

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22918)
of HERBERT G. AND MARGARET L. NORVELL) Decision 1368
AND BERWYN A. MANN to Appropriate)
from an Unnamed Stream in Sierra County)

DECISION APPROVING APPLICATION IN PART

Proceedings in Lieu of Hearing

Herbert G. and Margaret L. Norvell and Berwyn A. Mann having filed Application 22918 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 Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of Application

1. Application 22918 is for a permit to appropriate 1.55 cubic feet per second by direct diversion from May 1 to November 1 of each year and 40 acre-feet per annum by storage from November 1 of each year to May 1 of the succeeding year for mining purposes from an unnamed stream in Sierra County. The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 7, T21N, R10E, MDB&M.

Description of Applicants' Project

2. The applicants propose to repair an existing reservoir and ditch system on the unnamed stream which is tributary to Sacketts Gulch which flows into Slate Creek. The ditches terminate at holding ponds near the applicants' gold mining operation. The water will be used to separate the gold from gravel into a mixture of gold and clay, after which the gold will be separated from the clay by the use of chemicals.

Protests

3. Protestant California Sierra Association holds Permit 15264 (Application 21827) to appropriate 1.25 cubic feet per second from May 1 to December 1 of each year from the unnamed stream for mining purposes at a claim adjacent to the applicants. The association contends that there will be insufficient water for both mining operations and also contends that the applicants' proposed project will result in pollution of the unnamed stream.

4. Protestant Yuba County Water District and the Oroville-Wyandotte Irrigation District hold permits to divert water from Slate Creek for storage in Sly Creek Reservoir, a feature of their South Fork Project. Water is used for power production, domestic and irrigation purposes in the Oroville-Wyandotte Irrigation District's service area. Construction is under way for facilities to provide for the use of this water in the Yuba County Water District service

area. The district claims all the available water in Slate Creek is necessary to satisfy its rights under its permits.

The district is agreeable to having its protest considered withdrawn if any permit issued pursuant to Application 22918 covers only natural runoff and storage of water from November 1 of each year to May 1 of the succeeding year, and contains the standard terms concerning vested rights, mine operations and water quality (district's letter to Board, November 13, 1969; files of Application 22918). The suggested standard terms will be included in any permit issued on Application 22918.

Water is Physically Available at Project Site for Storage Only

5. There are no records of the flows of the unnamed stream. However, the average annual runoff of the watershed above the applicants' reservoir is an estimated 56 acre-feet. Most of this runoff occurs during the period from November 1 of each year to May 1 of the succeeding year, the applicants' storage season. There is not sufficient water to justify the approval of the direct diversion feature of Application 22918, and, to that extent, Application 22918 should be denied.

Approval of Application Will Not Result in Harm to Protestant

6. Most of the water stored by the applicants except for minimal evaporation losses will return to the stream and will be available to the protestants and the other downstream users.

Consequently, no harm to them should result from the approval of the storage proposed by Application 22918.

Unappropriated Water is Available to Applicants

7. 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.

8. The intended use is beneficial.

Application Should be Approved in Part

From the foregoing findings, the Board concludes that Application 22918 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 order following.

The records, documents, and other data relied upon in determining the matter are: Application 22918 and all relevant information on file therewith, particularly the report of field investigation made September 17, 1969.

ORDER

IT IS HEREBY ORDERED that Application 22918 be, and it 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 water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 40 acre-feet per annum by storage to be collected from about November 1 of each year to about May 1 of the succeeding year.

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 nine months from the date of issuance of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1973.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

6. Progress reports shall be filed promptly by permittee when requested by the State Water Resources Control 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 Resources Control 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. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

9. Permittee shall allow representatives of the State Water Resources Control 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.

10. Permittee shall, when required by the State Water Resources Control Board, install and 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 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.

11. In order to prevent degradation of the quality of water during and after construction of the project, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Water Quality Control Board, Central Valley Region or by the State Water Resources Control Board.

12. Permittee shall not conduct any mining operations until waste discharge requirements have been established by the Regional Board or by the State Water Resources Control Board unless the Board waives requirements pursuant to Water Code Section 13269.

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

Dated: December 17, 1970

Kerry W. Mulligan, Chairman

E. F. Dibble, Vice Chairman

Norman B. Hume, Member

Ronald B. Robie, Member

W. W. Adams, Member