

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

ADOPTED SEP 26 '62

In the Matter of Application 19632 of )  
Henry W. and Azalea M. Milo to Appropriate )  
from Bear Creek in El Dorado County )

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Decision D 1098

DECISION APPROVING APPLICATION IN PART

Henry W. and Azalea M. Milo having filed Application 19632 for a permit to appropriate unappropriated water; protests having been received; the applicants 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 19632 is for a permit to appropriate 0.25 cubic foot per second (cfs) by direct diversion from February 1 to November 30 of each year for domestic, irrigation, and stockwatering purposes from Bear Creek in El Dorado County. The point of diversion is to be located within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 20, T12N, R11E, MDB&M.

2. The applicants' point of diversion is located at a diversion dam constructed by them on the upper reaches of Bear Creek, from which point Bear Creek flows approximately 5 miles to join Rock Creek. From this junction Rock Creek continues

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approximately 2.5 miles to join the South Fork American River. Protestants diverting under claimed riparian and pre-1914 appropriative rights for domestic use and for the irrigation of small plots are located on Bear Creek at points between 2 and 3 miles below the applicants' point of diversion.

3. On July 3, 1961, when the flow of Bear Creek was between 25 and 75 percent of normal for that time of year, its flow at a point just above the applicants' point of diversion was 0.2 cfs. On that date the applicants were diverting virtually all the flow of Bear Creek, and there was sufficient water from accretions to the stream between the applicants' and protestants' points of diversion to supply the needs of the protestants.

4. The applicants have been diverting from Bear Creek for the past 10 years during which time the protestants of record have not experienced a shortage of water, and the project described in Application 19632 does not involve any additional works or new use of water. However, the Board in previous decisions has found that there is no unappropriated water available in the American River watershed, within which Bear Creek is located, during the months of August, September, and October, and that there is no unappropriated water during the months of July and August in the reach of the Sacramento River to which the American River is tributary. There has been no change in circumstances in either case since said decisions which would justify a contrary finding.

5. There is unappropriated water available to supply the applicants from about February 1 to about July 1 and from about November 1 to about November 30 of each year, 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. There is no unappropriated water to supply the applicants from about July 1 to about November 1.

6. The intended uses are beneficial.

7. The applicants state in their answer to the protests filed against their application that the water that is applied for is the same amount of water which has been used under claim of riparian right continuously since before 1900. No increase in use is proposed. The permit to be issued should contain a term to the effect that the water to be diverted under authority of the permit shall not be in addition to water diverted by virtue of any riparian or other right held by the permittees.

From the foregoing findings, the Board concludes that Application 19632 should be approved in part and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 19632 and all relevant information on file therewith, particularly the report of the field investigation made July 3, 1961; United States Geological Survey, Georgetown Quadrangle, 15-minute series dated 1949;

State Department of Public Works, Division of Water Resources, Bulletin No. 56, "Survey of Mountainous Areas," dated September 1955; and United States Weather Bureau "Climatological Data, California," annual and monthly summaries; Decisions D 893 and D 990 of State Water Rights Board; USBR Exhibits 164 and 164-A; and "Report on 1956 Cooperative Study Program," Volumes I and II and supplements.

IT IS HEREBY ORDERED that Application 19632 be, and the same is, approved in part, and that a permit be issued to the applicants 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 0.25 cubic foot per second by direct diversion to be diverted from about February 1 to about July 1 and from about November 1 to about November 30 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. Rights acquired under this permit shall not be in addition to such riparian or other right, if any, as permittees may have to the use of water of Bear Creek.

3. The maximum amount 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, 1964.

5. 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.

6. 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.

7. Permittee shall allow representative 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                      , 1962.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member