

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20279  
of A. John Hirsch to Appropriate  
from an Unnamed Stream Tributary to  
Sullivan Creek in Tuolumne County

ADOPTED APR 4 1963

Decision D 1123

DECISION APPROVING APPLICATION IN PART

A. John Hirsch having filed Application 20279 for a permit to appropriate unappropriated water; a protest having been received; the applicant 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 20279 is for a permit to appropriate 0.08 cubic foot per second (cfs) by direct diversion, year-round, and 1.5 acre-feet per annum by storage from January 1 to June 30 of each year for domestic, fire protection, and irrigation purposes from an unnamed stream tributary to Sullivan Creek in Tuolumne County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 8, T2N, R16E, MDB&M.

2. The applicant proposes to impound water at an existing on-stream reservoir of 1.5 acre-foot capacity and to

divert by means of a pumping plant and conduit to be installed for the irrigation of 6 acres and to serve a dwelling. The reservoir has an outlet pipe in the bottom of the dam at stream channel level.

3. Protestants John R. Lipscomb and Glenn T. Noyes hold Permit 13125, issued on Application 18547, for 0.18 cfs by direct diversion from about November 1 of each year to about May 3 of the succeeding year, and 13 acre-feet per annum by storage to be collected from about January 1 to about May 15 of each year from the unnamed stream tributary to Sullivan Creek. They divert at a point approximately 1,000 feet downstream from the applicant's point of diversion pursuant to the said permit and under claim of riparian and pre-1914 appropriative rights.

4. The unnamed stream flows year-round. During the summer months its flow does not exceed 10 gallons per minute (gpm). On July 31, 1962, the applicant's and protestants' dams were both full, and there was an inflow and outflow at their respective reservoirs of 5 gpm and 15 gpm.

5. Board's Decision D 1036, dated September 26, 1961, which approved Application 18547 and ordered the issuance of protestants' Permit 13125 found that no unappropriated water existed in Sullivan Creek and its tributaries during the period from June 1 through October 31. There has been no change in conditions since that time to justify a contrary finding in regard to the subject application. Water occurs in the unnamed stream during the other

months of the year in excess of the amounts necessary to satisfy the needs of the protestants and other holders of prior rights.

6. There is unappropriated water available to supply the applicant from November 1 of each year to June 1 of the succeeding year, 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.

7. The intended uses are beneficial.

8. The protestants have objected to the approval of the application not only on the basis that unappropriated water is not available but on the further ground that the applicant's dam appears unsafe and should be inspected. As the dam is not of sufficient size or capacity to be within the jurisdiction of the State pursuant to California Water Code, Division 3, Dams, the inclusion of a permit term requiring the permittee to obtain approval of the dam from the Department of Water Resources is not proper.

9. As the applicant claims a riparian right to the same use of water from the unnamed stream tributary to Sullivan Creek as that described in the application, the permit should contain a term stating that water diverted under the permit directly to use without storage shall not be in addition to such water, if any, as permittee may be entitled to use from the same source on the place of use authorized by the permit by virtue of a riparian or other right.

From the foregoing findings, the Board concludes that Application 20279 should be approved in part and that a permit 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: Application 20279 and all relevant information on file therewith, particularly the report of the field investigation made July 31, 1962; files of Applications 18381, 18546, 18547, 18548, 18549, 18552, 18553, 18554, 18558, and 18602; Board's Decision D 1036; and United States Geological Survey 15-minute series quadrangle, "Long Barn."

#### ORDER

IT IS HEREBY ORDERED that Application 20279 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 appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.08 cubic foot per second by direct diversion to be diverted from about November 1 of each year to about June 1 of the succeeding year and 1.5 acre-feet per annum by storage to be collected from about January 1 to about June 1 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 amounts herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before September 1, 1963, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

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

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

6. 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.

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.

8. 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.

9. This permit does not authorize collection of water to storage during the period from about June 1 to about December 31 of each season to offset evaporation and seepage losses or for any other purpose.

10. Permittee shall maintain an outlet pipe of adequate capacity in his 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.

11. Permittee shall install and maintain suitable measuring devices (a) upstream from the high water elevation of his reservoir and (b) immediately below his storage dam in order that accurate measurement can be made of the quantity of water flowing into and out of said reservoir.

12. Water diverted under this permit directly to use without storage shall not be in addition to such water, if any, as permittee may be entitled to use from the same source on the place of use authorized by this permit by virtue of a riparian or other right.

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