

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the matter of Application 17960
by Jaime and Louise Pereira to ap-
propriate from San Luisito Creek
in San Luis Obispo County

Decision No. D 948

ADOPTED DEC 17 '59

Substance of the Application

Application 17960 filed January 28, 1958, by Jamie and Louise Pereira is for a permit to appropriate 0.45 cubic foot per second to be diverted from April 1 to October 31 of each year from San Luisito Creek tributary to Chorro Creek thence Pacific Ocean for irrigation purposes. The point of diversion is to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, T29S, R11E, MDB&M, as projected into Rancho San Bernardo. Diversion is to be effected by a dam six feet high by 25 feet long in the creek channel and pumping from a pool thereby created at a rate of 500 gallons per minute. The place of use is to consist of 27.14 acres within the S $\frac{1}{2}$ of said projected Section 34.

Protests

Protests against the application were received from Tony E. and Rose Medeiros, Frank and Luella Caligari, the Estate of Teresina Nicola, and California Department of Fish and Game. With the exception of the protest of the Department of Fish and Game, each protestant claims in effect that the

proposed appropriation will deprive him of water sufficient for his needs and that the proposed appropriation is in excess of the applicants' requirements. These protestants claim rights to the use of the water in question for irrigation and domestic purposes by virtue of riparian ownership. The protestants are located on San Luisito Creek downstream from the applicants the following approximate distances:

Estate of Teresina Nicola	0.25 mile
Medeiros	0.5 mile
Caligari	0.5 mile

The California Department of Fish and Game claims that the proposed appropriation will cause destruction of steelhead, property of the State, in that the amount of water to be diverted is greater at times than the known minimum flow of the stream. According to the Department, steelhead are present and reproduce naturally in San Luisito Creek. The Department, basing its claim of right on Section 5937 of the Fish and Game Code*, agrees to withdraw its protest provided the following clause is included in any permit issued pursuant thereto:

"Permittee shall release below the diversion point 5 cfs or the natural flow whichever is less during the period of April 1 through May 31 and 0.5 cfs or the natural flow whichever is less during the period of June 1 through October 31 of each year for the protection of fishlife."

Answer to Protests

The applicants' answer to the protests is to the effect that they have been pumping water from the source for

*"The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam"

the past 11 years without interfering with protestants' rights or use of water; that they desire only to appropriate water which in the absence of their operations would waste into the ocean; that the purpose of the application is to protect their rights against subsequent appropriators; that their diversion works have in the past been examined by representatives of the Department of Fish and Game and no objection thereto was registered by that Department.

Field Investigation

Applicants and protestants, with the approval of the State Water Rights Board, stipulated to the proceedings in lieu of hearing as provided for under Section 737 of the Board's rules, and a field investigation was conducted on September 24, 1958, by A. N. Webb, an engineer of the Board. Applicants and protestants were present or represented at the investigation.

Records Relied Upon

Records relied upon in support of this decision are Application 17960, and all relevant information on file therewith with particular reference to the report of the aforementioned field investigation; USGS quadrangle maps--Cayucos 15-minute series, edition of 1951, and San Luis Obispo 15-minute series, edition of 1952; State Water Resources Board, Bulletin No. 18, "San Luis Obispo County Investigation", dated May 1958; and United States Weather Bureau, Climatological Data - California, with particular reference to records of precipitation recorded at San Luis Obispo.

Source of Supply

San Luisito Creek rises on the western slope of the Santa Lucia range within Section 28, T29S, R12E, MDB&M, at about elevation 2,000 feet and flows southwesterly for about eight miles to its confluence with Chorro Creek. The watershed is gently rolling foothill land and has a sparse-to-moderate covering of brush. About seven square miles of drainage area lie above the applicants' point of diversion. A small, intermittent tributary joins the source from the north between applicants' and protestants' points of diversion.

Water Supply

No continuous records of discharge of San Luisito Creek for the April through October season are available. The aforementioned Bulletin No. 18 reports that the occurrence of runoff of San Luisito Creek follows the regimen of precipitation. Seasonal precipitation observed at San Luis Obispo occurs in the following average amounts (Mean annual precipitation for this station is 21.27 inches for the 89 years of record):

April	1.49 inches
May	0.52
June	0.12
July	0.01
August	0.03
September	0.20
October	<u>0.88</u>

Total 3.25 inches

On September 24, 1958, the flow of San Luisito Creek was 2.15 cubic feet per second at the applicants' and at the Nicolas' points of diversion and was 2.1 cubic feet per second at Caligaris' points of diversion. The parties reported to

the investigating engineer that these flows were slightly more than normally occur during September. This assertion is borne out by the occurrence of precipitation recorded at San Luis Obispo during September 1958, to the extent of 0.75 inch in excess of normal. The parties further reported that the normal low flow of the source may be expected to be some 1.5 cubic feet per second; that July and August constitute the low flow period of the year, and that the source rarely has gone dry in the reach between applicants' point of diversion and its confluence with Chorro Creek. Protestant Caligari stated that he had been without water on only two occasions since 1945. Observations of flow of San Luisito Creek were also made on May 15, 1958, by an engineer of the Board in connection with the investigation of two downstream applications to appropriate from the source (Applications 17917 and 17923) at which time a flow near the confluence with Chorro Creek was 8.6 cubic feet per second.

