

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19830)
of John A. Evens and Fredrick E.)
Strahle to Appropriate from Butler)
Creek in Nevada County)

Decision D 1101

ADOPTED NOV 21 '62

DECISION APPROVING APPLICATION

John A. Evens and Fredrick E. Strahle having filed Application 19830 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 19830 is for a permit to appropriate 0.5 cubic foot per second (cfs) by direct diversion from April 1 to November 1 of each year and 35 acre-feet per annum by storage to be collected between November 1 of each year and April 1 of the succeeding year for domestic, irrigation, and recreational purposes from Butler Creek in Nevada County. The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 1, T14N, R7E, MDB&M.

2. The applicants have constructed a dam and a storage reservoir of 35 acre-foot capacity at a point approximately 300 feet above the point where Butler Creek joins Dry Creek, which is

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also their point of direct diversion. The reservoir can be drained by a 10-inch outlet pipe which passes through the bottom of the dam. Water is presently being used for watering of cattle. The applicants' major use in the future will be to supply a subdivision and some irrigation.

3. Applicants' reservoir has filled during both winter seasons since its construction in 1960. On January 4, 1962, the reservoir was spilling at a rate of approximately 0.75 cfs with an approximate seepage of 10 gallons per minute at the toe of the dam.

4. Approximately 13 miles below the confluence of Butler Creek and Dry Creek, Best Slough diverges from Dry Creek. From this point Dry Creek continues on approximately 14 miles to join the Bear River. Best Slough continues on to discharge into Algodon Slough which flows into the Bear River. The source of water in Butler Creek during the summer months is principally return flows of irrigation water imported by the Nevada Irrigation District for the irrigation of upstream lands.

5. Protestants Casey, Smith, and Grosso, claiming riparian rights, are located on the reach of Dry Creek between the applicants' point of diversion and the point where the creek branches into Best Slough. The only use by these protestants at the present time is for stockwatering for which they have an adequate supply. They are apprehensive that the granting of the application will interfere with the development of their lands for future irrigation or for the raising of additional stock. The prospect of such additional use of water is not sufficient grounds for denying the subject application. If the additional anticipated developments take place,

protestants holding valid riparian rights will be entitled to receive their correlative share of whatever portion of the supply is natural streamflow.

6. Protestants James D. Jensen et al. hold License 5458 confirming a right to divert 1.44 cfs from Best Slough between April 15 and October 1 of each year for irrigation of 180 acres. J. M. Sanford holds License 1771 confirming the right to divert 0.41 cfs from Dry Creek between April 1 and November 1 for domestic and stockwatering purposes and the irrigation of 32.5 acres. Since 1944, use of water under his license has been limited to stockwatering.

7. During the period of low summer flow the above-mentioned protesting appropriators may not receive an adequate supply to satisfy their needs. However, the direct diversion proposed by the applicants during such time would have little or no effect upon the supply available to these protestants, as virtually all of the water passing the applicants' point of diversion during this period is lost through evaporation or consumption by plant life before reaching these protestants.

8. Nevada Irrigation District bases its protest on its right to recapture return water from its customers within its boundaries. The fact that it may exercise such right in the future with the effect of diminishing or entirely cutting off the supply of water available to the applicants is not a bar to the granting of the application.

9. The protestants have no objection to the storage feature of the application.

10. Butler Creek is tributary to the Sacramento River in Reach 2 (Knights Landing to Sacramento) via Dry Creek and the Bear and Feather Rivers. There is no unappropriated water in this reach of the Sacramento River during the months of July and August. However, during these months water passing the applicants' point of diversion does not reach the Sacramento River except on infrequent occasions.

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

12. The intended uses are beneficial.

From the foregoing findings, the Board concludes that Application 19830 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 19830 and all relevant information on file therewith, particularly the report of the field investigation made January 4, 1962, files of Applications 15301, 15660, 15758, and 15836; United States Geological Survey 7½-minute series quadrangles, "Lake Combie", "Wolf", "Camp Far West", "Wheatland", "Olivehurst", "Sheridan", and "Nicolaus"; United States Department of the Interior Geological Survey, Water Supply Papers, "Surplus Water Supply of the United States, Part 11, Pacific Slope Basins in California."

IT IS HEREBY ORDERED that Application 19830 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 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 from about April 1 to about November 1 of each year and 35 acre-feet per annum by storage to be collected from about November 1 of each year to about April 1 of the succeeding year. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

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

3. Construction work shall be completed on or before December 1, 1965.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1966.

5. 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.

6. 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.

7. 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 this permit.

8. This permit does not authorize collection of water to storage during the period from about April 1 to about November 1 of each season to offset evaporation and seepage losses or for any other purpose.

9. Permittees shall 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 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 said water is not authorized under this permit.

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 , 1962.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member