

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

ADOPTED JUL 27 1966

In the Matter of Application 21969  
of Zelma B. Knight to Appropriate  
from Unnamed Tributaries of Pegleg  
Creek in Mariposa County

Decision D 1252

DECISION APPROVING APPLICATION IN PART

Zelma B. Knight having filed Application 21969 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Rights Board on August 18, 1965, conducted by Board Members Kent Silverthorne, Chairman, and Ralph J. McGill; the applicant and protest Chowchilla Water District (herein called the District) having appeared and presented evidence; the evidence at the hearing having been duly considered, the Board finds as follows:

1. Application 21969 is for a permit to appropriate 0.5 cubic foot per second (cfs) by direct diversion from March 1 to July 1 of each year and 35 acre-feet per annum (afa) by storage from November 1 of each year to July 31 of the succeeding year for irrigation, stockwatering, recreational and fire protection purposes from two unnamed creeks tributary to Pegleg Creek, thence West Fork Chowchilla River, in Mariposa County. The point of diversion is to be located within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 20, T5S, R19E, MDB&M.

2. Applicant now holds Permit 12337, issued on Application 19065, which authorizes collection to storage of 15 acre-feet per annum between November 1 and April 30 of the succeeding year, and direct diversion of 0.25 cfs between March 1 and July 31 for stockwatering, fish culture, fire protection, and irrigation uses. Water is diverted from one of the unnamed creeks to storage in a reservoir on the other creek. Applicant has developed between one and two acres of garden and orchard and about ten acres of irrigated pasture and plans to develop another ten acres of pasture. Applicant's storage reservoir was built to a capacity of about 37 acre-feet, instead of 15 acre-feet as originally planned (RT 40). Application 21969 was filed for the additional storage. No enlargement of the diversion and storage facilities is planned.

3. Applicant is located about 30 miles upstream from the site of the proposed 150,000 acre-foot capacity Buchanan Reservoir. A few miles farther downstream is the terminus of the Madera Canal, by which protestant District receives, under contract with the U. S. Bureau of Reclamation, up to 55,000 afa of Class 1 water and 160,000 afa of Class 2 water from Friant Dam on the San Joaquin River.

4. The District's protest to a large measure is based upon its Permit 9136, issued on Application 13175, which authorizes the year-round diversion of 600 cfs for irrigation and domestic use in an area of about 60,000 acres. Without taking Buchanan Reservoir into consideration, beneficial use

of water under Permit 9136 is not sufficient to bar approval of the Knight application. The District's manager testified that in the spring months very often there is a flood, with peak flows that might run to 5,000 or 10,000 cfs. He also testified that the District does not always divert the full 600 cfs when it is available. As an example, he stated that agriculture in the valley doesn't use as much water in January and February as in other months (RT 49).

According to the U-1 study of the Corps of Engineers (Prot. Exh. 1), under pre-Buchanan conditions an average of 18,400 afa of Chowchilla River water flows unused through the District. This study makes the assumption that the Chowchilla District has diverted to beneficial use 600 cfs to the extent that monthly averages show the water to be available.

5. The District's pending Application 18732 for storage in the proposed Buchanan Reservoir is also relied on by the District as supporting its position that there is and will be no unappropriated water available for the applicant. However, it is not clear when Buchanan Reservoir will be built. It has been authorized by Congress for construction by the U. S. Army Corps of Engineers primarily for flood prevention, but no money has been appropriated as yet. The water conservation features of the project will apparently be operated by the U. S. Bureau of Reclamation under its own pending Application 18714. The Bureau of Reclamation did not protest the subject application. The District made no showing that it intends to

construct the reservoir. Under these circumstances, the possible construction and operation of Buchanan Reservoir is not a sufficient ground for denial of the Knight application.

6. Unappropriated water is available in the storage season between November 1 and the following March 31, but is not available for the requested direct diversion. However, no additional direct diversion is needed by applicant. Subject to suitable conditions, water may be diverted to storage 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 21969 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

#### ORDER

IT IS HEREBY ORDERED that Application 21969 be, and it is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 35 acre-feet per annum by storage to be collected from November 1 of each year to March 31 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

2. The total quantity of water to be appropriated to storage under this permit and under Permit 12337 (Application 19065) shall not exceed 37 acre-feet per annum.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Construction work shall be completed on or before December 1, 1968.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1969.

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.

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                      1966.

/s/ Kent Silverthorne  
Kent Silverthorne, Chairman

/s/ Ralph J. McGill  
Ralph J. McGill, Member

/s/ W. A. Alexander  
W. A. Alexander, Member