

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Applications 18744, )  
18745, 18746, 18747, 18748, and )  
18749 by Tahoe National Forest to )  
Appropriate from an Unnamed Stream )  
Tributary to Church Creek, Packer )  
Creek, Salmon Creek, Sardine Creek, )  
Sawmill Creek, and Salmon Creek, )  
Respectively, in Sierra County )

Decision D 1051

**ADOPTED DEC 21 '61**

DECISION APPROVING APPLICATIONS

Tahoe National Forest having filed Applications 18744, 18745, 18746, 18747, 18748, and 18749 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held in Sacramento, California, on June 13, 1961, by the State Water Rights Board, Ralph J. McGill, Member, presiding; the applicant and protestants having appeared; evidence having been received; the Board, having considered the same and now being fully advised in the premises, finds as follows:

1. Applications 18744, 18745, 18746, 18747, 18748, and 18749 are to appropriate year-round by storage 130 acre-feet from an unnamed stream tributary to Church Creek, 90 acre-feet from Packer Creek, 380 acre-feet from Salmon Creek,

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280 acre-feet from Sardine Creek, 350 acre-feet from Sawmill Creek, and 340 acre-feet from Salmon Creek, respectively, for recreation, fish culture, and wildlife propagation purposes in Sierra County. The respective points of diversion are located within the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 21, T21N, R12E; the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 5, T20N, R12E; SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 29, T21N, R12E; SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 10, T20N, R12E; NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 32, T21N, R12E; and NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 28, T21N, R12E, all MDB&M. Application 18747 is also for direct diversion of 2,000 gallons per day year-round for domestic purposes.

2. The applicant Tahoe National Forest intends to repair the existing dams at the sites designated in the applications and restore the reservoirs to their original levels as part of its program to develop recreational facilities. It intends to invest over \$1,500,000 by the year 1976 to provide additional campsites for families and organizations and to provide summer homesites to meet the increasing demands for recreation in this area.

3. Sierra Buttes Canal and Water Company protested all the applications, claiming prior rights to the water in the sources named in the applications acquired prior to the year 1914 by its predecessors for industrial purposes in conjunction with mining operations. Its protests also assert ownership of the dam structures and sites that are designated in the applications. Mr. J. Orlo Hayes and others, referred to as the "Hayes interests," now hold the beneficial interest in

Sierra Buttes Canal and Water Company, another corporation, and individual rights under a holding agreement with California Pacific Title Company under which the latter is record title holder of all real property including water rights claimed by the protestant in this matter.

4. There has been no industrial use of water by the protestant since the year 1938 when the mines shut down. Protestant bases its present rights to water from the sources on a change of purpose of use from industrial to recreational, which use has been enjoyed by the Hayes interests, employees of a newspaper owned by them, until in 1952, and certain lessees.

5. Protestant has failed to show that the granting of the applications will result in any interference with their claimed right to the use of the waters of the sources for recreational purposes. Such being the case, it is unnecessary to consider whether or not a valid pre-1914 right has been established, whether or not there was a proper change of purpose from industrial to recreational use as contemplated by law, and whether or not use under both purposes has been sufficient to prevent forfeiture.

6. The foregoing conclusion is reached following a consideration of the true measure of the protestant's claimed appropriative right. The claimed appropriative right would extend only to the amount of water beneficially used by protestant for recreational purposes, which is the quantity necessary to offset evaporation and transpiration losses and

thereby maintain the lakes behind the dam at their present levels. Protestant in no case could resume its pre-1938 operation of seasonal storage of water in the reservoirs for later release. This right has been lost through nonuse since 1938. The resumption of the protestant's original manner of operation for development of power, which apparently is contemplated by the protestant in the future (RT 62) and is a source of apprehension to the applicant (Applicant's Brief, p. 5), would be unauthorized under the rights claimed by the protestant.

7. In view of the foregoing, it is concluded that there would be no interference with the protestant's claimed pre-1914 right by the granting of these applications. The enjoyment of recreational use by the protestant is not incompatible with the development proposed by the applicant (RT 136, 148).

8. The real conflict in this matter lies in the matter of ownership of the dam sites and structures. The applicant has made a prima facie case of ownership of the same through the status records of the Bureau of Land Management which is sufficient to justify the granting of the permits. A final disposition of the matter, if the controversy is not otherwise resolved, would require determination by a court of competent jurisdiction.

9. Sufficient water flows into the reservoirs to fill them each year, spilling until about the end of July in normal years. There is water available year-round to satisfy the direct diversion portion of Application 18747.

10. There is unappropriated water available to supply the applicant 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.

11. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 18744, 18745, 18746, 18747, 18748, and 18749 should be approved, and that permits should be issued to the applicant subject to the limitations and conditions set forth in the following order.

IT IS HEREBY ORDERED that Applications 18744, 18745, 18746, 18747, 18748, and 18749 be, and the same are, approved, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated under Application 18744 shall be limited to the amount which can be beneficially used and shall not exceed 130 acre-feet per annum by storage to be collected year-round from the unnamed stream tributary to Church Creek.

2. The amount of water to be appropriated under Application 18745 shall be limited to the amount which can be beneficially used and shall not exceed 90 acre-feet per annum by storage to be collected year-round from Packer Creek.

3. The amount of water to be appropriated under Application 18746 shall be limited to the amount which can be beneficially used and shall not exceed 380 acre-feet per annum by storage to be collected year-round from Salmon Creek.

4. The amount of water to be appropriated under Application 18747 shall be limited to the amount which can be beneficially used and shall not exceed 2,000 gallons per day by direct diversion to be diverted year-round and 280 acre-feet per annum by storage year-round from Sardine Creek.

5. The amount of water to be appropriated under Application 18748 shall be limited to the amount which can be beneficially used and shall not exceed 350 acre-feet per annum by storage to be collected year-round from Sawmill Creek.

6. The amount of water to be appropriated under Application 18749 shall be limited to the amount which can be beneficially used and shall not exceed 340 acre-feet per annum by storage to be collected year-round from Salmon Creek.

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

8. 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, these permits may be revoked.

9. Said construction work shall be completed on or before December 1, 1964.

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

11. 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.

12. All rights and privileges under these permits including methods of diversion, methods 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.

13. Permittee's rights under these permits extend only to water necessary to keep the reservoirs filled by replacing evaporation and seepage losses, and to refill if emptied for necessary maintenance and repair.

14. The issuance of the permits shall not be construed as conferring upon permittee right of access to the points of diversion or to property or existing works described in the approved applications.

15. 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.

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

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member