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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23711 and
Permit 9735 (Application 15559), Zack
and Arla E. Farmer, et al. to Appro-
priate from Rock Creek in Shasta County

Decision 1439

DECISION APPROVING APPLICATION 23711 AND GRANTING
PETITIONS TO CHANGE PURPOSES AND PLACE OF USE
AUTHORIZED BY PERMIT 9735 (APPLICATION 15559)

BY BOARD MEMBER ROBIE:

Zack and Arla E. Farmer, Harve W. and Marguerite H. Jourdan, Joseph C. Stricker, Maxon H. and Rhea J. Montgomery, Orville A. Figgs, Joseph and Florence B. Perry, D. Walter and Catherine Bunting, Donald A. Young and John R. Bunting, having filed Application 23711 for a permit to appropriate unappropriated water and a petition to change the purposes and place of use authorized by Permit 9735; protests having been received; a public hearing having been held before the State Water Resources Control Board on May 15, 1972; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Application

1. Application 23711 is for a permit to appropriate 0.4 cubic foot per second (cfs) and 0.05 cfs by direct diversion from June 1 to October 31, and from November 1 to May 31

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of each year, respectively, for irrigation and domestic purposes from Rock Creek in Shasta County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 16 T30N, R2E, MDB&M.

Applicants' Project and Use of Water

2. The applicants' predecessor constructed a reservoir with a capacity of 188 acre-feet on Rock Creek, a tributary to North Fork Battle Creek, which flows into the Sacramento River. The applicants hold Permit 9735 (Application 15559) covering storage of water in the reservoir for irrigation and domestic use. It was originally planned to pump water from the reservoir into a ditch to irrigate 47 acres of land and furnish a supply for a residence. In order to avoid pumping costs the applicants divert directly from Rock Creek immediately above the reservoir allowing the water to flow by gravity to the place of use. As Permit 9735 does not authorize direct diversion, Application 23711 was filed.

Protestants

3. Protestants Daniel D. and Billie J. Miles divert from Rock Creek through the Hunceker ditch approximately one mile below the applicants' reservoir for irrigation of pasture and domestic, stockwatering, fish propagation and recreational uses under claimed pre-1914 rights. A short distance farther downstream protestants Marcel E. and Leslie H. LaSieze divert

from Rock Creek through the Garnier ditch for substantially the same uses under claim of pre-1914 and riparian rights.

4. The Pacific Gas and Electric Company, hereinafter referred to as "Company", diverts water from North Fork Battle Creek through its Cross Country ditch for electric power generation at its South, Inskip and Coleman plants under claimed pre-1914 appropriative rights.

Protection of the Protestants' Rights During the Summer Months

5. The Company and the applicants have entered into an agreement dated April 27, 1972, providing for the withdrawal of the Company's protest in consideration of the performance of its terms and conditions (Company's Exhibit 1; RT 21, 25). The agreement provides in substance that water will be released from the applicants' reservoir to offset any direct diversion under Application 23711 during the summer months and for the establishment and maintenance of gaging stations. Any permit issued pursuant to Application 23711 should incorporate the terms of the agreement as to matters which lie within the authority of the Board. As the agreement between the Company and the applicants assures that the flows in Rock Creek at the other protestants' points of diversion during the summer months will be the same as they were prior to the construction of the applicants' project, the approval of Application 23711, subject to terms of the agreement, will not result in harm to them during that time.

Protection of the Protestants' Rights During the Winter Months

6. The principal concern of the protestants is with possible interference with their use of water under their prior rights during the summer months. They are also concerned with establishing and maintaining proper gaging stations which has been a source of dispute in the past. No contention was made during the hearing on Application 23711 that there was no surplus water in Rock Creek during the winter season to cover the domestic use features of Application 23711. It is noted that there were no protests to Application 15559 pursuant to which the applicants' predecessors were issued Permit 9735 to divert 188 acre-feet per annum for storage from Rock Creek from November 1 to March 31 for domestic, irrigation and recreational purposes.

Availability of Unappropriated Water

7. Unappropriated water is 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.

8. The intended use is beneficial.

Special Terms Requested by the Bureau of Reclamation

9. In a letter to the Board dated November 2, 1971, the Bureau of Reclamation withheld its protest provided the following terms would be included in any permit issued pursuant to the application:

- a. "Diversion of water under this permit from June 15 to September 1 of each year is allowed only so long as the flow of the stream is augmented by the release of water stored under Permit 9735 or any license issued subsequent thereto by the full amount of water diverted under this permit during said period of June 15 to September 1.
- b. "Permittees shall install and maintain measuring devices satisfactory to the Board in order that accurate measurements can be made of the amounts of water being diverted by the permittees and the quantity of water flowing into and out of said reservoir.
- c. "The State Water Resources Control Board reserves jurisdiction over this permit for the purposes of conforming the season of diversion to later findings of the Board on prior applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing."

