

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23441 )  
of LAWRENCE E. and AUDREY G. FLACK )  
to Appropriate from Collins Creek )  
in Siskiyou County. )

Decision 1387

DECISION APPROVING APPLICATION IN PART

Lawrence E. and Audrey G. Flack having filed Application 23441 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Resources Control Board on March 24, 1971; applicants and protestant 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 23441 is for a permit to appropriate 0.05 cubic foot per second (cfs) by direct diversion from April 1 to October 1 of each year for irrigation purposes from Collins Creek in Siskiyou County. The point of diversion is to be located within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 23, Township 46 North, Range 10 West, MDB&M.

Applicants' Project

2. The applicants propose to divert water from Collins Creek by means of existing works consisting of a diversion dam and



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ditch. The applicants are in the process of acquiring title to a 5-acre homesite under the Church-Johnson Act which will contain three irrigable acres. The quantity of water required for reasonable beneficial use on the three acres the applicants propose to irrigate is 0.04 cfs (18 gallons per minute (gpm)).

### Protests

3. Protestant W. L. Holstein claims a right to divert all the water flowing in Collins Creek at a point approximately 300 feet downstream from applicants' point of diversion as necessary to maintain the flow in his diversion and conveyance system at full capacity at all times. The basis of protestant's claim is a notice of claim filed by David Collins and recorded in 1894 in book 4 of Water Rights at page 166, Siskiyou County records. Although notice failed to comply with the statutory requirements in several particulars, **this** is immaterial as the water right David Collins acquired depended upon what water he actually diverted and applied to beneficial use. It is not necessary for the purposes of this decision to determine precisely what water right David Collins acquired circa 1894 or to trace the ownership of the right through the numerous mesne conveyances to determine if the protestant presently owns all or a portion of the Collins right. The applicants conceded at the hearing that the protestant has a prior appropriative right (RT 18).

Protestant also claims a riparian right to Collins Creek water but this was not supported by the evidence. Protestant testified that none of the land drains into Collins Creek (RT 86) and a surveyor's map (Prot. Exh. 9) of protestant's property, dated May 13, 1927, shows that the property is not contiguous to Collins Creek but is contiguous to the Klamath River.

The problem remaining is to quantify the water supply available and the right of the protestant so as to arrive at the quantity of unappropriated water available to the applicants. The determination of the quantity of water to which the protestant is entitled is controlled by the constitutional mandate "that the right to water or to the use of the flow of water in or from a 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 method of diversion of water."

#### Protestant's Requirements

4. The stream banks at each end of the protestant's dam have not been maintained and are eroded. Diversion is taken from the dam through a 12- or 14-inch pipe which is partially filled with gravel. The water then travels along the hillside in a ditch that is about two feet wide from which there is considerable seepage. Another pipe brings the water down the hillside from the ditch. A one-to-three-foot-wide and four-to-eight-foot-deep

depression along the uphill side of the county road, which runs along protestant's property, receives the water from the last-mentioned pipe. This road drainage trench is quite marshy and allows the water to flow in both directions farther than is necessary for conveyance purposes. The water crosses the road through a culvert and is usually used to flood-irrigate one acre of lawn and five acres of pasture. A number of rainbird sprinklers are set up in a low part of the pasture and operated under a maximum hydraulic head of eight to ten feet, an insufficient head for proper operation. Protestant's practice is to irrigate the same land continuously, which is deleterious to the crops and a wasteful use of water.

A reasonable amount of water to irrigate protestant's six acres would be about 0.1 cfs or 45 gpm. An additional 20 gpm is a reasonable allowance for conveyance loss in the stream channel and diversion judging from ditch loss measurements taken by the former Division of Water Resources in connection with its adjudication investigations on other northern California streams. This amount should suffice if protestant rehabilitates his diversion system and maintains it in a reasonable state of repair.

#### Water Supply

The only measurements of flow in Collins Creek are spot estimates and measurements made by Board representatives in the past three years showing a low surface flow of from 50 to 100 gpm during August, September and October. During other months of the year observations have shown the flow to be in excess of all requirements.

### Water Quality

6. Applicants' project will have little or no effect upon the quality of the Klamath River. As this diversion has been made for many years, there will be no change in water quality. The California Regional Water Quality Control Board, North Coast Region, stated that the protested application does not appear to pose any water quality threat to Collins Creek or Klamath River.

### Unappropriated Water and Beneficial Use

7. Unappropriated water is available during most of the 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, provided that sufficient water is bypassed to satisfy the prior right of Protestant Holstein.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 23441 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 23441 and all relevant information on file therewith, particularly the report of field investigation made June 28, 1971.

ORDER

IT IS HEREBY ORDERED that Application 23441 be, and it is, approved in part, 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 0.04 cubic foot per second (18 gallons per minute) by direct diversion to be diverted from April 1 to October 1 of each year for irrigation purposes. The maximum amount diverted under this permit shall not exceed 12 acre-feet per year.

2. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

3. Permittee shall at all times bypass, at the point of diversion, a minimum flow of 65 gallons per minute (0.14 cubic foot per second) or the natural flow, whichever is less.

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

5. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

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. To assure by-pass of 65 gpm permittee shall install and maintain each year from about July 1 to about November 1 in the stream channel immediately downstream from his diversion works a rectangular sharp crested weir with crest length of 12 inches, and shall divert water only when water is flowing over the weir at a depth of at least 1½ inches, or shall provide other water measuring facilities satisfactory to the State Water Resources Control Board.

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

Dated: January 6, 1972

KERRY W. MULLIGAN  
Kerry W. Mulligan, Chairman

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

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

W. W. ADAMS  
W. W. Adams, Member