

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 26031	)	Decision: 1580
PARKER POLLOCK, ET. AL.	)	Source: Unnamed Stream
Applicant	)	County: Shasta
JOHN WHITSON	)	
Protestant	)	

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DECISION APPROVING APPLICATION 26031

BY THE BOARD:

Parker and Linda Pollock having filed Application 26031 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestant 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 stipulations; the Board having considered all available information, finds as follows:

Substance of the Application

1. Application 26031 is for a permit to collect 15 acre-feet per annum (afa) to storage from November 1 to April 1 from an unnamed stream tributary to Glendenning Creek thence Old Cow Creek for irrigation, stock-watering, and recreation. Water will be collected at a point within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 8, T32N, R1E, MDB&M.

Applicant's Project

2. The applicant proposes to construct a 24-foot high earth fill dam 300 feet long. This dam will form a 15 acre-foot reservoir with a surface

area of two acres. This appropriation will supplement water received from the Grindlay-Williams Ditch for irrigating 12 acres of pasture and watering 60 head of livestock. The reservoir will also be used to regulate water obtained from the Grindlay-Williams Ditch under rights granted to applicant's predecessor in the Cow Creek Adjudication, No. 38577 entered by the Shasta County Superior Court in 1969. The Ditch enters the Pollock property on a ridge adjacent to the stream on which the reservoir is to be built. A short ditch lateral would be constructed which would at times convey a portion of the water into the reservoir for regulation.

#### Protest

3. John Whitson protested Application 26031 on the basis of injury to his vested rights. He contends that the source of water is the Grindlay-Williams Ditch. Mr. Whitson would agree to dismiss his protest if he could use water from the Grindlay-Williams Ditch.

4. The determination of what rights, if any, that Mr. Whitson and certain other property owners in the area have to water flowing in the Grindlay-Williams Ditch during the irrigation season is currently before the Board as referee for the Superior Court, Shasta County, in an action in which applicant is plaintiff and protestant is a defendant (Pollock v. Frankel, et. al. No. 38577 Shasta County Superior Court). Pertinent Board findings set forth in its Draft of Report of Referee adopted in June 1981 are that Pollock continues to have an irrigation right to water in the ditch and that Whitson does not have a right to water in the ditch.

5. The issue currently before the court is concerned with the diversion of water from Cow Creek via the Grindlay-Williams Ditch for use during the irrigation season. Application 26031 is concerned with the collection to storage of winter runoff from a local watershed. The concession

sought by Mr. Whitson is simply unrelated to issues properly considered by the Board in acting on this application. Whitson's rights to Grindlay-Williams Ditch water will be determined by the court in the current litigation.

#### Availability of Unappropriated Water

6. Applicant's project will be constructed in a different watershed than the one where the protestant's property lies. The area tributary to applicant's proposed reservoir is in excess of 40 acres and will normally produce winter runoff of more than one acre-foot per acre. Stream flow records on Glendenning Creek and Cow Creek, to which the source stream is tributary, show ample unappropriated water during the collection season requested in Application 26031. The storage of water on the unnamed stream will not injure any vested water right held by protestant or others located downstream from applicant's project.

#### Environmental Considerations

7. This Board decision authorizes a project which constitutes only a minor modification to land, water and vegetation, and such projects are thereby exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq.) in accordance with Section 15104; Chapter 3, Title 14, California Administrative Code.

#### Record in this Matter

8. The records, documents and information used in deciding this matter are: Application 26031, and all information on file therein, especially the Engineering Staff Analysis of Record Dated August 24, 1981; topographic maps published by the United States Geological Survey (USGS) covering the area under consideration; the 1969 Cow Creek Adjudication; the record in Shasta County Superior Court Case No. 38577 referred to the Board as referee; and all relevant information on file therein.

Conclusion and Recommendation

9. From the foregoing, the Board concludes that water is available which can be stored and used without causing injury to downstream users, and that Application 26031 should be approved and that 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 26031 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (5i, 6, 10, 11, 12, and 13)\* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 15 acre feet per annum to be collected from November 1 of each year to April 1 of the succeeding year.

2. Construction work shall begin within two years of the date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

3. Said construction work shall be completed by December 1, 1984. Complete application of the water to the authorized use shall be made by December 1, 1985.

4. Rights under this permit are, and shall be subject to existing rights determined by the Cow Creek Adjudication, Superior Court, Shasta County, No. 38577 and as said rights may be modified by the court in Case No. 38577, Pollock v. Frankel et. al., and such other rights as may presently exist.

\*The Board keeps a list of standard permit terms. Copies of these are obtainable upon request.

5. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to the results of a comprehensive analysis of the availability of unappropriated water in the Sacramento River Basin. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing.

6. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

7. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water. The Board shall advise permittee of the probability of imminent curtailment of diversions as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Central Valley Project or the State Water Project operators. The Board shall notify the permittee of curtailment of diversion when it finds that no water is available for diversion under this permit.

For the purpose of initially determining supplemental Project water required for inbasin entitlements, the following definitions shall apply:

a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows

required by the Board for maintenance of water quality and fish and wildlife. Export diversion and Project carriage water are specifically excluded from the definition of inbasin entitlements.

b. Supplemental Project water is defined as water imported to the basin by the Projects, and water released from Project storage, which is in excess of water required for Project export and Project inbasin deliveries.

Notice of curtailment of diversion under this term shall not be issued by the Board until:

1) Project operators jointly develop and demonstrate to the Board a reasonably accurate method of calculating supplemental Project water.

2) The Board has approved the method of calculating supplemental Project water and has confirmed the definitions of inbasin entitlements and supplemental Project water after public hearing.

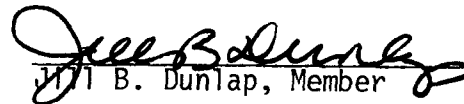
3) The Project operators have notified the Board that the release of supplemental Project water is imminent or has occurred. Such notice should include the times and amounts of releases or potential releases.

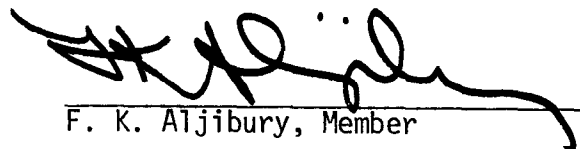
4) The Board finds that supplemental Project water has been released or will be released.

Dated: October 15, 1981

  
Carla M. Bard, Chairwoman

  
L. L. Mitchell, Vice-Chairman

  
J. B. Dunlap, Member

  
F. K. Atjibury, Member

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