

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 18743)
and 19745 of Juel L. Christensen to)
Appropriate from an Unnamed Stream)
Tributary to Saratoga Creek in)
Santa Clara County)

Decision D 1044

ADOPTED NOV 13 '61

DECISION APPROVING APPLICATIONS IN PART

Juel L. Christensen having filed Applications 18743 and 19745 for permits to appropriate unappropriated water; protests having been received; the applicant and protestant 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 18743 is for a permit to appropriate 0.6 cubic foot per second (cfs) by direct diversion year-round for domestic and irrigation purposes from an unnamed stream tributary to Saratoga Creek in Santa Clara County. The point of diversion is to be located in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 15, T8S, R2W, MDB&M.

2. Application 19745 is for a permit to appropriate 25 acre-feet per annum by storage from January 1 to June 1 of

each year for irrigation and domestic purposes from said unnamed stream. The point of diversion is to be located in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, T8S, R2W, MDB&M.

3. Protestant San Jose Water Works stores the flows of the unnamed stream at Lake McKenzie, an offstream reservoir located approximately 1 $\frac{1}{2}$ miles upstream from the applicant's point of diversion. Water is released into the unnamed stream during periods of shortage to augment the flow of Saratoga Creek. Protestant has two points of diversion located approximately one mile below the junction of the unnamed stream and Saratoga Creek.

4. Protestant claims that it has a pre-1914 right to divert 1.04 cfs from Saratoga Creek. It holds License 4247 to divert 1.96 cfs from Saratoga Creek at a point approximately 500 feet upstream from its main diversion dam and works and it also holds Permit 10652 authorizing the storage in the same vicinity of 2,000 acre-feet from November 1 to April 1.

5. Over the 25 years of record, the average annual flow of Saratoga Creek at protestant's diversion works has been 7,350.9 acre-feet. This figure is obtained by adding the historical diversions of the protestant to the flows recorded at a USGS gaging station located approximately one-half mile below the protestant's lower diversion dam.

6. A study of the reconstructed flows of Saratoga Creek for the 25 years of record (1933-1958) shows that an average annual surplus of 4,166.8 acre-feet per annum would have occurred after

protestant company had diverted its maximum entitlement, when available, under License 4247 (Application 12134), Permit 10652 (Application 15412) and its pre-1914 claims of right.

7. A study of the monthly distribution of the surplus water over the 25-year period of record shows that surplus water occurs in substantial amounts in most years during the months of February, March, April, May and June.

8. During the month of January, surplus water occurred in eight of the 25 years of study. When there is surplus water during that month, it usually occurs in substantial quantities. The protestant has not used its full entitlement upon which the study determining surplus water was based during January and is not likely to do so for a considerable time in the future, as that month is within the period of protestant's minimum demand.

9. There is unappropriated water available during the months of January, February, March, April, May and June to supply the applicant, and subject to suitable conditions, such water can be diverted to use in the manner proposed during those times without substantial injury to any lawful appropriator of water.

10. The permit issued pursuant to this application should contain a special condition that the permittee shall be allowed to divert only when water is flowing past protestant's lower diversion dam, and limiting its diversions to same, in order that the rights of the protestant may be protected during the month of January and during periods when surplus water fails to occur.

11. There is no unappropriated water to supply the applicant under Application 18743 from July 1 to December 31 and, insofar as that application relates to diversions during this period, it should be denied.

12. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19745 should be approved and that Application 18743 should be approved in part, and that permits should be issued to the applicant 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: Applications 18743 and 19745 and all relevant information on file therewith, particularly the report of the field investigation made March 3, 1960; records of flow of "Saratoga Creek near Saratoga" (prior to October 1951, called Campbell Creek) as published in "Surface Water Supply of the United States," Part 11, "Pacific Slope Basins of California"; monthly records of diversions from Saratoga Creek for period 1933-34 to 1958-59, inclusive, supplied by San Jose Water Works by letter dated May 23, 1960; estimated annual releases from Lake McKenzie supplied by San Jose Water Works by letter dated May 23, 1960.

IT IS HEREBY ORDERED that Application 19745 be, and the same is, approved, and that Application 18743 be, and the same is, approved in part, and that permits be issued to the applicant subject to vested rights and the following limitations and conditions:

1. The amount of water to be appropriated under permit issued pursuant to Application 18743 shall be limited to the amount which can be beneficially used and shall not exceed 0.6 cubic foot per second by direct diversion to be diverted between about January 1 and about July 1 of each year. The equivalent of such continuous flow allowance for any thirty-day period may be diverted for irrigation use in a shorter time if there be no interference with vested rights.

2. The amount of water to be appropriated under permit issued pursuant to Application 19745 shall be limited to the amount which can be beneficially used and shall not exceed 25 acre-feet per annum by storage to be collected from about January 1 to about June 1 of each year.

3. Permittee shall divert under these permits only when water is passing the lower diversion dam of San Jose Water Works and diversions shall not exceed the quantity of water which would otherwise flow past that point.

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

5. Actual construction work shall begin on or before June 1, 1962, 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, 1964.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

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

9. All rights and privileges under these permits, 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.

10. The permit issued pursuant to Application 19745 does not authorize collection of water to storage during the period from about June 1 to about December 31 to offset evaporation and seepage losses.

11. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam to be constructed under the permit issued pursuant to Application 19745 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 reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of water is not authorized under the permit issued pursuant to Application 19745.

12. Permittee 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 these permits.

IT IS FURTHER ORDERED that, except to the extent expressly approved, Application 18743 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