

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23945 )  
and 23946, and Petitions to Change )  
Application 23945 and License 4334 )  
(Application 11881) )  
WILLIAM P. AND ROBERT L. WALLACE )  
DBA WALLACE BROTHERS )  
Applicant and Petitioner )

Decision: 1590  
Source: Reclamation  
District No. 2047  
Main Drain Canal  
County: Colusa

DECISION APPROVING APPLICATIONS 23945 AND 23946, AND PETITIONS  
TO CHANGE APPLICATION 23945 AND LICENSED APPLICATION 11881

BY THE BOARD:

William P. and Robert L. Wallace dba Wallace Brothers having filed Applications 23945 and 23946 for permits to appropriate unappropriated water; protests having been received; a hearing having been held; petitions for change having been filed; protests having been resolved; the Board having considered all available information, finds as follows:

Substance of Applications 23945 and 23946

1. Applicants propose under each of the two applications to divert 17 cubic feet per second (cfs) from RD 2047 Main Drain Canal (aka Colusa Basin Drainage Canal) for irrigation purposes. Application 23945 is limited to 4100 acre-feet per annum (afa) to irrigate a net area of 852 acres owned by applicant. Application 23946 is limited to 6600 afa for a net area of 1883 acres leased by applicant. The diversion season for both applications

is from April 1 to June 30 and September 1 to September 30. The applications have a common point of diversion within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 6, T14N, R1W, MDB&M.\*

Substance of Petition to Change Application 23945

2. The proposed change to Application 23945 is the addition of a second point of diversion on the west bank of the canal (currently the point allowed under licensed Application 11881), directly across from the existing point on the east bank, and a change in the place of use to 852 acres net within a gross area of 1458 acres. The location of the new point of diversion is within the NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 6, T14N, R1W. There is no change in source or increase in appropriation. The new point of diversion would allow irrigation of the land lying west of the canal.

Substance of Petition to Change Licensed Application 11881

3. It is proposed under licensed Application 11881 to change the point of diversion from the old point on the west bank of the canal to a point directly opposite on the east bank. The authorized place of use consists of 206.3 acres lying west of the canal. It is also proposed to change the place of use to a net 206.3 acres within a gross area of 1458 acres. The location of the new point of diversion is within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 6, T14N, R1W. There is no change in source or increase in appropriation. Approval of the petition would permit irrigating land on both sides of the canal. The license allows diversion of 13 cfs from about April 15 to October 1 of each year.

Applicants' Project

4. The applicants' project is located about 30 miles north of Knights Landing and about 10 miles south of Colusa within the flood plain of the Sacramento River. The canal is an artificial channel constructed by

\*All references to Township and Range indicate Mount Diablo Base and Meridian (MDB&M).

Reclamation District 2047, in the 1920's, to collect and convey irrigation drainage flows. It originates near Willows and flows in a southerly direction for about 70 miles to Knights Landing where it empties into the Sacramento River through controlled gates or into the Knights Landing Ridge Cut which leads to the Yolo Bypass. Wallace Brothers irrigate a total of 2,735 acres, both owned and leased.

### Protests

5. Applications 23945 and 23946 were protested by numerous appropriators represented by Knights Landing Ridge Cut Water Users and Drainage Association, by Reclamation District 108 and by H. H. Balsdon as an individual protestant. The protests were based on injury to vested rights due to insufficient water to satisfy all prior rights. At the hearing on October 18, 1977, the applicants and protestants entered into a stipulated agreement and the protests were withdrawn. The agreement, signed by representatives of the above protestants, requires the applicants to cease diverting when notified by one of the protestants that insufficient water exists in the canal. Protests against the petitions to change were not accepted since the protestants' dismissal conditions had already been met.

### Availability of Water

6. During the irrigation season the U. S. Bureau of Reclamation (Bureau) and Glenn-Colusa Irrigation District divert water from the Sacramento River for irrigation purposes. Return flow enters the Colusa Basin Drainage Canal (Canal) and is available for diversion and use on lands adjacent to the Canal. Nearly all of the flow in the Canal is return flow or operating waste from use upstream, such as large areas planted in rice

with resultant high return flow (Staff Exhibit 1). The Canal outlet to Sacramento River is controlled at Knights Landing to allow sufficient water to flow through Knights Landing Ridge Cut into Yolo Bypass to satisfy demands of users on that channel. The flow at the Knights Landing Outfall Gates has been measured by the Department of Water Resources and is published in Bulletins 23 and 130. Applicants' Exhibit 12 shows that for the period 1965 through 1975 during the months of April, May, June, and September water is physically present to supply the applications at least 86 percent of the time. The applicants' Exhibits 5 and 10 indicate the same thing in bar chart form (RT 22 and 23). During July and August there is no water available for appropriation in the Sacramento River and Delta to which the Canal is tributary. The flows in the Canal and Ridge Cut are usually adequate to supply requirements of all the diverters throughout each irrigation season except occasionally in April when rice checks are being filled.

