

Mr. Page

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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In the matter of Application 17198) Source: Butano Creek
by Manuel J. Mello) County: San Mateo

Decision No. D 880

Decided: January 3, 1958

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In attendance at investigation conducted by the staff
of the State Water Rights Board on August 15, 1957:

Manuel J. Mello	Applicant
Francis N. Foley	Attorney for Protestants
John Dias, Sr.	Protestant
John Dias, Jr.	Protestant
Thelma A. Keyes	Protestant
Wallace Keyes	Husband of Thelma A. Keyes
R. R. Forsberg	Assistant Hydraulic Engineer representing State Water Rights Board

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DECISION

Substance of the Application

Application 17198, filed July 24, 1956, is for a permit
to appropriate 7 acre-feet per annum by offstream storage, to be
collected between December 1 of each year and June 30 of the suc-
ceeding year, from Butano Creek tributary to Pacific Ocean via

Pescadero Creek in San Mateo County, for irrigation purposes.

The maximum rate of diversion to offstream storage is not to exceed 200 gallons per minute. Diversion is to be effected at a point within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 14, T8S, R5W, MDB&M by means of pumping from a sump in the unobstructed channel of Butano Creek into a 6-inch welded steel pipe, 200 feet in length, which discharges into an offstream reservoir of a capacity of 7 acre-feet and a surface area of one acre. A storage dam 5 feet high by 300 feet long is to be constructed of earth. Included within the place of use are 6 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$, 24 acres within NW $\frac{1}{4}$ of SE $\frac{1}{4}$, 6 acres within SW $\frac{1}{4}$ of SE $\frac{1}{4}$, and 2 acres within SE $\frac{1}{4}$ of SW $\frac{1}{4}$, all in Section 14, T8S, R5W, MDB&M. According to the application the irrigation season is to extend from about April 1 to about November 15 of each year.

The application as originally filed also proposed direct diversion of 0.5 cubic foot per second from Butano Creek between April 1 and November 15 of each year. This portion of the application was subsequently withdrawn by the applicant by letter dated March 13, 1957.

Protests and Answers

Protests against Application 17198 were received from:

- (1) John Dias, Sr., John Dias, Jr., and Noel Dias
- (2) Thelma A. Keyes
- (3) California Department of Fish and Game

John Dias, Sr., John Dias, Jr., and Noel Dias claim riparian rights to divert from Butano Creek and protest the proposed appropriation upon the ground that injury will result to

them during the irrigation season as they claim the supply of water is not sufficient to meet their needs and the needs of other downstream riparian owners. These protestants claim that water from Butano Creek has been used on their riparian lands for about 30 years for irrigation and domestic purposes, and that during the portion of each year that irrigation is necessary they divert up to 650 gallons per minute from the creek. Their points of diversion, according to the protest, are within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 14, and the S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 15, T8S, R5W, MDB&M.

Thelma A. Keyes likewise protests upon the contention that the proposed appropriation will deplete the amount of water in Butano Creek to such an extent that there will be none left during dry periods for use on her lands. She claims that the creek dries up during part of the year and that upper riparian owners have on occasions cut down their use so that she would be able to irrigate. According to the protest, water has been used on her property since about 1864 and is presently used for the irrigation of approximately 75 acres of cultivated crops and 92 acres of pasture land. This protestant's point of diversion is described in the protest as being approximately 3 miles below applicant's property.

California Department of Fish and Game based a protest against Application 17198 on Section 525 of the Fish and Game Code, alleging that steelhead trout would be destroyed as, according to that Department, the amount of water to be diverted is greater than the known minimum flow of the stream at times. However, the protest was subsequently withdrawn upon the condition

which was acceptable to the applicant, that any permit issued will provide as follows:

"Permittee shall release below the diversion point 1/2 c.f.s. or the natural flow, whichever is less, during the period June 1 to December 1; and 3 c.f.s. or the natural flow, whichever is less, in the period December 1 through May 31."

No answer to the protests, other than that of California Department of Fish and Game, is of record.

Field Investigation

The applicant and protestants, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for by Section 737 of the Board's Rules, on August 15, 1957, by an engineer of the Board. The applicant and protestants were duly notified of the investigation and were present or represented.

