

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20340)
of Robert R. and Violin M. Smith)
to Appropriate from French Corral)
Creek and an Unnamed Stream)
Tributary to French Corral Creek)
in Nevada County)

Decision D 1103

ADOPTED NOV 21 '62

DECISION APPROVING APPLICATION

Robert R. and Violin M. Smith having filed Application 20340 for a permit to appropriate unappropriated water; protest having been received; the applicants 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 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 20340 is for a permit to appropriate 5,000 gallons per day by direct diversion, year-round, from French Corral Creek and 1.0 acre-foot per annum by storage from November 1 of each year to June 1 of the succeeding year from an unnamed stream tributary to French Corral Creek, in Nevada County, for domestic and stockwatering purposes. The points of diversion are to be located in the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T17N, R7E, MDB&M.

2. The applicants' point of direct diversion is located at a point approximately 2 miles above the confluence of French Corral Creek with the Yuba River. The applicants pump from a pool in the stream to a 20,000-gallon regulatory tank which serves a home, trees and garden, and affords fire protection. This portion of the project covered by the application has been in operation for approximately 15 years.

3. Applicants intend to supplement their supply by constructing an earth-filled dam on an unnamed stream tributary to French Corral Creek which will create a reservoir of 1.0 acre-foot.

4. Protestant James F. Dudley waters approximately 14 head of cattle on land located approximately 2,000 feet downstream from the applicants' point of diversion in French Corral Creek under claimed riparian and possible pre-1914 appropriative rights. He also diverted water for the irrigation of pasture from the creek until his diversion dam was washed out by a flood in 1958. His protest is directed to the direct diversion portion of the application only, and his concern is with possible interference with his supply upon the construction of a new dam by him and the resumption of his prior irrigation use. His present supply is adequate for his present use.

5. On June 13, 1962, the flow of French Corral Creek was approximately 10 gallons per minute at the applicants' point of diversion and approximately 5 gallons per minute through the protestant's property.

6. There is sufficient water in the unnamed stream to satisfy the storage feature of the application during the winter months, flow ceasing in the early spring.

7. The prospect of interference with the protestant's supply at a later date in the event that he reconstructs his diversion facilities is not sufficient justification for the denial of the application. If the protestant has a valid riparian right as claimed, he will be entitled to receive his correlative share of the natural flow of French Corral Creek for the irrigation of his pasture when his dam is rebuilt, unaffected by the permit to be issued to applicants.

8. The sources named in the application are tributary to the Sacramento River in Reach 2 (Knights Landing to Sacramento) by way of the Yuba River, and no unappropriated water exists in this reach of the river during July and August. However, during these months water passing the applicants' point of diversion does not reach the Yuba River.

9. There is unappropriated water available to supply the applicants, and subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

10. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20340 should be approved 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 20340 and all relevant information on file therewith, particularly the report of field investigation made June 13, 1962, and United States Geological Survey "French Corral" 7.5-minute quadrangle.

IT IS HEREBY ORDERED that Application 20340 be, and the same is, approved, 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 appropriated shall be limited to the amount which can be beneficially used and shall not exceed 5,000 gallons per day by direct diversion to be diverted year-round and 1.0 acre-foot per annum by storage to be collected from about November 1 of each year to about June 1 of the succeeding year.

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, 1963, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1965.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1966.

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. 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 project works to determine compliance with the terms of this permit.

9. This permit does not authorize collection of water to storage during the period from about June 1 to about November 1 of each season to offset evaporation and seepage losses or for any other purpose.

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.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member