

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19014)
of LAURENCE and MARIE WALTER to)
Appropriate from Bear Creek and an)
Unnamed Gulch Tributary to Bear Creek)
in Calaveras County)

Decision D 1037

ADOPTED SEP 26 '61

DECISION APPROVING APPLICATION IN PART

Laurence and Marie Walter having filed Application 19014 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 19014 is for a permit to appropriate 0.2 cubic foot per second (cfs) by direct diversion from December 1 of each year to April 30 of the following year from Bear Creek and an unnamed gulch tributary to Bear Creek, and 35 acre-feet per annum by storage from Bear Creek and 48 acre-feet per annum by storage from said unnamed gulch, both from October 1 of each year to June 1 of the succeeding year, for irrigation and stockwatering purposes, in Calaveras County.

The points of diversion are to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 21, T4N, R10E, MDB&M.

2. Protests to the application were filed by D. E. and Elizabeth M. Hurley and C. A. and Mary M. Silva based on the apprehension that granting of the application would interfere with prior rights under certain permits and licenses. Protest of D. E. and Elizabeth M. Hurley was withdrawn following an agreement with the applicants.

3. Protestants Silva hold License 5386 confirming a right to divert 1.65 cubic feet per second from March 1 to November 1 of each year at a point located approximately 24.5 miles downstream from the applicants' points of diversion.

4. The only other water users holding licenses or permits to divert from Bear Creek are located below a USGS gaging station which is approximately 19 miles downstream from applicants. The USGS records of the mean daily and monthly flows of Bear Creek at this station for the period 1944 through 1958 show that its flows frequently exceed these rights of record and those of the protestants during most years from December 1 of each year to April 30 of the following year in sufficient quantities to supply the applicants, but that in other months of most years there is no such surplus water.

5. A natural land barrier exists in the stream channel of Bear Creek above the point of diversion of protestants Silva which prevents small flows from reaching downstream diverters.

6. There is unappropriated water available at times to supply the applicants from December 1 of each year to April 30 of the following year, and subject to suitable conditions, such water may be diverted and used in the manner proposed during those times without causing substantial injury to any lawful user of water.

7. There is no unappropriated water available to supply the applicants during the months of May, October, and November.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19014 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 following Order.

The records, documents, and other data relied upon in determining the matter are: Application 19014 and all relevant information on file therewith, particularly the report of the field investigation made June 28, 1960; Board's Decision D 962 in the matter of Application 18305; Decision D 829 in the matter of Application 15102; the files of License 5386 (Application 12341), License 5393 (Application 12426), License 4270 (Application 12660), License 5956 (Application 16486), Permit 12055 (Application 18414); United States Geological Survey Water Supply Papers, Part 11, Pacific Slope Basins in California, 1945 through 1958; United States Geological Survey (USGS) "Bellota" and "Valley Springs" quadrangles, 15-minute series, 1942 and 1956, respectively.

IT IS HEREBY ORDERED that Application 19014 be, and the same 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 amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed a total of 0.2 cubic foot per second by direct diversion from Bear Creek and an unnamed gulch tributary to Bear Creek to be diverted between about December 1 of each year and about April 30 of the succeeding year and 35 acre-feet per annum by storage from Bear Creek and 48 acre-feet per annum by storage from said unnamed gulch to be collected from about December 1 of each year to about April 30 of the succeeding year. The equivalent of the continuous flow allowance of 0.2 cubic foot per second for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before June 1, 1962, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1964.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

6. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights 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 Rights 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. Permittee shall install and maintain an outlet pipe of adequate capacity in each storage dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Rights Board, in order that water entering the reservoirs or collected in the reservoirs during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy the downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

9. This permit does not authorize collection of water to storage during the period from about April 30 to about December 1 of each season to offset evaporation and seepage losses.

10. Permittee shall allow representatives of the State Water Rights 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.

IT IS FURTHER ORDERED that, except to the extent expressly approved, Application 19014 is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member