

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23945)	ORDER: WR 83-6
and 23946)	
WILLIAM P. AND ROBERT L. WALLACE)	SOURCE: Reclamation District
dba WALLACE BROTHERS,)	No. 2047 Main Drain
Applicant and Petitioner)	Canal
	COUNTY: Colusa

ORDER DENYING PETITION FOR
RECONSIDERATION OF DECISION 1590

BY THE BOARD:

Applications 23945 and 23946 having been approved by Board Decision 1590 on February 17, 1983; the Board having received a petition for reconsideration and amendment of Decision 1590 from Applicants William P. and Robert L. Wallace dated March 18, 1983; the petition having been duly considered; the Board finds as follows:

Substance of Decision 1590

1. Decision 1590 approved Applications 23945 and 23946 for diversion of a total of 34 cubic feet per second for irrigation of land on both sides of Reclamation District No. 2047 Main Drain (aka Colusa Basin Drainage Canal). The season of diversion under both applications is from April 1 to June 30 and September 1 to September 30. The decision ordered that the permits issued on Applications 23945 and 23946 shall include a number of standard permit terms including Standard Permit Term 90 as set forth in paragraph 7 of the order portion of Decision 1590. The decision

protestants entered into a stipulated agreement and the protests were withdrawn.

5. The Board is the plaintiff in a lawsuit against the Wallace Brothers which seeks to enjoin illegal diversion of water from the Colusa Basin Drainage Canal. It was filed on December 14, 1977, following a staff investigation of a complaint filed with the Board alleging illegal diversion of water. Since 1977, the Wallace Brothers have diverted large amounts of water from the Colusa Basin Drainage Canal during much of the irrigation season, including July and August. A large portion of their diversions were not covered by permit or license and, as discussed in Decision 1590, their diversions could not be justified under riparian or prescriptive rights.

6. Before issuing permits authorizing a "split" season of diversion for irrigation as requested by Applications 23945 and 23946, the Board generally requires evidence of a legally available supplemental source of water on which the applicant intends to rely when water is not available under his appropriative right. This policy is directed at reducing unauthorized diversion of water and at ensuring water is available to complete the irrigation begun under an appropriative permit or license.

7. By letter dated October 1, 1982, the Wallace Brothers' attorney advised the Board of their intentions to contract for a supplemental supply of water to be released into the Sacramento River during July and August in exchange for water diverted from

the Colusa Basin Drainage Canal. This type of exchange contract would protect prior rights in the Sacramento River and Delta and would allow Wallace Brothers to divert from the canal during July and August (providing that prior rights along the canal are satisfied). The applicants are part of a group negotiating for a long-term water supply contract with the Bureau of Reclamation. On an interim basis, however, the applicants' attorney advised they would seek to contract for a supplemental water supply from Yuba County Water Agency or elsewhere.

8. In a letter dated January 5, 1983, the applicants' attorney advised the Board that Yuba County Water Agency would have water available for sale in the coming summer and confirmed that it was his clients "firm intention" to purchase exchange water for July and August of 1983. Having received assurances of the applicants' intentions to secure a legally acceptable supplemental supply of water for July and August, the Board promptly issued Decision 1590 approving Applications 23945 and 23946 on February 17, 1983. The applications were approved subject to a number of permit terms, including Standard Permit Term 90.

9. The Board maintains a list of Standard Permit Terms applicable to various types of situations. Water right permits are issued subject to the applicable permit terms in effect at the time the permits are issued. Since the Board began use of Term 90 nearly three years before the applicants' applications were approved, it is proper to include Term 90 in permits issued on those applications.

10. Section 1375 of the Water Code requires the Board to determine if water is available for appropriation before issuing a permit. The availability of water varies considerably from year to year. Inclusion of Term 90 in water right permits allows the Board to issue permits to new appropriators while providing specific protection to holders of prior rights. This policy promotes the constitutional mandate that the waters of the state shall be put to maximum beneficial use. (Calif. Const., Art. XIV, Sec. 3).

11. Use of Standard Permit Term 90 is a reasonable exercise of the Board's statutory authority under Section 1253 of the Water Code which authorizes the Board to allow appropriations of unappropriated water "under such terms and conditions as in its judgment will best develop, conserve and utilize in the public interest the water sought to be appropriated."

12. If a permittee's season of diversion were reduced by Board action pursuant to Term 90, a permittee who believed that the Board action was improper could seek judicial review under Section 1360 of the Water Code. Therefore, the assertion that Term 90 deprives the permittee of his day in court is erroneous.

Conclusion

13. Inclusion of Standard Permit Term 90 in the permits issued on Applications 23945 and 23946 is a proper and reasonable exercise of the Board's authority under Sections 1253 and 1375 of the Water Code and Article XIV, Section 3 of the California Constitution.

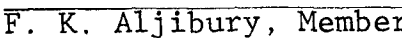
ORDER

NOW, THEREFORE, IT IS ORDERED that the Petition for Reconsideration and Amendment of Decision 1590 is denied.

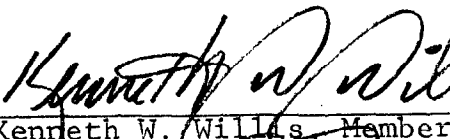
Dated: MAY 4 1983


Carole A. Onorato, Chairwoman

ABSENT


F. K. Aljibury, Member


Warren D. Noteware, Member


Kenneth W. Willis, Member

also approved a petition to change the point of diversion and place of use under licensed Application 11881, but the Board action on Application 11881 is not challenged by the petition for reconsideration.

Substance of Petition for Reconsideration

2. Petitioner requests that the Board remove Permit Term 90 from the permits to be granted on Applications 23945 and 23946. The reasons alleged in the petition are that the Board is not authorized to impose such a term by statute, that the term is unreasonable, and that the term was not adopted until "long after the applications were filed, and until after they should have been permitted".

Term 90

3. Standard Permit Term 90, as set forth in paragraph 7 of the order portion of Decision 1590, reads as follows:

"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."

Term 90 has been included in permits issued in the Sacramento-San Joaquin Delta watershed since April 10, 1980.

Discussion

4. Applications 23945 and 23946 were filed on December 9, 1971. At the hearing on October 18, 1977, the applicants and the