

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 16749
of Grace M. Baird to Appropriate
from Walthall Slough, a Channel of
the Delta in San Joaquin County

ADOPTED APR 4 1963

Decision D 1117

DECISION APPROVING APPLICATION IN PART

Application 16749, filed by Grace M. Baird, is for a permit to appropriate five cubic feet per second (cfs) by direct diversion to be diverted between March 1 and October 31 of each year from Walthall Slough in San Joaquin County for irrigation purposes.

Protest and Hearing

The United States Bureau of Reclamation (hereinafter referred to as the Bureau) filed a protest against the approval of Application 16749. A hearing was held by the State Water Rights Board before Chairman Kent Silverthorne on February 28, 1961, in Stockton. The applicant and protestant appeared, evidence was received, and the matter was submitted for decision by the Board.

Description of the Source

The point of diversion under Application 16749 is within the Sacramento-San Joaquin Delta as defined by Water Code Section 12220. The San Joaquin River meanders through this portion of

the Delta. An arm of the San Joaquin River known as "Weatherbee Lake" extends southeasterly from the river a distance of about 0.5 mile. Weatherbee Lake has been extended southeasterly several hundred feet by the dredging of an artificial channel (RT 60) into which Walthall Slough discharges. The point of diversion under Application 16749 is located upon the dredged portion of the channel (RT 60) and is within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 10, T2S, R6E, MDB&M. There is no obstruction to the free movement of water between the dredged channel, Weatherbee Lake and the San Joaquin River. The water in all channels is at or near sea level year-round and is affected by tidal action*. The dredged channel is considered a portion of Walthall Slough for purposes of this decision.

Use of Water Under Application 16749

The applicant's place of use is 601 acres of agricultural land situated adjacent to and easterly of the aforementioned dredged channel and Walthall Slough. The land was leased by the applicant to E. P. Picchi and Son six years ago for a term of 15 years. The Picchis have been farming the land since they took possession and now have 375 acres planted to alfalfa (RT 50-53). The Picchis plan to cultivate the entire 601 acres (RT 57). The land is irrigated by pumping from Walthall Slough at the point of diversion described in Application 16749 and at another point. The Picchis intend to continue diverting water in the same manner.

*Bulletin No. 27 "Variation and Control of Salinity in Sacramento-San Joaquin Delta and Upper San Francisco Bay", dated 1951, page 152.

Discussion

As a prerequisite to the issuance of a permit to appropriate water, there must be unappropriated water available to supply the applicant (Water Code Section 1375). Although the applicant introduced evidence to the effect that water has been physically available at the proposed point of diversion in the past and that water has been diverted to irrigate crops, the physical presence of water which can be diverted and beneficially used does not necessarily mean that the water is subject to appropriation.

The Bureau presented evidence of the inflow to the Delta as modified for the historical operation of Shasta Reservoir (USBR 4), the net consumptive use demands of the Delta lowlands (RT 81) and the need for an outflow from the Delta to repel salt water encroachment (RT 82). The position of the Bureau with respect to the extent and availability of unappropriated water is that the quantity of unappropriated water may be determined by subtracting from the historical inflow to the Delta the net consumptive use demands of the Delta lowlands and 1500 cfs Delta outflow required to repel salt water encroachment (RT 80-83). This approach is deficient because it makes no allowance for future development upstream from the Delta under existing permits and does not consider the Delta upland requirements.

During the irrigation season the major portion of inflow to the Delta is from the Sacramento River and therefore

the availability of water for appropriation in the Delta is influenced by prior rights to divert from the Sacramento River. The existence of unappropriated water in the Sacramento River and Delta may best be studied by dividing the Sacramento River into three reaches: Reach 1, Keswick to Knights Landing; Reach 2, Knights Landing to Sacramento, and Reach 3, the Delta below Sacramento. The point of diversion under Application 16749 is located on a channel of the Delta in Reach 3.

Decision D 990, adopted by the Board pursuant to a hearing concerning Application 5625 et al. of the Bureau to appropriate from the Sacramento River and the Delta provided, among other things, that:

"Direct diversion and storage of water under permits issued pursuant to Applications 5626, 9363, 9364, 9366, 9367 and 9368 for use beyond the Sacramento-San Joaquin Delta or outside the watershed of Sacramento River Basin shall be subject to rights initiated by applications for use within the said watershed and Delta regardless of the date of filing said applications."

In light of this condition an analysis has been made of the available water supply within the Delta, Reach 3, utilizing for this purpose the reports of the 1956 Cooperative Study Program and "Central Valley Project Operation Study, Shasta Reservoir Operation" (Staff 7 and 8).

The analysis included the following matters and assumption:

1. A repetition of the hydrologic conditions for the period 1922 through 1954 was assumed.

2. The available water supply was adjusted to reflect conditions of ultimate development of the Central Valley Project.

3. Local rights in each reach including riparian, appropriative, and "other" rights initiated prior to 1954 and Bureau requirements for the Sacramento Valley Canals, Cow Creek and Yolo-Zamora Units in Reach 1 were satisfied, first, by tributary and return flows accruing within the reach, and second, by the natural runoff flowing into Lake Shasta.

The water supply within the Delta, Reach 3, after the satisfaction of these requirements, equals the water remaining at Shasta plus the water remaining in Reaches 1 and 2 plus the water remaining from the San Joaquin inflow to the Delta.

From our analysis it is concluded that water subject to appropriation remains in the Delta, Reach 3, during the period April through October the following percentage of time:

<u>Months</u>	<u>Percentage of Time Remaining within Delta</u>
April	100
May	100
June	91
July	58
August	21
September	94
October	100

The evidence discloses that water is available in the Delta (Reach 3) for appropriation by the applicant during the months of March, April, May, June, September and October. However, the denial of a permit to appropriate during the months of July and August will not deprive the applicant of a full irrigation supply because during those months it appears that the applicant can divert water under claim of riparian right or obtain water from an alternate source. A possible alternate source from a practical standpoint is stored water from the Central Valley Project. The applicant, having a point of diversion located on a channel of the Delta, is in position to contract directly for stored project water.

Conclusions and Order

The evidence indicates and the Board finds that unappropriated water exists in Walthall Slough, a channel of the Sacramento-San Joaquin Delta, at times and in sufficient quantities to justify the approval of Application 16749 except for diversion during the months of July and August; that the use proposed is beneficial; that subject to certain conditions the water may be taken and used as proposed without interference with the exercise of prior rights; and that the application should be approved in part and a permit issued pursuant thereto, as set forth in the following Order.

IT IS HEREBY ORDERED that Application 16749 be, and the same is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed five cubic feet per second by direct diversion to be diverted from about March 1 to about June 30 and from about September 1 to about October 31 of each 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 permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

6. 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 this permit.

7. 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.

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

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member