

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 21459  
of Green Gulch Ranch, Inc., and  
Application 23962 of W. S. Lindquist  
and R. L. Kennedy to Appropriate  
from Balls Creek and South Creek,  
Respectively, in Sierra County.

Decision 1444

DECISION DENYING APPLICATION 21459 AND  
APPROVING APPLICATION 23962 IN PART

BY BOARD VICE CHAIRMAN ROBIE AND MEMBER AUER:

Green Gulch Ranch, Inc., having filed Application 21459 and W. S. Lindquist and R. L. Kennedy having filed Application 23962 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held on a common record with contests of proofs of claims filed in the Long Valley Creek Adjudication before the State Water Resources Control Board on February 2, 1973 and continued on March 26, 1973; 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 Applications

- 1.(a) Application 21459 is for a permit to appropriate 5 cubic feet per second (cfs) by direct diversion from March 1

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to September 30 of each year for irrigation purposes from Balls Creek in Sierra County. The point of diversion is to be located within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 24, T21N, R17E, MDB&M.

At the time of the hearing the applicant amended the applications to request a permit to appropriate 2 cfs at such times as the flow in the creek is 8 cfs or higher (Vol. 1, RT 113).

(b) Application 23962 is for a permit to appropriate 19 acre-feet per annum (afa) by storage to be collected from September 15 of each year to March 1 of the succeeding year for irrigation, domestic and stockwatering purposes from South Creek in Sierra County. The points of diversion are to be located within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 36 and the SW $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 25, T21N, R17E, MDB&M.

#### The Applicants' Projects

2. Application 21459 does not involve any construction. The purpose of this application is to obtain authority to divert water from Balls Creek in addition to applicant's decreed right (Evans v. Flagg, et al., Superior Court, Sierra County, No. 2809). Existing facilities would be used.

Application 23962 covers an offstream reservoir approximately 2.5 miles above the South Creek-Long Valley Creek junction which was constructed in the year 1950 (Vol. 1, RT 6, 7). It has a capacity of 19 acre-feet. The water stored has been used as a supplemental supply for irrigation of 291.6 acres of pasture. Water is also released into ditches to provide stockwater and there is some incidental recreational use at the reservoir (Vol. 1, RT 8, 9).

## Protests

3. Application 21459 was protested by Saralegui Land and Livestock Company, Fred Galeppi, Edith Evans and the California Department of Fish and Game.

Edith Evans, whose lands are immediately below the applicant, claims riparian and pre-1914 appropriative rights and rights under the aforementioned decree to waters from Balls Creek. She contends that during the irrigation season there is insufficient water in the creek to meet her needs (Vol. 1, RT 126, 127). Saralegui Land and Livestock Company, approximately 18 miles below the applicant, claims pre-1914 and riparian rights to water from Long Valley Creek for irrigation and stockwatering. It claims that there has not been sufficient water in Long Valley Creek to meet its needs (Vol. 2, RT 96).

Fred Galeppi, whose lands are approximately five miles below Saralegui Land and Livestock Company, did not appear at the hearing in support of his protest. The protest of the Department of Fish and Game was withdrawn following the hearing on February 2, 1973.

4. Application 23962 was protested by Green Gulch Ranch, Inc., claiming riparian, prescriptive and appropriative rights and rights under the aforementioned decree. It claims that uses under these and other vested rights require all the flow in Balls Creek during the irrigation season.

### Availability of Water for Application 21459

5. Protestant Edith Evans' rights, which have been confirmed by court decree, will be adequately protected if

diversions are limited to times, if and when, the flow in Balls Creek is 8 cfs or higher (Vol. 1, RT 111-113).

6. Protestant Saralegui Land and Livestock Company has ample water during the months of March and April (RT 98). However, it has a late irrigation season as adobe soil in that area holds the winter moisture well (RT 100).

7. John M. and Ruth B. Matley filed proofs of claim in the pending Long Valley Creek Adjudication (Nos. 146, 147) claiming riparian and pre-1914 appropriative rights for irrigation of 483 acres, stockwatering and domestic use from March 1 to October 31. They divert through the Roland-Matley-Hall ditch which diverts water from Long Valley Creek approximately two miles below Fred Galeppi.

The Matleys appeared at the hearing on Application 21459 and were recognized as protestants. During the period 1962 to 1969, when Eugene Roland owned their ranch, in only two years was there sufficient water for his needs (Vol. 2, RT 65). In a normal year he would divert all of the water in the creek after the end of March (Vol. 2, RT 71). During the irrigation season in a normal year any diversion upstream interfered with the irrigation of the ranch (Vol. 2, RT 77).

