

EXHIBIT 5

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19136 of)
Joe R. Carmel to Appropriate from)
Moccasin Creek in Tuolumne County)

Decision D 995

ADOPTED MAY 4 '61

DECISION DENYING APPLICATION

Joe R. Carmel having filed Application 19136 for a permit to appropriate unappropriated water; protests having been received; the applicant 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 19136 is for a permit to appropriate 0.125 cubic foot per second from Moccasin Creek in Tuolumne County between May 1 and October 30 of each year for irrigation purposes within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 21, T1S, R15E, MDB&M.
2. The applicant's proposed point of diversion on Moccasin Creek is approximately 2.5 miles below the City and County of San Francisco's Moccasin Creek power plant and approximately 0.5 mile above the confluence of Moccasin Creek with the Tuolumne River. Protestants, Modesto Irrigation District and Turlock Irrigation District, have constructed Don Pedro Dam and La Grange Dam approximately 15 and 19 miles, respectively, downstream from the Moccasin Creek-Tuolumne River confluence.
3. The water in Moccasin Creek during the applicant's proposed diversion season is imported by the City and County of San Francisco

through the Hetch Hetchy Aqueduct from Tuolumne River and runs through the Moccasin Creek power plant. It is released into the creek channel for the benefit of protestant districts as required by the Raker Act (38 Stats. 242).

4. Protestants hold License 2425 (Application 6711) authorizing the diversion of 800 cubic feet per second between February 1 and November 30 of each year from the Tuolumne River at La Grange Dam. Application 6711 was filed specifically for the purpose of appropriating the releases made from Moccasin Creek power plant.

5. More water is being diverted and put to beneficial use under License 2425 during the applicant's proposed diversion season than flows from Moccasin Creek into Tuolumne River.

6. The protestants hold other licenses to appropriate from the Tuolumne River for power purposes at their Don Pedro project which require all the flow of the river from July through October of each year.

7. There is no unappropriated water available to supply applicant after about July 1 of each year. A permit limited to the months of May and June would be of no value to applicant, since his trees could not survive without irrigation after July 1.

From the foregoing findings, the Board concludes that Application 19136 should be denied.

The records, documents, and other data relied upon in determining this matter are: the file of Application 19136 and all relevant information on file therewith, with particular reference to the report of field investigation dated July 18, 1960; the files of Licenses 5420 (Application 1232), 5417 (Application 1233), 5421 (Application 1532), 2580 (Application 3139), 2424 (Application 3648), 2425 (Application 6711), 5418 (Application

9996), and 5419 (Application 9997), and Permits 9318 (Application 13604), 9319 (Application 14126) and 9320 (Application 14127); United States Geological Survey (USGS), Sonora and Merced Falls quadrangles, 15-minute series, dated 1948 and 1954, respectively; USGS Water Supply Papers, "Surface Water Supply of the United States, Part 11, Pacific Slope Basins in California".

IT IS HEREBY ORDERED that Application 19136 be, and the same is, 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