

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20712  
of Martin W. and Mizpah E. Miller  
to Appropriate from Neds Gulch in  
Calaveras County

Decision D 1168

ADOPTED FEB 17 1964

DECISION APPROVING APPLICATION

Martin W. and Mizpah E. Miller having filed Application 20712 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 20712 is for a permit to appropriate 5.5 acre-feet per annum by storage from November 1 of each year to March 31 of the succeeding year for recreational purposes from Neds Gulch in Calaveras County. The points of diversion are to be located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 9, T4N, R14E, MDB&M.
2. The applicants have constructed an earth dam, designated as (1) in their application, in the streambed of Neds

Gulch approximately 20 feet in height and 80 feet in length forming a reservoir of a capacity of approximately 5 acre-feet. This dam has a 12-inch outlet pipe installed at the bottom of the stream channel.

They also propose to construct another dam, designated as (2) in their application, just downstream from the dam now constructed. This dam is to consist of concrete abutments and removable flashboards and will form a reservoir with a capacity of about 0.5 acre-foot.

The uppermost dam is located approximately 0.25 mile above the point where Neds Gulch enters San Antonio Creek. The reservoirs will be used for swimming and fishing, and no water will be diverted from the stream.

3. Protestant Letora diverts from San Antonio Creek at two points, the lowermost point being approximately 3.0 miles downstream from the Neds Gulch-San Antonio Creek confluence. He diverts for the irrigation of 80 acres, domestic use at one house, and for stockwatering purposes under claim of riparian, pre-1914 appropriative, and prescriptive rights.

4. The watershed area above protestant Letora's lowermost point of diversion constitutes approximately 65 per cent of the total watershed above a USGS gaging station located approximately 2 miles upstream from the mouth of San Antonio Creek, while only 4 per cent of the watershed area above the gage is above the applicants' lowermost point of diversion. With this in view, the records of the gaging station for the period of record, 1950-59, show that

during the applicants' proposed diversion season the average monthly flows of San Antonio Creek at the protestant's lower diversion point are such that the applicants' project will result in no injury to this protestant.

5. Protestants California Youth Authority and Hengen Brothers have agreed to withdraw their protests on condition that the season specified in any permit issued be from November 1 of each year to March 31 of the following year and the purpose of use be limited to recreation. As the amended application contains this diversion season and purpose, these protests can now be disregarded.

6. There is unappropriated water 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20712 should be approved 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 20712 and all relevant information on file therewith, particularly the memorandum of the field investigation made on May 21, 1963; United States Geological Survey Water Supply Papers, Part 11, "Pacific Slope Basins," for the water years 1950-51 to 1958-59; United States Geological Survey "Murphys" and "Stanislaus" 7.5-minute quadrangles, and "Blue Mountain" 15-minute quadrangle.

ORDER

IT IS HEREBY ORDERED that Application 20712 be, and the same is, approved 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 5.0 acre-feet per annum by storage to be impounded by dam (1) and 0.5 acre-foot per annum by storage to be impounded by dam (2), for a total of 5.5 acre-feet per annum, to be collected from about November 1 of each year to about March 31 of the succeeding year.

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

3. Actual construction work on dam (2) shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked insofar as it relates to dam (2).

4. Construction work shall be completed on or before December 1, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

6. 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.

7. 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.

8. Permittee's right under this permit extends only to water necessary to keep the reservoirs filled by replacing evaporation and seepage losses and to refill if emptied for necessary maintenance and repair.

9. 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 this permit.

10. This permit does not authorize collection of water to storage during the period from about March 31 to about November 1 of each season to offset evaporation and seepage losses or for any other purpose.

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                   , 1964.

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 Kent Silverthorne, Chairman

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 Ralph J. McGill, Member

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 W. A. Alexander, Member