An interview with Manuel F. Andre, holder of Permit 11489 (Application 17917), the lowermost appropriator of record on San Luisito Creek, disclosed that he has ample water for his needs during years of normal supply and that even during dry years he could operate by use of a small regulatory dam on the creek.

Use of Water and Rights Thereto

The applicants' diversion works have been in operation for the past eleven years and are used to flood-irrigate about 23 acres of sweet peas and sugar beets. At times a portable

pumping installation is used to supply a sprinkler system. The topography of applicants' lands is such that any drainage waters will return to San Luisito Creek upstream from protestants.

Protestant Nicolas' project consists of a pump installation used to irrigate some 13 acres of land.

Protestants Caligaris' project consists of two pump installations used to irrigate about 22 acres of sugar beets and sweet peas.

Protestants Medeiros' project consists of a deep well serving about eight acres of land. Although currently not using water from the creek, they contemplate that about three acres of land will be served when a reach of the creek abutting their lands is realigned to accommodate changes in State Highway No. 1.

Rosa E. Silva is the holder of Permit 11488 (Application 17923) and is authorized to divert 0.15 cubic foot per second from San Luisito Creek at a point located between protestants Caligari and Medeiros. Mrs. Silva irrigates 10.31 acres of general crops. Water has been used on her property since prior to 1926.

Manuel F. and Maria S. Andre, the lowermost known diverters from San Luisito Creek, are the holders of Permit 11489 (Application 17917) and are authorized to divert 0.1 cubic foot per second for the irrigation of seven acres of general crops. Water has been used on their property since prior to 1936.

The staff field engineer reports that the land of each of the afore-mentioned parties are contiguous to San Luisito Creek, and there appears to be no basis to question the claim of riparian rights as advanced by the protestants.

Position of the Department of Fish and Game

A written statement submitted by a representative of the Department of Fish and Game at the September 24, 1958, field investigation alleges that San Luisito Creek contributes to the supply of Chorro Creek which in turn is the access route for steelhead; that in the vicinity of applicants' project the channel of San Luisito Creek is a perennial stream providing spawning and nursery grounds for steelhead. At the investigation, the Department's representative stated that the afore-mentioned Applications 17917 and 17923 were not protested because they involve a reach of San Luisito Creek which does not have perennial flow.

Summary and Conclusions

According to the foregoing information, the land irrigated from San Luisito Creek, downstream from the applicant is as follows:

Protestant Nicolas	13 acres
Protestant Caligari	22 acres
Protestant Medeiros	3 acres
Permittee Silva	10.31 acres
Permittee Andre	<u>7 acres</u>
Total	55.31 acres

The permit issued to Rosa E. Silva allows a duty of water equal to approximately 1 cfs for 69 acres; the duty of

water under the permit issued to Manuel F. Andre et ux. is approximately 1 cfs to 70 acres. Assuming that the riparian owners would require about the same duty, say 1 cfs to 69 acres, the quantity necessary to irrigate 55.31 acres would, on a continuous flow basis, be about 0.8 cubic foot per second.

As previously stated, the normal low flow of San Luisito Creek in the vicinity of Applicant Pereira is reported to be about 1.5 cfs. On the basis of present downstream requirements being about 0.8 cfs, it would appear that there is, normally, unappropriated water available in the source for the applicant's use, and that Application 17960 should be approved. In view of the fact that the applicant has been diverting from the stream for the past 11 years and that he assertedly does not intend to materially change his operation over that followed in the past, any specific provision for bypass of water for the maintenance of fish life as requested by the Department of Fish and Game does not appear justified.

As to the question of the duty of water under Application 17960, it is noted that the Board has already approved two applications on this source on the basis of a duty of 1 cfs to 69 acres and 1 cfs to 70 acres. On a duty of 1 cfs to 69 acres, Applicant Pereira would require about 0.4 cfs for the 27.14 acres. In view of the relatively small difference between the amount applied for and the amount required under an assumed duty equal to that allowed Silva and Andre no reduction at this time seems appropriate. Any necessary reduction can be made if and when the project proceeds to license action.

The evidence indicates and the Board finds that unappropriated water exists at times in the source named in Application 17960 and that such water may be taken and used in the manner proposed by the applicant during such time without injury to downstream water users holding prior vested rights. It is, therefore, the conclusion of the Board that Application 17960 should be approved and that a permit should be issued to the applicant subject to the usual terms and conditions.

Order

Application 17960 for a permit to appropriate unappropriated water having been filed, protests against the approval thereof having been received, applicants and protestants having submitted stipulations to the proceedings in lieu of hearing as provided for under Section 737 of the Board's rules, an investigation having been held by the Board, and the Board having considered all of the available information and now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17960 be and the same is hereby approved, and it is ordered that a permit be issued to the applicants subject to vested rights and the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.45 cubic foot per second to be diverted from about April 1 to about October 31 of each year.

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.

2. The maximum amount herein stated may be reduced in the license if the investigation so warrants.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1962, and if not so completed this permit may be revoked.

4. 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.

5. All rights and privileges under this permit, including 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 _____, California, on this _____ day of _____, 1959.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member