

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 17083,)
18058, 19210, and 19211 of Coastside)
County Water District to Appropriate)
from Frenchman, Pilarcitos, Mills,)
and Purisima Creeks, and Arroyo Leon)
in San Mateo County)

Decision D 1064

ADOPTED FEB 9 '62

DECISION APPROVING APPLICATIONS

Coastside County Water District having filed Applications 17083, 18058, 19210, and 19211 to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Rights Board in Redwood City, California, on December 9 and 10, 1959, and April 6 and 7, 1961, Chairman Kent Silverthorne presiding; the applicant and protestants having been duly notified of said hearing; all evidence received at said hearing having been duly considered, the Board finds as follows:

1. Application 17083, filed May 10, 1956, is for a permit to appropriate 10,960 acre-feet per annum (afa) by storage between November 1 of each year and May 1 of the succeeding year for irrigation and domestic purposes from Frenchman Creek (2,450 afa), Pilarcitos Creek (2,010 afa), Mills Creek (2,550 afa), Arroyo Leon (1,200 afa), and Purisima Creek (2,750 afa) in San Mateo County.

A petition dated March 1, 1960, was subsequently filed to change the point of diversion on Arroyo Leon to a point upstream with a view to abandoning the storage site on Arroyo Leon and diverting the water from that source into an enlarged Mills Creek Reservoir. Points of diversion as amended by said petition are to be located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 8, T5S, R5W; SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 11, T5S, R5W; NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 34, T5S, R5W; SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 36, T5S, R5W; and SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 2, T6S, R5W, respectively, MDB&M.

2. Application 18058, filed March 21, 1958, is a duplicate of Application 17083 except that it is an application for a permit for municipal and domestic purposes.

3. Application 19210, filed February 2, 1960, is for a permit to appropriate 4,400 acre-feet per annum by storage between November 1 of each year and May 1 of the succeeding year for domestic and municipal purposes from Frenchman Creek (850 afa), Mills Creek (800 afa), and Purisima Creek (2,750 afa) in San Mateo County. The points of diversion are to be located as described in Applications 17083 and 18058 for the corresponding sources.

4. Application 19211 filed February 2, 1960, is a duplicate of Application 19210 except that it is for a permit for domestic and irrigation purposes.

5. Stream flow records are available only for Purisima Creek and limited to the period from October 1958 through September 1959. During this period the runoff of Purisima Creek totaled 901 acre-feet. Independent estimates of the runoff of the streams at the proposed points of diversion by engineers representing the

applicant and the protestants based upon rainfall studies are as follows:

<u>Stream</u>	<u>Estimate of Applicant's Engineer (acre-feet)</u>	<u>Estimate of Protestants' Engineers (acre-feet)</u>
Frenchman Creek	2,400	----
Pilarcitos Creek	950	----
Mills Creek	2,500	1,000 - 1,400
Arroyo Leon	970	----
Purissima Creek	4,100	4,000 - 4,500

6. A detailed study of prior downstream rights has not been made by the applicant. However, water occurs in the sources during the applicant's diversion season in excess of the quantities required to satisfy present downstream uses. The applicant is on notice of the existence of prior downstream rights and has acknowledged its duty to operate its project so as not to interfere with the same. There has been no showing made by the protestants claiming riparian and pre-1914 rights that storage as proposed by the applicant during the season from November 1 of each year to May 1 of the following year necessarily will result in interference with their claimed rights.

7. There is unappropriated water available to supply the applicant, 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. The intended uses are beneficial.

8. Apart from the question of the existence of unappropriated water, protestants have objected to the granting of the applications for the reason that the applicant has allegedly shown no definite plan to proceed with the construction of other than the Pilarcitos Creek unit of the proposed project. They contend that approval of the applications as they relate to Frenchman, Mills, and Purisima Creeks and Arroyo Leon would constitute a reservation of water for use in the indefinite future by the applicant and create an impediment to local water development as well as cause unjustifiable hardship to property owners within the reservoir sites by making it difficult for them to transfer or develop their property.

9. Applicant's representatives testified that they intend to proceed immediately with the filing of an application for a loan to construct these project units with the Federal Government under the provisions of the Small Reclamation Projects Act of 1956 and to proceed immediately with construction upon approval of same. There is a present need for irrigation water in the area. The uncontroverted testimony of the applicant's engineer given at the hearing was that approximately two-thirds of the land lying between Frenchman and Purisima Creeks is now unproductive because of lack of water and that this area can be served by the applicant's project. Some of the protestants stated at that time that they were short of water during the summer months for agricultural purposes.

In order to secure a Federal loan under the small Reclamation Projects Act, the applicant must show in its proposal that it has or can acquire rights pursuant to State law to the water

necessary for the successful construction and operation of the project (Title 43, USCA, Sec. 422(d)). Due to this requirement the Board's action on these applications cannot fairly be withheld until the prospective loan is approved or denied.

10. There is no showing that water to be developed by applicant's project, other than the Pilarcitos Unit, will be required for domestic or municipal use within the near future. However, demands for such uses from any of these units at any particular time will be dependent upon future population growth patterns which cannot presently be foreseen. The water covered by Applications 18058 and 19210 for municipal and domestic uses is the same water as that which will be appropriated under Applications 17083 and 19211 for irrigation and domestic purposes. Separate applications were filed for irrigation and municipal purposes in order to conform to the Board's rules at the time, which required separate filings. It is in the public interest that the District be able to supply its future requirements for either irrigation, domestic, or municipal use. No prejudice to other users will result from approving the municipal applications subject to the condition that the quantity of water to be appropriated under them will be included in and not in addition to the water appropriated pursuant to the irrigation applications.

