

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20878 )  
of Rex Sierra Gold Corporation to )  
Appropriate from Oregon Creek )  
Tributary to Middle Yuba River )  
in Sierra County )

Decision D 1160

ADOPTED DEC 19 1963

DECISION APPROVING APPLICATION IN PART

Application 20878 to appropriate unappropriated water having been filed; a protest having been received from Yuba County Water Agency; public hearing having been held before the State Water Rights Board in Downieville, California, on August 15, 1963, conducted by W. A. Alexander, Member; applicant and protestant having appeared and presented evidence; the evidence at said hearing having been duly considered; the Board finds as follows:

1. Application 20878 is for a permit to appropriate 10 cubic feet per second (cfs) by direct diversion, year-round, for mining purposes from Oregon Creek in Sierra County. The point of diversion is to be located within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 33, T19N, R9E, MDB&M.

2. The applicant proposes to divert water from Oregon Creek at a point approximately 10 miles upstream from its confluence with Middle Yuba River. Water will be pumped into a 14-inch pipeline to a regulating reservoir where it will be commingled with water from other sources. Water is released from this reservoir for use at a mill. Water pressure forces ore through a sluice box into the mill. Except for washing the jigs, water is used only as a transporting agent. Below the mill water is collected in a debris pond and is pumped back and reused through the system. Waste material deposited in the debris pond will be removed by mechanical means and placed on the hillside above the debris pond. Slimes collected in the debris pond will be pumped into sludge ponds located at various points along the hillside. Overflow from the debris pond is discharged into Oregon Creek about three-fourths mile downstream from the proposed point of diversion.

3. Protestant has prior pending applications for permits to divert water from Oregon Creek about six miles below applicant's proposed point of diversion. Its major concern is that waste material might be discharged into Oregon Creek which would adversely affect its project.

4. Discharge of water into Oregon Creek from applicant's mill is under the jurisdiction of the Central Valley Regional Water Pollution Control Board. Said Board has adopted certain standards and has ordered applicant to comply therewith. The order of the Water Pollution Control Board is enforceable by injunction

issued by the Superior Court upon petition by the District Attorney or in case he fails to act, by the Attorney General (Water Code Section 13063).

5. So long as the Water Pollution Control Board's requirements are met, protestant agrees that it will suffer no damage (RT 72). Protestant contends that any permit issued to the applicant should be conditioned upon full compliance with the requirements of the Water Pollution Control Board so that upon breach thereof the permit might be revoked (RT 75).

6. There is no evidence that a violation of any one of the requirements imposed by the Water Pollution Control Board would necessarily result in substantial impairment of any right protestant might acquire by virtue of its prior applications. Those requirements were designed to protect the public and not the private rights of protestant. Therefore, a violation should not be cause, per se, for revocation of the permit to be issued to applicant. If violations occur, adequate remedies are provided by law.

7. The applicant entered into an agreement with the California Department of Fish and Game which resulted in the withdrawal of the Department's protest against approval of the application. This agreement provides that the applicant will bypass 12 cfs or the natural flow, whichever is less, during the months of April and May and 8 cfs or the natural flow, whichever is less, during the remaining months of the year.

8. The flow of Oregon Creek at the point of diversion proposed by applicant, as computed from records of the USGS gaging

station near the mouth of the creek, is less than that required to be bypassed for fish from July 1 to November 1. There is sufficient unappropriated water available to satisfy applicant to justify issuance of a permit authorizing diversions from November 1 of each year to July 1 of the succeeding year.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20878 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

#### ORDER

IT IS HEREBY ORDERED that Application 20878 be, and the same is, approved in part, and that a permit be issued to the applicant 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 10 cfs by direct diversion to be diverted from about November 1 of each year to about July 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, 1964, 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, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

6. Progress reports shall be filed promptly by permittee 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, during the months of April and May, bypass a minimum of 12 cubic feet per second or the flow of the stream, whichever is less, and during the remaining months for which diversion is permitted, the permittee shall bypass a minimum of 8 cubic feet per second or the flow of the stream, whichever is less, past the point of diversion to maintain fishlife.

9. 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.

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 \_\_\_\_\_, 1963.

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Kent Silverthorne, Chairman

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Ralph J. McGill, Member

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W. A. Alexander, Member