

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20893)
of Marco and Nila G. Collini to
Appropriate from Perry Creek,
Tributary to Middle Fork Cosumnes
River, in El Dorado County

Decision D 1163

ADOPTED JAN 22 1964

DECISION APPROVING APPLICATION IN PART

Marco and Nila G. Collini having filed Application 20893 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 20893 is for a permit to appropriate 0.125 cubic foot per second (cfs) by direct diversion from April 15 to November 1 of each year and 7 acre-feet per annum by storage from November 1 of each year to April 15 of the succeeding year for irrigation and stockwatering purposes from Perry Creek in El Dorado County. The point of diversion is to be located within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T9N, R12E, MDB&M.

2. The applicants propose to construct a reservoir with a capacity of 7 acre-feet on Perry Creek approximately 2 miles from the point where the creek originates. Water from the reservoir will be diverted to a sprinkling system for the irrigation of 10 acres of pasture, and the reservoir will also be utilized for year-round stockwatering of approximately 30 head of cattle. The creek courses in a northwesterly direction from the applicants' damsite approximately 5.5 miles to join the Middle Fork Cosumnes River. The Middle Fork Cosumnes River continues approximately 10 miles in a southwesterly direction to join the Cosumnes River. The Cosumnes River flows from its Middle Fork junction approximately 50 miles to its confluence with the Mokelumne River.

3. Protestant Cosumnes Irrigation Association diverts from the Cosumnes River approximately 19 miles below the Middle Fork junction. It holds License 2629 and claims pre-1914 appropriative rights and asserts riparian rights on behalf of its members for a total use during the irrigation season of 30 second-feet. Protestants George W. Artz and Hal Ellis divert at the same point as the Cosumnes Irrigation Association under claimed pre-1914 appropriative rights, riparian rights, and License 537 for 2 cfs. Water is used by them for stockwatering and irrigation of approximately 800 acres. Protestant E. Clemens Horst Company, located approximately 10 miles below protestants Artz and Ellis, irrigates approximately 160 acres under claim of riparian and pre-1914 appropriative rights. Protestant County of Amador claims a pre-1914 appropriative right to divert 30 cfs from the Middle Fork

of the Cosumnes River approximately 5 miles downstream from the Perry Creek-Middle Fork Cosumnes River junction for irrigation and for domestic and municipal uses in the City of Plymouth.

4. Wilbur E. Horn and E. H. Anderson divert directly from Perry Creek at points located between the applicants' point of diversion and the Perry Creek-Middle Fork Cosumnes River confluence. They hold, respectively, License 2848 to divert 3,500 gallons per day, year-round, for domestic use, and License 4404 to divert 0.09 cfs from about May 1 to about November 1 of each year for the irrigation of 12 acres.

5. On August 13, 1963, at a time when the applicants were not diverting, the flow of Perry Creek at the applicants' point of diversion was 0.17 cfs and was approximately four gallons per minute at the junction of the creek with the Middle Fork Cosumnes River. The flow of Perry Creek has been inadequate to satisfy the rights under License 4404 of E. H. Anderson during subnormal years, and a field visit on July 26, 1954, found no water passing his point of diversion.

6. Due to shortage of water in the Cosumnes River during the 1962 irrigation season, the Cosumnes Irrigation Association purchased water from Sly Park Reservoir, commencing July 15 of that year.

7. An analysis of the records of the USGS gaging station "near Somerset," located just below the Perry Creek-Middle Fork Cosumnes River junction, shows that there is no water surplus to the quantities necessary to satisfy the protestants and needs

of other prior rightholders during the months of July, August, September, and October. Surplus water is available to satisfy the applicants in most years during the remaining months of the year.

8. There is unappropriated water available from about November 1 of each year to about July 1 of the succeeding year to supply the applicants, and subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

10. Applicants' land is contiguous to the source, and they claim a riparian right to the use of water therefrom, but said claimed right has not been established by court decree. The permit should provide that upon a judicial determination that the land or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired for direct diversion under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

From the foregoing findings, the Board concludes that Application 20893 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 20893 and all relevant information on file therewith, particularly the report of the field investigation made August 13, 1963, the files of License 2629

(Application 2296) and License 537 (Application 1838); USGS Water Supply Papers "Surface Water Supply of the United States, Part 11, Pacific Slope Basins in California," for the years 1957 through 1960, and the report entitled "Surface Water Records of California, Volume 2, Northern Great Basin and Central Valley," for the year 1961; USGS Omo Ranch, Aukum and Fiddletown 7.5-minute quadrangles dated 1952, 1952, and 1949, respectively; U. S. Weather Bureau "Climatological Data, California," annual summaries for the years 1957 through 1961; and Board Decision D 1075.

ORDER

IT IS HEREBY ORDERED that Application 20893 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 0.125 cubic foot per second by direct diversion to be diverted from about April 15 to about July 1 of each year and 7 acre-feet per annum by storage to be collected from about November 1 of each year to about April 15 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. Actual construction work shall begin on or before June 1, 1964, 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, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

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 April 15 to about November 1 of each season to offset evaporation and seepage losses or for any other purpose.

10. Permittee shall install and maintain an outlet pipe of adequate capacity in permittee's 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. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired for direct diversion under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

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 , 1964.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member