

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 22083)
of Arthur H. and Della M. Dahlem to)
Appropriate from an Unnamed Stream)
Tributary to Oliver Creek and Two Un-)
named Streams Tributary to De Long)
Creek in Mariposa County)

Decision D 1285

DECISION APPROVING APPLICATION

Application 22083 of Arthur H. and Della M. Dahlem having been filed; a protest having been received; a public hearing having been held before the State Water Rights Board on February 21, 1967, conducted by Board Member W. A.

Alexander; applicants and protestant having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 22083 is for a permit to appropriate 12.3 acre-feet per annum (afa) by storage from an unnamed stream tributary to De Long Creek and from an unnamed stream tributary to Oliver Creek, and 3.1 afa by storage from another unnamed stream tributary to De Long Creek from November 1 of each year to May 1 of the succeeding year for domestic, irrigation, stockwatering, and recreational purposes in Mariposa County. The points of diversion are to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 21, T5S, R20E, MDB&M.

2. Applicants have constructed a reservoir with an estimated capacity of 12.3 acre-feet on an unnamed tributary of De Long Creek, which they refer to as Diversion Point No. 1. In years of normal rainfall it is filled by the runoff from the tributary drainage area. Also, water can be diverted by gravity from an unnamed tributary of Oliver Creek, referred to as Diversion Point No. 3, through a pipeline to off-stream storage in this reservoir. The maximum rate of diversion to off-stream storage is 2 cubic feet per second (cfs).

Applicants plan to construct a reservoir with a capacity of approximately 3 acre-feet on another unnamed tributary of De Long Creek which they designate as Diversion Point No. 2. This stream is dry except during and immediately after rainfall. The reservoir will also be fed by a spring. There is sufficient water to fill the proposed reservoir in most years.

3. The unnamed stream tributary to Oliver Creek flows approximately one and one-half miles in a southerly direction from the applicants' Diversion Point No. 3 to join Oliver Creek. Oliver Creek continues approximately another one and one-half miles to join De Long Creek. The two unnamed streams tributary to De Long Creek on which applicants' Diversion Points Nos. 1 and 2 are located enter De Long Creek above the De Long Creek-Oliver Creek junction. De Long Creek continues from its junction with Oliver Creek approximately two miles in a general southwesterly direction to enter the Chowchilla River.

4. Applicants intend to use the water stored in these reservoirs for the irrigation of oats, rye, clover, wheat, and permanent pasture. They intend to enlarge their permanent pasture by 20 to 30 acres. A minimum pool in the reservoirs will be maintained for fire protection purposes.

5. Chowchilla Water District (hereinafter referred to as "the District") protests Application 22083 on the ground that its approval will result in interference with its rights under Permit 9136 (Application 13175), which authorizes year-round diversion of 600 cfs from the Chowchilla River for irrigation and domestic use in an area of approximately 60,000 acres. The District also holds Application 18732 for storage of 300,000 acre-feet of water in the proposed Buchanan Reservoir and claims that approval of Application 22083 would interfere with that project.

6. The flows of the Chowchilla River have been recorded at a U.S.G.S. gaging station a few miles upstream from the District's point of diversion. These records show that for the 37 years of published record (1921-23 and 1930-65) the average annual discharge of the Chowchilla River was 69,940 acre-feet and the maximum annual discharge was 258,900 acre-feet. For this period, the mean number of days in each year that the flow of the river exceeded 600 cfs was 9. Flows between 3,000 and 10,000 cfs occur in most years. From the foregoing, it is apparent that in most years there is water in the Chowchilla

River that is surplus to the rights of the District under Permit 9136, which water is available to the applicants.

7. The U. S. Bureau of Reclamation holds Application 18714 for 1,000 cfs and 300,000 afa, both year-round, for its Buchanan Project. This is the same project covered by the District's Application 18732. For the most part, water covered by the Bureau's application will be used on lands within the Chowchilla Water District (Paragraphs 11 and 13, Supplement to Application 18714). The District has no immediate plans to construct a project, but intends to contract, along with other districts, with the Bureau for water service from the federal project (Protestant's Exh. No. 1). The Bureau has not protested Application 22083. The record is not clear as to whether approval of Application 22083 will cause interference with the Buchanan Project and the answer to this question turns on how the Buchanan Project will be operated for flood control and as a unit of the Central Valley Project. However, although the Buchanan Project has been authorized by Congress for construction by the U. S. Corps of Engineers (Flood Control Act of 1962), no money has yet been appropriated for the construction of the project. The only appropriations so far that have been made cover preliminary planning and engineering studies (RT 50, 51) and it cannot now be determined when and if it will be constructed. If it is not constructed by the Federal Government, considerable time will elapse before the

District, in the normal course of events, will be able to proceed on its Application 18732. During the interim, applicants should be allowed to place water to beneficial use that is now going to waste. The applicants are aware of Applications 18714 and 18732 and that any permit issued on Application 22083 will be subject to any rights that may be obtained pursuant to those applications. It is not considered necessary to include a permit term containing such an admonition.

8. Estelle Hendrickson, who uses water from De Long Creek for stockwatering purposes under claim of riparian right, appeared at the hearing as an interested party. In most years she has sufficient water for stockwatering until the month of July (RT 60). As the applicants' diversion season ends May 1, approval of Application 22083 will not interfere with her use of water from the creek under her claimed riparian right, and in years of drought the applicants must release or bypass water to satisfy the prior rights of riparian owners.

9. Unappropriated water is available 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.

10. The intended use is beneficial.

11. On July 23, 1967, the applicants filed a petition for amendment of the application to correct the description of the points of diversion. This change will not operate to the injury of any legal user of the water involved and the petition should be granted.

From the foregoing findings, the Board concludes that Application 22083 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 22083 be, and it is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 12.3 acre-feet per annum (afa) by storage from an unnamed stream tributary to De Long Creek (Diversion Point No. 1) and/or an unnamed stream tributary to Oliver Creek (Diversion Point No. 3), and 3.1 afa from an unnamed stream tributary to De Long Creek (Diversion Point No. 2), to be collected from about November 1 of each year to about May 1 of the succeeding year. The maximum rate of diversion from Diversion Point No. 3 to off-stream storage will not exceed 2 cfs.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. The maximum quantity herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before June 1, 1968, 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, 1970.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

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. Water entering the reservoirs or collected in the reservoirs during and after the current storage season shall be released into the downstream channels to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittee shall, when required by the State Water Rights Board, install and maintain outlet pipes of adequate capacities in his dams as near as practicable to the bottom of the natural stream channels, or provide other means satisfactory to the State Water Rights Board to comply with this paragraph.

IT IS FURTHER ORDERED that the applicants' petition for amendment of the application to correct the points of diversion, filed July 23, 1967, be, and it is, granted.

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

Dated: NOV 3 0 1967

/s/ George B. Maul
George B. Maul, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member