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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23512)
of DAVID W. O'GRADY and CORBETT WOLFE)
to Appropriate From Magnolia Creek in)
Nevada County)

Decision 1402

DECISION APPROVING APPLICATION IN PART

Messrs. David W. O'Grady and Corbett Wolfe having filed Application 23512 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 23512 is for a permit to appropriate six acre-feet per annum (afa) by storage to be collected from November 1 of each year to May 1 of the succeeding year for recreational and fire protection purposes from Magnolia Creek tributary to Bear River thence Feather River in Nevada County. The point of diversion is to be located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 28, T14N, R8E, MDB&M.

Applicants' Project

2. The applicants have constructed an earth dam 150 feet long and about ten feet high with a freeboard of about five feet. The stated capacity of the reservoir is six acre-feet. The water will be used for recreation at the reservoir and fire protection only.

Protestants

3. South Sutter Water District protested the application on the basis of Permit 14871 (Application 10221) and Permit 11297 (Application 14804). These permits authorize direct diversion at the rate of 475 cfs and storage of 115,000 acre-feet per year in Camp Far West Reservoir located on the Bear River approximately 12 miles downstream from its confluence with Magnolia Creek. The district indicates that its protest may be disregarded and dismissed if the storage season is reduced to the period from November 1 through March 31, and if the applicants agree to release water in favor of the protestant's Camp Far West Reservoir in the event that reservoir does not fill.

Camp Far West Irrigation District protested the application on the basis of riparian rights and use begun prior to 1890. The protest claims that use has been continuous since prior to 1890 and that the quantity used has been approximately 25 cfs plus 15,000 acre-feet per year. During the period from about March 10 to October 1 water is used for irrigation of peaches, walnuts, rice, alfalfa, permanent pasture, and other crops, and for stockwatering and domestic uses.

Robert N. and Elberta J. Cain protested the application on the basis that the proposed diversion would possibly interfere with their water supply during the period from April 15 to October 15. These protestants hold Licenses 1612 (Application 3995) and 5685 (Application 15607) and claim riparian rights. License 1612 allows appropriation of 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 for recreation and stockwatering. License 5685 allows appropriation of (1) 0.14 cubic foot per second by direct diversion from about April 15 to about October 15 for irrigation purposes and (2) 40 afa by storage to be collected from about November 1 of each year to about April 15 of the succeeding year for stockwatering and recreational purposes.

Water Supply

4. Observations made over the past 15 years indicate that Magnolia Creek usually ceases to flow by March 31. From all data and information available, in most years there will be sufficient flow in Magnolia Creek at applicants' point of diversion between November 1 and March 31 both to fill applicants' reservoir and to satisfy the prior rights of protestants. Any permit issued to applicants should provide that in any year in which Camp Far West Reservoir does not fill by **April 15**, water stored in applicants' reservoir during the preceding season must be released to satisfy prior downstream rights.

Existence of Unappropriated Water

5. 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.

6. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 23512 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: Applications 3995, 10221, 14804, 15607, 21559, 22535, and 23512 and all relevant information on file therewith, particularly the report of field investigation made September 1, 1971.

ORDER

IT IS HEREBY ORDERED that Application 23512 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 six acre-feet per annum by storage to be collected from November 1 of each year to March 31 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 State Water Resources Control Board Reserves jurisdiction over this permit for the purpose of conforming the season of diversion to later findings of the Board on prior

applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

3. After the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

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, 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.

10. Permittee shall 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 State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

11. The right to use water for fire protection purposes authorized by this permit is limited to that quantity normally necessary to maintain an adequate reserve for fire protection.

12. Permittee shall install and maintain a staff gage in his reservoir meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoir.

13. Permittee shall supply the staff gage readings on or about November 1 of each year, verified by protestant South Sutter

Water District or its designated representative, to the State Water Resources Control Board.

14. If South Sutter Water District's Camp Far West Reservoir does not fill during the period from November 1 of each year to April 15 of the succeeding year, permittee shall release the quantity of water stored during the preceding storage season, November 1 to March 31, but not exceeding the amount by which Camp Far West Reservoir did not fill. The water stored by permittee shall be deemed to be the water in storage in the reservoir on March 31 less the amount in storage on the previous November 1.

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

Dated: **August 3, 1972**

ABSENT

W. W. Adams, Chairman

E. F. DIBBLE

E. F. Dibble, Vice Chairman

RONALD B. ROBIE

Ronald B. Robie, Member

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member