

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19919
of Norval and Letha Miles to
Appropriate from an Unnamed Stream
Tributary to Lindsay Creek
in Humboldt County

Decision D 1145

ADOPTED AUG 26 1963

DECISION APPROVING APPLICATION

Norval and Letha Miles having filed Application 19919 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 19919 is for a permit to appropriate 0.12 cubic foot per second (cfs) by direct diversion year-round and 10 acre-feet per annum by storage from November 1 of each year to April 30 of the succeeding year for domestic and irrigation purposes from an unnamed stream in Humboldt County. The points of diversion are to be located within the $SE\frac{1}{4}$ of $NW\frac{1}{4}$, Section 24, and $SW\frac{1}{4}$ of $NE\frac{1}{4}$, Section 23, T7N, R1E, HB&M.

2. The applicants propose to divert directly from the unnamed stream at moveable points of diversion and to impound the flows of the stream by an earth dam with a capacity of

10 acre-feet in order to furnish water for an 18-home subdivision which is to be developed on 9 acres of presently idle land. The irrigation use will be confined to watering of shrubs and lawns not to exceed one-half acre on each parcel of land.

3. The unnamed stream flows year-round at the applicants' points of diversion. On July 19, 1961, the date of the field investigation, its flow at a point near where the stream leaves the applicants' property was 0.11 cfs.

4. Protestant Dean B. Mather owns approximately 3,400 acres of land located approximately one-half mile below the applicants' property. A portion of his land is traversed by Lindsay Creek, to which the unnamed stream is tributary. The protestant waters approximately 150 head of cattle from the creek under claim of riparian and pre-1914 appropriative rights.

5. The flow of Lindsay Creek at a point near where the creek enters the protestant's property was 0.28 cfs on July 19, 1961. There is no shortage of water for stock on the protestant's property, and there would be no shortage if the contribution from the unnamed stream was eliminated.

6. The protestant is apprehensive that if the application is approved there will not be a sufficient supply of water to meet the needs of his lands should he subdivide in the future. A prospective use under riparian right is not a sufficient basis to deny a present application to appropriate water. Any pre-1914 appropriative right the protestant may have is measured by his past use, and there is water surplus to his past use which is subject to appropriation.

7. There is no merit in the protestant's contention that the amount of water applied for is excessive in relation to the normal demands of a project such as contemplated by the applicants. The applicants' estimated requirements are reasonable and consistent with experience and the Board's rules.

8. Humboldt Bay Municipal Utility District holds Permits 11714 and 11715 for its Ruth Reservoir project on the Mad River which authorizes a direct diversion of 200 cfs in a reach of the Mad River located approximately 1/2 mile below the point where Lindsay Creek enters the river. A protest filed by the District against Application 19919 was withdrawn in reliance on a finding by the Board that the appropriation sought thereunder will not interfere with the rights of the District on Mad River.

9. Board's Decision D 1086 adopted on June 26, 1962, approving Application 19466 to appropriate from Hobart Creek, found that a substantial amount of unappropriated water occurs year-round in the Mad River beyond the quantity sought to be appropriated by the applicant. There has been no change in circumstances since that decision which would warrant a different finding at the present time.

10. 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.

11. The intended use is beneficial.

12. Applicants' land is contiguous to the source, and they claim a riparian right to the use of water therefrom, but

said claimed right has not been established by court decree. The permit should provide that upon a judicial determination that the land or a portion thereof is entitled to the use of water by riparian right the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

From the foregoing findings, the Board concludes that Application 19919 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 19919 and all relevant information on file therewith, particularly the report of the field investigation made July 19, 1961; the evidence received at the hearing on August 1, 1961, on Application 19466, the USGS "Arcata North, 1959," 7½-minute quad sheet and USGS Water Supply Papers covering the Mad River watershed.

ORDER

IT IS HEREBY ORDERED that Application 19919 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

0.12 cubic foot per second by direct diversion to be diverted year-round and 10 acre-feet per annum by storage to be collected from about November 1 of each year to about April 30 of the succeeding 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 investigation warrants.

3. Actual construction work 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.

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 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.

9. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

10. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this day of 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member