and 18602 are hereby denied.

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