11. In view of the uncertainties attendant upon construction of the Frenchman, Mills, Purisima, and Arroyo Leon Units of applicant's project, the permits to be issued should require submission to the Board of semi-annual progress reports. There should be a further requirement that no extension of time within which to commence or complete construction of these portions of permittee's project shall be granted except after notice to protestants of record and an opportunity for them to be heard.

12. Protestant California Department of Fish and Game and the applicant entered into a stipulation for withdrawal of the Department's protest provided that any permit issued to the applicant contain a provision requiring the permittee to maintain a flow of 1.0 cubic foot per second between the storage dam and the point of rediversion on Purisima Creek during the period between November 1 of each year and May 1 of the succeeding year and that the natural flow of the stream be bypassed at the storage dam during the period May 2 through October 31 of each year.

Purisima Creek has a resident population of rainbow and brown trout and is considered to be one of the better small fishing streams in San Mateo County. The proposed conditions are necessary to protect the existing fishery resources of Purisima Creek, and they should be included in permits to be issued to the applicant.

13. Decision D 903 adopted by the Board on May 14, 1958, approved Application 16498 of the District to appropriate 1.5 cfs from Pilarcitos Creek by direct diversion from November 1 of each year to May 31 of the succeeding year at a point a short distance

upstream from the site of the proposed reservoir described in these applications. In order to afford protection to prior rights, the decision limited diversions by the District to such times as there is surface flow in Pilarcitos Creek immediately above its confluence with Arroyo Leon at Half Moon Bay and at the existing dam near the northerly boundary of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 14, T5S, R5W, MDB&M. A similar limitation should be imposed in permits pursuant to these applications.

14. The proposed change in point of diversion on Arroyo Leon as requested by petition dated March 1, 1960, will not operate to the injury of any legal user of the water involved and should be allowed.

From the foregoing findings, the Board concludes that Applications 17083 and 18058 as amended by petition dated March 1, 1960, and Applications 19210 and 19211 should be approved, and that permits should be issued to the applicant, subject to the limitations and conditions set forth in the following Order.

IT IS HEREBY ORDERED that Applications 17083 and 18058 as amended by petition dated March 1, 1960, and Applications 19210 and 19211 be, and the same are, approved, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions.

1. The amount of water to be appropriated under permits issued pursuant to Applications 17083 and 18058 shall be limited to the amount which can be beneficially used and shall not exceed a total under both permits of 10,960 acre-feet per annum (afa) by

storage to be collected from about November 1 of each year to about May 1 of the succeeding year from Frenchman Creek (2,450 afa), Pilarcitos Creek (2,010 afa), Mills Creek (2,550 afa), Arroyo Leon (1,200 afa), and Purisima Creek (2,750 afa).

2. The amount of water to be appropriated under permits issued pursuant to Applications 19210 and 19211 shall be limited to the amount which can be beneficially used and shall not exceed a total under both permits of 4,400 acre-feet per annum by storage to be collected from about November 1 of each year to about May 1 of the succeeding year from Frenchman Creek (850 afa), Mills Creek (800 afa), and Purisima Creek (2,750 afa).

3. The maximum amounts herein stated may be reduced in the licenses if investigation warrants.

4. 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, these permits may be revoked.

5. Said construction work shall be completed on or before December 1, 1965.

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

7. Permittee shall submit to the State Water Rights Board semi-annual reports of progress on the Frenchman, Mills, and Purisima Creeks, and Arroyo Leon portions of its project during the period allowed for commencement of construction, the first of said reports becoming due six months from the date the permits are

issued. No extension of time within which to commence or complete construction of these portions of permittee's project shall be granted except after notice to protestants of record and an opportunity for them to be heard.

8. Permittee shall maintain a flow of 1.0 cubic foot per second in Purisima Creek between the storage dam and the point of rediversion during the period from November 1 of each year to May 1 of the succeeding year and shall bypass the natural flow of the stream at the storage dam from May 2 to October 31 of each year for the maintenance of fish life.

9. Collection of water to storage in Pilarcitos Reservoir shall be limited to such times as a surface flow exists in Pilarcitos Creek immediately above its confluence with Arroyo Leon at Half Moon Bay and at the existing dam near the northerly boundary of the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 14, T5S, R5W, MDB&M.

10. All rights and privileges under these permits, 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 method of use, or unreasonable method of diversion of water.

11. Permittee shall clear the sites of the proposed reservoirs of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

12. A separate application for approval of plans and specifications for construction of the dams described in these approved applications shall be filed with and approved by the Department of Water Resources prior to commencement of construction of said dams.

13. Permittee shall install and maintain suitable measuring devices as follows:

(a) Upstream from the high water elevation of its reservoirs, and

(b) Immediately below its storage dams, in order that accurate measurements can be made of the quantity of water flowing into and out of said reservoirs.

14. These permits do not authorize collection of water to storage during the period from about May 1 to about October 31 of each year to offset evaporation and seepage losses or for any other purpose.

15. Permittee shall install and maintain outlet pipes of adequate capacity in its dams as near as practicable to the bottom of the natural stream channels or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoirs and collected in the reservoirs during and after the current storage season may be released into the downstream channels to the extent necessary to satisfy the downstream prior rights and/or to the extent the appropriation of water is not authorized under these permits.

16. 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 these permits.

It is further ordered in accordance with petition filed March 1, 1960, that the point of diversion of water on Arroyo Leon be changed to the following described point and that Applications 17083 and 18058 be amended accordingly: N30°E - 600 feet from SW corner of Section 36, T5S, R5W, MDB&M, being within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 36.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held in Sacramento, California, the 9th day of February, 1962.

Kent Silverthorne, Chairman

Ralph J. McGill, Member