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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23025
of BUTTE VALLEY IRRIGATION DISTRICT
to Appropriate from Butte Creek in
Siskiyou County

Decision 1381

DECISION APPROVING APPLICATION

Butte Valley Irrigation District having filed Application 23025 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on June 10, 1970; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Application

1. Application 23025 is for a permit to appropriate 10,000 acre-feet per annum by underground storage from November 1 of each year to July 1 of the succeeding year for irrigation and domestic purposes from Butte Creek in Siskiyou County. The point of diversion is to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 10, T44N, R1W, MDB&M.

Applicant's Project

2. The applicant proposes to divert water from Butte Creek by means of existing works consisting of a diversion dam,

channel and off-stream reservoir. This system was constructed by the Corps of Engineers as a flood control project. Water diverted into the reservoir will flow through a fissure into the main aquifer that supplies the Butte Valley groundwater basin. Water will be pumped from wells principally for the irrigation of approximately 4,500 acres. The applicant plans to enlarge the existing diversion structure to accommodate a diversion rate of 700 cubic feet per second (cfs) (RT 43).

Availability of Water in Butte Creek

3. Records of the flow of Butte Creek at a U.S.G.S. gaging station located approximately 4.5 miles below the applicant's point of diversion for the nine years of record (1921-22, 1952-60) show an annual average rate of flow of 25.5 cfs, for an average total annual flow of 18,460 acre-feet. A maximum total flow of 33,690 acre-feet occurred in 1958 and a minimum flow of 7,280 acre-feet occurred in 1955.

Protestants

4. Protestant Timberhitch, Inc., located on Butte Creek approximately five miles below the applicant's point of diversion, diverts 320 miner's inches (approximately seven cfs) under claimed pre-1914 appropriative and riparian rights for irrigation purposes. Its maximum rate of diversion is approximately 15 cfs, which is attained early in the spring (RT 56). It is in the process of developing additional lands which will be irrigated from Butte Creek.

The protest is based on possible interference with use under the claimed riparian and appropriative rights, particularly during the month of June (RT 58). During the remaining months covered by the applicant's diversion season, there is water surplus to existing uses. On occasions, the area is subject to floods (RT 56). Also, the protestant is concerned with the effect of diminished flows in the creek upon the ecology of the area (RT 55).

Della M. Stevenson and Rose M. Cross filed protests based upon prior rights to appropriate from Meiss Lake by means of the Sams Neck Drain pursuant to Applications 22982, 22983 and 22984. They also contend that the proposed diversion of Butte Creek water to underground storage by the district will violate an agreement which obligates the applicant to deliver any surplus water in the creek to Meiss Lake (RT 72).

Disposition of Cross and Stevenson Protests

5. Since the hearing on Application 23025, Applications 22982, 22983 and 22984, relied upon by Della M. Stevenson and Rose M. Cross, have been canceled for failure diligently to complete the applications. Application 22984 stated that the applicants had no other rights to water from Meiss Lake. Apart from the fact that these protestants have no apparent rights to divert water from Meiss Lake entitled to protection, water from Butte Creek has reached Meiss Lake only during times of flood when the applicant diverted water to the lake through its facilities (RT 18).

The applicant denies that it is under any obligation to divert water into Meiss Lake for the benefit of these protestants and others (RT 41). However, as was pointed out to the

parties during the hearing, this Board has no authority in such a controversy. Further, approval of Application 23025 will have no effect upon whatever right the protestants have to compel the applicant to deliver water from Butte Creek to Meiss Lake.

Availability of Unappropriated Water

6. During an average year water is available at the proposed point of diversion in excess of existing rights, including those of protestant Timberhitch, Inc. While the full amount applied for is not available except in years of above-normal streamflow, the permit issued pursuant to Application 23025 should authorize diversion of the full amount to enable the applicant to obtain a right to place to beneficial use the flood flows when they occur.

7. The intended use is beneficial.

Special Term to Protect Holders of Prior Vested Rights

8. In addition to the usual term stating that the permit is subject to vested rights, the permit issued pursuant to Application 23025 should contain a special term restricting diversions to times when the uninterrupted flow of Butte Creek extends to permittee's spreading area in Section 7, T45N, R1W, which is below lands of Timberhitch, Inc.

Protection of Fish Life

9. The applicant and the Department of Fish and Game have entered into an oral agreement whereby the applicant will bypass 10 cfs or the natural flow, whichever is less, for the protection of fish life (RT 26). Any permit issued on Application 23025 should contain a term so restricting permittee's right

to divert along with a term stating that the term is based on a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the Board that the amount of water to be bypassed is either adequate or required for the maintenance of fish life.

The maintenance of the minimum flows necessary for fish life along with the water to be released to satisfy rights of lower users will insure that the recreational and esthetic value of the stream will not be destroyed.

Effect of Applicant's Project on Water Quality

10. The applicant's project is within the boundaries of the North Coast Regional Water Quality Control Board. The regional board's report, dated August 27, 1969, states that the project contemplated by Application 23025 is not in an area where a water quality control plan has been established and the approval of the application will not cause an unreasonable adverse effect on the quality of the water remaining in the source. However, any permit issued pursuant to Application 23025 should contain the standard term that the quantity of water diverted under the permit and under any license issued pursuant thereto is subject to modification, under certain conditions, if necessary to meet water quality control plans.

From the foregoing findings, the Board concludes that Application 23025 should be approved and a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Application 23025 be, and it is, approved, and that a permit be issued to the applicant 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 10,000 acre-feet per annum to be collected to underground storage at a maximum rate of 700 cubic feet per second from November 1 of each year to July 1 of the succeeding year.

2. Water may be diverted only at times when the uninterrupted surface flow of Butte Creek extends to permittee's south spreading area in Section 7, T45N, R1W.

3. Permittee shall allow 10 cubic feet per second or the natural flow, whichever is less, to pass the point of diversion at all times for the protection of fish life. The provisions of this paragraph are based on a bilateral agreement between permittee and the Department of Fish and Game, and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of fish life.

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

5. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

6. Said construction work shall be completed on or before **December 1, 1974**.

7. Complete application of the water to the proposed use shall be made on or before **December 1, 1975**.

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

9. 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.

10. 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.

11. 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.

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

Dated: August 5, 1971

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

NORMAL B. HUME
Norman B. Hume, Member

RONALD B. ROBIE
Ronald B. Robie, Member

ABSENT
W. W. Adams, Member