The suggested terms are proper and in the public interest and they or terms that are substantitally the same should be included in any permit issued pursuant to Application 23711.

Petitions to Change Purposes and Place of Use Under Permit 9735

10. The applicants have filed petitions to change the purposes of use and the place of use authorized by their Permit 9735. The water stored in the reservoir under the authority of Permit 9735 will not be used for domestic and irrigation purposes at the place of use described by the permit. Instead it will be used for recreation at the reservoir and will be released for streamflow replenishment for the following uses: power, irrigation, domestic, stockwatering, wild-life enhancement and recreation uses. The place of use will be the reservoir, the Company's powerhouse on the South Fork

Battle Creek and on lands served with water from Rock Creek under prior vested rights. The proposed change in purposes and place of use will not result in harm to any lawful user of water and the petitions should be granted.

Environmental Considerations

11. All environmental reviews required in compliance with the California Environmental Quality Act of 1970 have been completed.

From the foregoing findings, the Board concludes as follows:

1. The petitions to change the purposes and place of use under Permit 9735 should be granted.

2. Application 23711 should be approved and a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Application 23711 be, and it is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions.

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.4 cubic foot per second (cfs) by direct diversion from June 1 to October 31 of each year, and 0.05 cfs by direct diversion from November 1 of each year to May 30 of the succeeding year. So long as there is no interference with other rights, junior, as well as senior, permittee may increase his rate of diversion to a maximum of 1.25 cfs provided the total quantity diverted in any 30-day period for irrigation purposes

does not exceed 24 acre-feet and the total quantity diverted in any 7-day period for domestic purposes does not exceed 0.70 acre-foot. The maximum amount diverted under this permit shall not exceed 96 acre-feet per year.

2. The State Water Resources Control Board reserves jurisdiction over this permit for the purpose of conforming the season of diversion to later findings of the Board on prior applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

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

5. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

6. All rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those

contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

7. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which

have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

8. Permittee shall allow representatives of the State Water Resources Control 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. Permittee shall operate the project under this permit and Permit 9735 during the period April 1 through October 31 to insure the flow downstream from the reservoir shall equal or exceed the flow upstream from the point of diversion of this permit less the amount of water taken by J. W. Null from the reservoir by means of an existing pipeline.

10. Permittee shall install and maintain measuring devices and allow other work to be performed as set forth in the agreement between the permittee and Pacific Gas and Electric Company dated April 27, 1972 and also meet any additional requirements of the Board in order that accurate measurements can be made of the quantity of water flowing into and out of said reservoir, said work to be performed, and said devices to be located at the following locations and meeting the following conditions:

- a. A weir and staff gage capable of measuring the summer flow in Rock Creek to be installed upstream from the point of diversion.
- b. A staff gage in the reservoir for the purpose of determining water level in the reservoir above elevation 3178 (spillway elevation = 3200). The seasonal record of staff gage readings made each two weeks commencing on June 15 shall be supplied with the annual progress reports.
- c. The outlet pipe gate shall be calibrated to determine flows at various gate openings and at various stages of head as set forth in the letter of July 13, 1972 addressed to the Board from Pacific Gas and Electric Company.

11. This permit is subject to the agreement dated April 27, 1972 between permittee and Pacific Gas and Electric Company, to the extent such agreement covers matters within the Board's jurisdiction.

IT IS FURTHER ORDERED that the purposes of use authorized by Permit 9735 be changed to recreational use at the reservoir and streamflow replenishment for the following uses: power, irrigation, domestic, stockwatering, wildlife enhancement and recreation.

IT IS FURTHER ORDERED that Permit 9735 be amended to include the following conditions which have become standard since the permit was issued:

1. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. In compliance with Fish and Game Code Section 5943, permittee shall accord to the public, for the purpose of fishing, reasonable right of access to the water impounded by this dam during the open season for the taking of fish, subject to the regulations of the Fish and Game Commission.

3. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

IT IS FURTHER ORDERED that condition 7 of Permit 9735 be amended to read as follows:

All rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water uses as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

IT IS FURTHER ORDERED that the place of use described by Permit 9735 be changed to: the permittee's reservoir within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 16, T30N, R2E, MDB&M, the Pacific Gas and Electric Company's South Powerhouse on South Fork Battle Creek within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 5, T29N, R1E, MDB&M and lands served with water from Rock Creek under prior vested rights.

Dated: September 19, 1974

We Concur:

RONALD B. ROBIE

Ronald B. Robie
Vice Chairman

W. W. ADAMS

W. W. Adams, Chairman

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer,
Member

ABSENT

W. Don Maughan, Member