Records Relied Upon

Application 17198 and all relevant information on file therewith, with particular reference to "Report of Field Investigation" dated September 3, 1957; Pigeon Point and Franklin Point quadrangles, United States Geological Survey, 7½ minute series, 1955; Bulletin No. 1, State Water Resources Board, "Water Resources of California", 1951; Bulletin No. 5, Division of Engineering and Irrigation, "Flow in California Streams", 1923.

Water Supply

Butano Creek heads in the western part of T8S, R3W, MDB&M on the west slope of Butano Ridge of the Coast Range at an

altitude of about 2000 feet. The stream first courses in a northwesterly direction about 5 miles, makes an abrupt turn southward for about one-half mile to a junction with South Fork Butano Creek. From this junction Butano Creek continues in a general southwest-erly direction an additional 3 miles, turns again northwesterly about one-quarter mile above a junction with Little Butano Creek and flows an additional 5 miles to a confluence with Pescadero Creek. Applicant Mello is located on Butano Creek about one and one-half miles below the junction of Butano Creek and Little Butano Creek.

According to the aforementioned "Report of Field Investigation", Butano Creek is also fed from an unnamed stream from the northeast at a point immediately below the applicant's point of diversion and by a spring which drains into Butano Creek from the west at a point about two miles downstream from the applicant's point of diversion and between Protestants Dias' points of diversion and Protestant Keyes' proposed point of diversion.

The watershed above the applicant's point of diversion consists of approximately 17.8 square miles of moderately to steeply sloping hills and mountains. In the upper reaches of Butano Creek the watershed has a heavy covering of brush and trees, while the area in the lower reaches is more open with some trees and brush. Several acres of cultivated land lie adjacent to the creek bed.

Precipitation and runoff records for the Butano Creek area are sparse. According to Plate 3, Bulletin No. 1, State Water Resources Board, "Water Resources of California", the watershed lies within a zone of mean annual precipitation of about

30 inches. Table 151 of Bulletin No. 5, Division of Engineering and Irrigation, "Flow in California Streams", indicates that for the Pescadero Creek Group which includes Butano Creek the mean seasonal runoff is 853 acre-feet per square mile and that the distribution of seasonal runoff by months for the proposed diversion season under Application 17198 is as follows:

December	5.3%	April	4.4%
January	38.1	May	2.3
February	30.5	June	1.5
March	13.2		

During the field investigation on August 15, 1957, an engineer of the State Water Rights Board measured the flow in Butano Creek as follows:

<u>Point of Measurement</u>	<u>Flow</u>
Immediately above applicant's point of diversion	1.8 cfs
Immediately below applicant's point of diversion	1.2 cfs*
Immediately below Protestants Dias' lowest point of diversion	.57 cfs*
Approximately 0.4 miles upstream from Pescadero Road Bridge**	2.5 cfs***

*Applicant's pump and one of Protestants Dias' pumps were in operation.

**Approximately 2.5 miles below applicant's point of diversion.

***Flow estimated.

Applicant's Project

Applicant Mello has installed a centrifugal pump of approximately 250 gallons per minute capacity with which he proposes to pump water from Butano Creek through a 6-inch welded steel pipe, about 200 feet in length, to an offstream storage reservoir located within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 14, T8S, R5W, MDB&M on the west side of the creek. The storage reservoir was estimated

to have a surface area of about 0.75 acre and a capacity of about 7 acre-feet, the dam being of earthfill construction equipped with a 6-inch steel outlet pipe. The applicant's pump is arranged so that water can be pumped from either the direct flow of the creek or from the stored water (riparian rights are claimed by applicant to cover the proposed direct diversion). Water is used for irrigation of 38 acres of land, artichokes being the principal crop.

Use by Protestants

The field investigation on August 15, 1957, revealed that protestants' use of water is substantially in agreement with that described in their protests. However, Protestant Keyes has no permanent diversion works on Butano Creek, the principal source of water being from Pescadero Creek at a point upstream from the Butano Creek junction. Protestant Keyes indicated that Butano Creek is now used as a standby source of water when the flow in Pescadero Creek gets low, but that land is being cleared of greasewood in preparation for pasture on which Butano Creek water will be used. It appears that Protestant Keyes' objections are mainly based on her anticipated future use of water from Butano Creek.

