

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20263
of Elliott W. and Dorothy W. Locke
and Clyde and Aileen M. McKinsey
to Appropriate from West Branch
Gold Run Creek in Nevada County

ADOPTED APR 4 1963

Decision D 1124

DECISION APPROVING APPLICATION IN PART

Elliott W. and Dorothy W. Locke having filed Application 20263 for a permit to appropriate unappropriated water; the application having been partially assigned to Clyde and Aileen M. McKinsey; a protest having been received; the applicants and protestant having stipulated to proceedings in lieu of hearings 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 20263 is for a permit to appropriate 0.16 cubic foot per second (cfs) by direct diversion, year-round, for domestic, irrigation, and fish culture purposes from West Branch Gold Run Creek in Nevada County. The point of diversion is to be located within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 18, T16N, R9E, MDB&M.

2. Gold Run Creek rises in a swampy area just below the Cascade Canal of the protestant Nevada Irrigation District

at an approximate elevation of 3,100 feet and courses in a northwesterly direction approximately 2 miles to join Deer Creek. The applicants' point of diversion is located on a man-made ditch, referred to as the West Branch Gold Run Creek, located approximately one-half mile above the Gold Run Creek-Deer Creek confluence. Deer Creek continues from this junction approximately 15 miles to join the Yuba River.

3. Applicants McKinsey propose to divert through an existing system of flumes and ditches to maintain two fish ponds and for the irrigation of approximately 5 acres. Their project is in existence and the use of water, as proposed, has been made for the past 20 years except that additional land will be irrigated. Applicants Locke propose to use the same diversion works to place approximately 3 acres of land under irrigation. Domestic use at five cabins and stockwatering are also proposed by the application.

4. Gold Run Creek is a perennial stream, partially supplied by springs. On June 12, 1962, the flow of the West Branch at a point just above the applicants' point of diversion was approximately 4 cfs.

5. Protestant Nevada Irrigation District claims pre-1914 appropriative rights to divert from Deer Creek and holds Permit 5801 to divert 100 cfs from April 1 to October 1 of each year from Deer Creek and South Fork Deer Creek. It diverts from Deer Creek to help serve approximately 6,000 acres within the District by means of three ditches located between the Deer Creek-Gold Creek confluence and the USGS gaging station "near Smartville."

Records of this gaging station from the year 1935 to date show that following the spring runoff, the flow of Deer Creek decreases sharply. This sudden decrease in flow occurs between the early part of April and the early part of June.

6. There has not been sufficient water available in Deer Creek to meet the District's requirements pursuant to the above-mentioned rights in most years during the period from about June 1 to about October 1. Water occurs in Deer Creek which is surplus to the protestant's requirements in most years during the remainder of the year.

7. There is unappropriated water available to supply the applicants during the period from about October 1 of each year to about 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. There is no unappropriated water available to supply the applicants from about June 1 to about October 1.

8. The intended uses are beneficial.

9. As the applicants claim a riparian right to the same use of water from West Branch Gold Run Creek as described in the application, the permit should contain a term stating that water diverted under the permit should not be in addition to such water, if any, as permittees 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 20263 should be approved in part 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 20263 and all relevant information on file therewith, particularly the report of the field investigation made June 12, 1962; Decisions D 687, D 767; Applications 11717 (canceled), 14189, 1615, and 5193; Exhibit 3, "Nevada Irrigation District, Study of Water System and Future Requirements," dated October 1958; U. S. Geological Survey Water Supply Papers, "Surface Water Supply of United States, Part 11, Pacific Slope Basins in California"; United States Geological Survey Chicago Park, Grass Valley, Nevada City, and North Bloomfield, 7½-minute quadrangles dated 1951, 1949, 1948, and 1951, respectively.

ORDER

IT IS HEREBY ORDERED that Application 20263 be, and the same is, approved in part, 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 0.16 cubic foot per second by direct diversion to be diverted from about October 1 of each year to about June 1 of the succeeding year.

The equivalent of such continuous flow allowance for any thirty-day period may be diverted for irrigation purposes 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. Water diverted under this permit shall not be in addition to such water, if any, as permittees 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