

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 19725  
of Robert H. Simmons to Appropriate  
from Mokelumne River in San Joaquin  
County

**ADOPTED FEB 21 1963**

Decision D 1109

DECISION DENYING APPLICATION

Robert H. Simmons having filed Application 19725 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Rights Board on April 3, 1962, after due notice to the applicant and protestant; the applicant and protestant having appeared; evidence having been received; the Board, having considered the same and now being fully advised in the premises, finds as follows:

1. Application 19725 is for a permit to appropriate 2.5 cubic feet per second (cfs) by direct diversion from June 1 to October 1 of each year for irrigation of 160 acres from the Mokelumne River in San Joaquin County. The point of diversion is to be located within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Sec. 19, T4N, R8E, MDB&M.
2. The place of use is now and for years has been irrigated by pumping from the Mokelumne River starting about March 1 of each year under claimed riparian rights. Under a misapprehension as to the nature of the application procedure,

the applicant states that he is not seeking unappropriated water, merely written evidence of a right to the same water which he has been using. The applicant desires a permit because of possible future litigation and because his rights are unadjudicated. His proposed season would start on June 1 because that is when the water supply starts to get critical (RT 13).

3. As a basis for the issuance of a permit, the applicant relied upon and quoted from Decision 858 of the Division of Water Resources on applications of Calaveras County Water District and others to appropriate from the Mokelumne. However, said decision found that unappropriated water from said source was not available between July 1 and December 1 of each year. Furthermore, the Board will take official notice of its Decision D 990 relating to the Sacramento River. Exhibits 164 and 164A introduced therein by the United States Bureau of Reclamation indicate that no unappropriated water is available in the Delta, to which the Mokelumne is tributary, during the months of July through September. The available streamflow records for the Mokelumne indicate that there is hydrologic continuity to the Delta throughout the year.

4. Accordingly, the Board finds that no unappropriated water is available in the source from July 1 through September 30, and the application must be denied for that period. The applicant did not reply to an inquiry as to whether he would consider worth while a permit limited to the month of June, and it is found that such a permit would not be worth while and that the application should be denied in its entirety.

IT IS HEREBY ORDERED that Application 19725 be, and the same is, denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this                      day of                      , 1963.

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Kent Silverthorne, Chairman

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Ralph J. McGill, Member

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W. A. Alexander, Member