

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

106

In the Matter of Application 16175  
of Mary V. Lavaggi to Appropriate  
from Mormon Slough in San Joaquin  
County, Application 16448 of  
William C. Sinclair, and  
Application 18208 of Irene M. Dickhaut,  
Edna E. Snyder, and Marion C. Lindsay  
to Appropriate from Calaveras River in  
Calaveras County

Decision D 1065

**ADOPTED FEB 15 '62**

DECISION APPROVING APPLICATIONS IN PART

Applications 16175, 16448, and 18208 for permits to appropriate unappropriated water having been filed; protests having been received; a hearing having been held before the State Water Rights Board on March 7, 1961, in Stockton, California, before Ralph J. McGill, Member; the applicants and protestants having appeared; evidence having been received; Application 13423 of the Stockton and East San Joaquin Water Conservation District, heard at the same time on a consolidated record, being the subject of a separate decision since it would derive nearly all its water supply from a separate source; and the Board, having considered all of the evidence relative to Applications 16175, 16448, and 18208, finds as follows:

1. Application 16175 of Mary V. Lavaggi was filed December 10, 1954, for a permit to appropriate 1.0 cubic foot per second year-round by direct diversion from Mormon Slough for irrigation purposes. The point of diversion is to be within the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 1, T1N, R7E.\* The place of use is within the W $\frac{1}{2}$  of SE $\frac{1}{4}$  of said Section 1 and consists of an existing farm of 80 acres, about half in orchard and half in general crops.

2. Application 16448 of William C. Sinclair was filed July 5, 1955, for a permit to appropriate 0.2 cubic foot per second between May 1 and October 31 of each year by direct diversion from the Calaveras River for irrigation purposes. The point of diversion is to be within the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 32, T3N, R10E. The place of use consists of 16 acres within the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of said Section 32. The applicant claims an unadjudicated riparian right for the place of use but requests a permit in order to receive electric power.

3. Application 18208 of Irene M. Dickhaut, Edna E. Snyder, and Marion C. Lindsay was filed July 7, 1958, for a permit to appropriate 1.0 cubic foot per second by direct diversion between March 1 and December 31 of each year from the Calaveras River for irrigation, domestic, and recreational purposes. The point of diversion is just downstream from that of Application 16448, and the place of use consists of 61.21 acres adjoining on the west and the north the place of use of said Application 16448.

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\*All references to township and range are from Mount Diablo Base and Meridian (MDB&M)

4. The Calaveras River is formed by the junction of its north and south forks about 2 miles west of San Andreas in Calaveras County. From the junction of these two forks, the Calaveras River courses southwest about 7 miles to Hogan Dam and then continues in a southwesterly direction another 7 miles through a narrow canyon where it debouches from the mountains near Jenny Lind at about elevation 300 feet. Here the river turns and flows in a westerly direction about 4 miles to the proposed points of diversion under Applications 16448 and 18208.

The river continues its westerly course another 6.5 miles to a point near Bellota where Mormon Slough diverges. Here control gates permit the regulation and apportionment of the flows of the Calaveras River between Calaveras River and Mormon Slough.

Mormon Slough flows southwest from Bellota, and the point of diversion under Application 16175 is located on this channel 11 miles downstream. Below this point of diversion Mormon Slough continues its southwesterly course another 2 miles where it enters the Stockton Diverting Canal. The latter flows about 5 miles to the northwest and rejoins the Calaveras River just above tidewater on the northerly side of the City of Stockton.

5. The drainage area of the Calaveras River lies below 4,000 feet above sea level, receives nearly all its moisture as rain, and has most of its runoff in the winter and spring months. After March, the flow reduces rapidly and practically ceases during September and October (Staff Exhs. 4 and 5). Unappropriated water

is available too infrequently in Mormon Slough during the months of July, August, September, and October to justify issuance of permits to appropriate water during those months. (Staff Exh. 4).

6. The protest of the Stockton and East San Joaquin Water Conservation District to Application 16175 stated that it could be dismissed upon execution of an appropriate agreement between the District and the applicant. At the hearing the District made it clear that the agreement requested was for this applicant to pay on the same basis as other users for water to be stored behind New Hogan Dam and released down the stream bed for irrigation and other use pursuant to appropriative rights which the District expects to acquire. Subsequent to the hearing this applicant did agree to the aforesaid condition. Notwithstanding adjustment of the District's protest, however, the Board must still consider the extent of availability of unappropriated water and the extent to which it would be beneficially used.

7. Although Application 16175 requests a year-round diversion season, the evidence indicates that neither this applicant nor other persons in this area irrigate during the months of November, December, January, and February.

8. Applications 16448 and 18208 both propose to divert from the same deep pool in the bed of the Calaveras River which is fed by underflow and contains water year-round. Availability of this supply justifies extension of the authorized diversion season for these two applications through October, but not during the nonirrigation season.

9. There is unappropriated water available at the times hereinbefore indicated to supply the applicants, 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.

10. The proposed uses of water described in Applications 16175, 16448, and 18208 are beneficial, and the rates of diversion are reasonable.

From the foregoing findings, the Board concludes that Applications 16175, 16448, and 18208 should be approved in part, and that permits should be issued to the applicants subject to the limitations and conditions in the following Order.

IT IS HEREBY ORDERED that Applications 16175, 16448, and 18208 be, and the same are, approved in part, and that permits be issued to the applicants subject to vested rights and to the limitations and conditions herein set forth, as follows:

1-a. The amount of water to be appropriated under Application 16175 shall not exceed 1.0 cubic foot per second by direct diversion to be diverted between about March 1 and June 30 of each year.

1-b. The amount of water to be appropriated under Application 16448 shall not exceed 0.2 cubic foot per second by direct diversion to be diverted between about May 1 and about October 31 of each year.

1-c. The amount of water to be appropriated under Application 18208 shall not exceed 1.0 cubic foot per second by direct diversion to be diverted between about March 1 and October 31 of each year.

2. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

3. Any rights to appropriate water under the permit issued on Application 16448 shall be inclusive of, and not in addition to, such riparian rights, if any, as the permittee may have with respect to the authorized place of use.

4. The maximum amounts herein stated may be reduced in the licenses if investigation warrants.

5. Actual construction work shall begin on or before September 1, 1962, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, these permits may be revoked.

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

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

8. Permittees 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 the project works to determine compliance with the terms of the permits.

9. 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.

10. All rights and privileges under these permits, 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.

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                      , 1962.

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Kent Silverthorne, Chairman

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Ralph J. McGill, Member

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W. A. Alexander, Member