#### Environmental Considerations

7. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et. seq.) and the State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

#### Discussion

8. The Board is the plaintiff in the litigation against the Wallace Brothers alleging illegal diversion of water during the drought in July and August of 1977. Wallace Brothers claimed they were

taking water from the canal under riparian rights and/or prescriptive rights. The California Supreme Court's decision in People vs. Shirokow, 26 Cal. 3d 301 (1980) made it clear that one cannot acquire prescriptive rights against the State for diversions initiated after 1914 as is the case here. It is also extremely unlikely that a riparian right exists to take water from the Canal during the mid-summer months since almost all the flow during that time is foreign (imported) water to which riparian rights do not attach.

9. The 2047 Drain Water Users Association is currently negotiating with the Bureau for a supplemental supply from Shasta Dam in July and August. This water would not be supplied directly to Wallace Brothers and other members of the Association through the canal since the Bureau has no conduits capable of getting the water there. Rather, the water would be released into the Sacramento River to flow into the Sacramento-San Joaquin Delta in exchange for water diverted from the Canal.

10. Prior to the Reclamation Reform Act of 1982, Wallace Brothers could not have obtained a satisfactory contract with the Bureau because they own more than 160 acres. The Reclamation Reform Act of 1982 increases the acreage limit to 960 acres and should make it possible to obtain a contract. Wallace Brothers have agreed to contract for an interim supply of water for July and August with Yuba County Water Agency (YCWA) or elsewhere, pending negotiation of a contract with the Bureau. YCWA has water available for sale for July and August of this year.

11. Previously, Wallace Brothers had proposed that 34 cfs could be supplied during July and August by wells. No recommendation was made to the Board for a decision on the applications and change petitions pending a showing by Wallace Brothers that they have operational wells capable of producing this supplemental water supply. As discussed above, Wallace Brothers now intend to purchase supplemental water for July and August. Any permits should be strictly conditioned upon the Wallace Brothers providing clear evidence to the Board that all diversions not authorized by appropriative permits or licenses are covered by water purchase contracts for the full amount of water diverted.

### Conclusions and Recommendation

12. From the foregoing findings, the Board concludes that water is available which can be appropriated without injury to downstream users, and that Application 23945 and 23946 together with pertinent changes as petitioned should be approved and that permits be issued. The Board also concludes that change petitions on licensed Application 11881 should be approved. The approvals should be subject to the conditions set forth in the order following:

#### ORDER

IT IS HEREBY ORDERED that licensed Application 11881 be amended to change the point of diversion and place of use as requested. It is further ordered that Application 23945, as amended by petition, and Application 23946, be approved and that permits be issued subject to vested rights. Both permits shall contain all applicable standard permit terms (6, 9, 10, 11, 12, 13)\* in addition to the following conditions:

#### Application 23945

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 17 cubic feet per second to be diverted from April 1 to June 30, and September 1 to September 30 of each year. The maximum amount diverted under this permit shall not exceed 4100 acre-feet per year.

#### Application 23946

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 17 cubic feet per second to be diverted from April 1 to June 30, and September 1 to September 30 of each year. The maximum amount diverted under this permit shall not exceed 6600 acre-feet per year.

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

## Both Applications

2. This permit is subject to permittee obtaining an alternate water supply through a purchase contract or use of groundwater for July and August of each year for the place of use specified in this permit. Until a permanent contract for an alternate water supply is signed, permittee shall, prior to March 1 of each year, inform the Board of the source of alternate supply for the following July and August. No water may be diverted under this permit each year until the Board is so notified. If the alternate supply is to be provided by a water purchase exchange contract, the permittee shall, by March 1 of each year, provide the Board a copy of an executed contract covering all diversions from the Canal which are not covered by water right permits or licenses.

3. Permittee shall comply with the following provision which is included in the agreement between permittee, Reclamation District 108, Knights Landing Ridge Cut Water Users and Drainage Association, and H. H. Balsdon as an individual, executed on October 18, 1977:

"Permittee shall cease to divert water under this permit whenever any protestant, who is party to the above agreement, notifies permittee that insufficient water is available to satisfy prior rights. Permittee shall not recommence diverting until notified by the protestant that water is available for appropriation."

4. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue.

5. The equivalent of the continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there be no interference with other vested rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed.

6. 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.

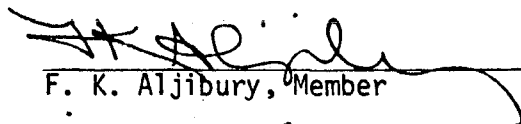
7. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any 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.

8. Permittee shall consult with the Division of Water Rights and the Department of Water Resources and develop and implement a water conservation program or actions. A progress report on development of the program shall be submitted to the Board within six months. The program or proposed actions shall be presented to the Board for approval within one year from the date of this order or such further time as may, for good cause shown, be allowed by the Board.

Dated: February 17, 1983



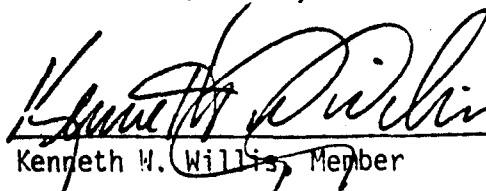
Carole A. Onorato, Chairwoman



F. K. Atjibury, Member



Warren D. Noteware, Member



Kenneth W. Willis, Member