

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23317
of W. CLIFFORD AND WILFORD B. OLSON
to Appropriate from Macks Creek
in Siskiyou County.

Decision 1385

DECISION APPROVING APPLICATION

W. Clifford and Wilford B. Olson having filed Application 23317 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 September 22, 1970; applicants 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 23317 is for a permit to appropriate 300 gallons per day by direct diversion, year round, for domestic purposes from Macks Creek in Siskiyou County. The point of diversion is to be located within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 36, T46N, R11W, MDB&M.

Applicants' Project

2. The applicants propose to divert from Macks Creek approximately one-quarter mile upstream from where the creek enters the Klamath River. Water is to be used to provide a

substitute supply for a single-family, two-room residence and for a guest house that may be constructed. Their present source of water is Hamburg Ditch which flows into Macks Creek just above the Highway 96 crossing. The water in Hamburg Ditch is not fit for human consumption (Applicants' Exh. No. 3).

Protestants

3. Protestant Raymond P. Roberts claims a pre-1914 appropriate right to divert water from Macks Creek through the Hamburg Extension Ditch. The intake of the Hamburg Extension Ditch is just below the applicants' proposed point of diversion. While the protestant is not using water from Macks Creek at the present time, he plans to construct several homes which will require water from the creek (RT 109). He supplies a house, which he occupies approximately seven weeks during the year, from a well (RT 108).

Protestant Rose Doggett diverts from the creek below the intake of the Hamburg Extension Ditch for use at a residence and also diverts from the creek through the Ramus-Martin Ditch, farther downstream, for the irrigation of a small garden.

At the hearing, both protestants stipulated that their protests be disregarded in respect to claimed riparian rights and relied upon their claimed pre-1914 rights (RT 8).

Water Supply

4. There are no published records of the flows in Macks Creek. The creek originates at an elevation of approximately

4,100 feet and flows in a general northeasterly direction approximately two miles to enter the Klamath River. Records of the Board contain the following spot checks of the flow in the creek just upstream from the protestants' points of diversion:

| <u>Date</u> | <u>Flow (cfs)*</u> |
|--------------------|--------------------|
| November 15, 1934 | 1.5 |
| May 20, 1937 | 7.5 |
| October 4, 1941 | 2.0 |
| September 10, 1962 | 0.3 |

* Estimated

5. During the hearing the parties agreed to a field investigation by an engineer from the Board's staff to determine the physical facts involved in Application 23317 and that the report of the investigation, and any subsequent comments on the report by the parties, would be a part of the hearing record (RT 70-71).

On October 8, 1970, the date of the field investigation, the flow in Macks Creek was 0.4 cubic foot per second (cfs) at the applicants' proposed point of diversion. There was a flow of 70 gallons per minute (gpm) through a culvert in Macks Creek at Highway 96 below the lowermost user of water, 40 gpm of which was foreign water from Hamburg Ditch which enters the creek below the protestants. On June 16, 1971, the flow of the creek through the culvert was 10 cfs and the contribution from Hamburg Ditch was 0.5 cfs. At that time, 0.75 cfs was being diverted into the Hamburg Extension Ditch and 0.50 cfs into the Ramus-Martin Ditch. It is apparent that at the time of the investigations, one of which was in the dry season of the year, there

was water surplus to all uses. There are some users who have no apparent water rights (RT 85).

Waste of Water

6. The California Constitution declares that the general welfare requires that waste of water be prevented and that a water right pertaining to any natural stream or watercourse shall not extend to the waste of water:

" . . . The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water."
(Article XIV, Sec. 3, California Constitution)

The field investigation of the diversion works of the protestants and other users of water from Macks Creek disclosed that water is not being diverted in a reasonable manner. Protestant Rose Doggett diverts into Hamburg Ditch by means of a rock dam covered with plastic. Water was flowing through and around the dam. A more efficient diversion system would result in more water being available to this protestant. At the Rainbow Lodge diversion upstream from the applicants approximately four gpm was escaping through breaks in pipes. On the opposite side of the stream from the Rainbow Lodge the diversion system used by Henry Martin to supply his residence was leaking at an estimated rate of three gpm.

In the event of an unusually dry season the elimination of water losses caused by inefficient diversion systems along

the creek would result in an adequate supply for both the applicants and protestants.

Existence of Unappropriated Water

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.

From the foregoing findings, the Board concludes that Application 23317 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Application 23317 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 300 gallons per day by direct diversion to be diverted year round.

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 date of 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, 1974.

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

6. Progress reports shall be submitted 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.

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

Dated: October 13, 1971

ABSENT

Kerry W. Mulligan, Chairman

E. F. DIBBLE

E. F. Dibble, Vice Chairman

ABSTAINED

Norman B. Hume, Member

RONALD B. ROBIE

Ronald B. Robie, Member

W. W. ADAMS

W. W. Adams, Member