Discussion

Subsequent to the field investigation the attorney for the protestants, in a letter dated August 29, 1957, addressed to the State Water Rights Board, stated that they (the protestants) would "... consent to the application, numbered above (17198) on behalf of Mr. Manuel J. Mello for the storage of 7 acre-feet per annum of water ... provided it is limited to the period of time

between December 1 of each year to February 1 of the succeeding year." In reply the applicant stated that due to high water during those months, it is impossible to have a pump in the creek, furthermore, that in previous years he has lost several pumps, due to high water.

From the available information it appears that the problem requiring solution relates not only to the existence of unappropriated water but that it relates, and more especially, to the time of year during which water may be diverted by the applicant without interference with the exercise of downstream rights. The protestants have indicated that their objection will be satisfied if the applicant diverts to storage during December and/or January only. So severe a restriction upon the applicant appears unnecessary in view of the much longer period during the winter and spring months when supply frequently exceeds demand.

Upon the assumption that the Butano Creek watershed and the Pescadero Creek Group watershed (for which data are available in the Bulletin No. 5 above mentioned) contributes about the same per unit of watershed area and that the monthly distribution of runoff from those watersheds is also approximately the same, the flows reaching the applicant's proposed point of diversion during the diversion season he contemplates should be approximately as follows:

<u>Month</u>	<u>Seasonal runoff per cent</u>	<u>Acre-feet</u>	<u>Cubic-feet per second equivalent continuous flow</u>
December	5.3	804	13.0
January	38.1	5,780	94.2
February	30.5	4,620	83.5
March	13.2	2,000	32.6
April	4.4	670	11.3
May	2.3	350	5.7
June	1.5	230	3.9

The same Bulletin No. 5 indicates that during the month of August the runoff is 0.7% of the mean annual runoff. Upon this basis the flow during August of a normal year is about 106 acre-feet, equivalent to a continuous flow during that month of about 1.7 cubic feet per second. On August 15, 1957, the flow immediately above the applicant's point of diversion was 1.8 cubic feet per second.

The Protestants Dias have indicated that the maximum amount of water diverted by them is about 650 gallons per minute (1.44 cfs) and Protestant Keyes is not using water from Butano Creek at the present time. On August 15, 1957, it was observed that with a flow of only 1.8 cubic feet per second and the applicant and the Protestants Dias diverting from Butano Creek there was still remaining a flow of some 0.57 cubic foot per second. It is apparent then that during years of runoff typical of 1957, diversion under Application 17198 could be made considerably longer than the season requested without interference.

It is recognized that should downstream use of water upon riparian lands increase in the future, conditions may not be favorable to extend as long a season of diversion as that

contemplated. Nevertheless it is well recognized that prospective future use under claim of riparian right is not a bar to approval of an application to appropriate such water as may be available meanwhile.

Conclusions

The information indicates and the Board finds that unappropriated water exists in the source from which the applicant seeks to appropriate and that such water may be taken and used in the manner proposed by the applicant without injury to downstream parties. It is therefore the conclusion of the Board that Application 17198 should be approved and that a permit should be issued to the applicant subject to the usual terms and conditions.

Order

Application 17198 for a permit to appropriate unappropriated water having been filed, protests having been submitted, an investigation having been held by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17198 be, and the same is, hereby approved, and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 7.0 acre-feet per annum to be collected from about December 1 to about June 30 of each season.

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

3. Actual construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

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 by-pass (1) during the period December 1 through May 31 a minimum of 3.0 cubic feet per second or the natural flow of the stream, whichever is less, and (2) during the period June 1 through June 30 a minimum of 0.5 cubic foot per second or the natural flow of the stream, whichever is less, to maintain fish life.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 3rd day of January, 1958.

/s/ Henry Holsinger
Henry Holsinger, Chairman

John B. Evans, Member

/s/ W. P. Rowe
W. P. Rowe, Member