8. Philip S. Hall and Anna Wood filed proofs of claim in the pending Long Valley Creek Adjudication (Nos. 39, 44) claiming pre-1914 appropriative and riparian rights for domestic and stockwatering purposes and for the irrigation of 237 acres. Their irrigation season is from March 1 to September 30. They divert through the Hall levee ditch and through the Roland-Matley-Hall Long Valley ditch mentioned above. Mr. Hall appeared at the

hearing on Application 21459 and was recognized as a protestant. In nine out of ten years there has been no water surplus to his needs during the irrigation season (Vol. 2, RT 85, 90).

9. Gilbert R. and Donna P. Azevedo, the lowermost diverters from Long Valley Creek, filed proofs of claim Nos. 167 and 168 in the Long Valley Creek Adjudication. They divert from Long Valley Creek through Azevedo-Garnier ditch under claimed riparian and pre-1914 appropriative rights for the irrigation of 537 acres. When Eugene Roland was irrigating the Matley ranch very little water went past him for the benefit of the Azevedos or any of the other users below (Vol. 2, RT 73, 74).

10. While the flows of Long Valley Creek are augmented by hot springs rising on Saralegui Land and Livestock Company, the flows of Balls Creek are necessary to cool the spring water so that it can be used for irrigation (Vol. 2, RT 96). There is no water in Long Valley Creek for the lower diverters unless there are substantial flows in Balls Creek (Vol. 2, RT 77, 78).

11. In a normal year the irrigation season in the Long Valley-Balls Creek area commences around the first of April (Vol. 2, RT 93, 94). However, water is applied to the land as early as March or in early February in extremely dry years. This irrigation, or pre-irrigation, is to increase the soil moisture to a maximum in the growing season when it appears there will be a short water supply later on in the spring (Staff Exh. 2, Report on Water Supply and Use of Water, Long Valley Creek Stream System, Long Valley Creek Adjudication, page 20). The early months of the diversion season requested by Application 21459

are within the local irrigation season and all available water is necessary to satisfy present vested rights in most years.

Availability of Water for Application 23952

12. A summary of the monthly Department of Water Resources records of Long Valley Creek near Doyle (1957-58 through 1968-69) shows large quantities of water during the winter months in excess of the requirements of the protestant and other holders of prior rights (Vol. 1, RT 9, 10). This is acknowledged by the protestant (Vol. 1, RT 13).

However, any permit issued pursuant to Application 23962 should have the diversion season limited to the period when there is no use of water from Long Valley Creek for irrigation purposes. Tables 1 and 2 of Staff Exhibit 2 show the records of the dates of killing frosts of three stations in the Long Valley Creek area which indicate the irrigation season. These tables show that the earliest date in the fall when water may be available would be about October 1 and would not usually be required for irrigation prior to the March 1 termination date requested in the application. Accordingly, Application 23962 should be approved for the amount of water requested but limited to a diversion season from October 1 to March 1.

Existence of Unappropriated Water

13. There may be rare occasions when water surplus to downstream rights is available to Green Gulch, Inc., under Application 21459 for short periods which could make the irrigation of the ranch more convenient. However, to allow water to be diverted for convenience on rare occasions would tend to encourage dependence on this supply which in turn would encourage the applicant to divert at unauthorized times. The proposed

point of diversion is far upstream from the points of diversion of the holders of prior vested downstream rights that are most likely to be injured. This would make it difficult for them to protect rights from any unauthorized diversion. Without close supervision, such as watermaster service, it is very likely that water would be diverted at unauthorized times. The insignificant amount of water that might be available at times when it could be beneficially used and the likelihood of unauthorized diversions, either intentional or unintentional, constitute a basis for a finding of no unappropriated water at all.

Unappropriated water is available to supply the applicants under Application 23962 and, subject to suitable conditions, the water may be diverted and used in a manner proposed without causing substantial injury to any lawful user of water.

14. The intended use proposed by Application 23962 is beneficial.

15. All environmental reviews required in compliance with the California Environmental Quality Act of 1970 have been completed.

From the foregoing findings, the Board concludes that Application 21459 should be denied and that Application 23962 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.

#### ORDER

IT IS HEREBY ORDERED that Application 21459 be denied.

IT IS FURTHER ORDERED that Application 23962 be 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 19 acre-feet per annum by storage to be collected from October 1 of each year to March 1 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 5.23 cubic feet per second.

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 amount authorized for appropriation may be reduced in the license if investigation warrants.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1976.

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

5. All rights and privileges under this permit and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water

and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreato-phytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

6. 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.

7. 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.

Dated: December 19, 1974

We Concur:

RONALD B. ROBIE  
Ronald B. Robie  
Vice Chairman

W. W. ADAMS  
W. W. Adams, Chairman

MRS. CARL H. (JEAN) AUER  
Mrs. Carl H. (Jean) Auer  
Member

ROY E. DODSON  
Roy E. Dodson, Member

W. DON MAUGHAN  
W. Don Maughan, Member