

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 18180
of Milligan Water Users Association
to Appropriate from South Fork
Jackson Creek in Amador County

Decision No. D 976

ADOPTED JUN 30 '60

DECISION APPROVING APPLICATION IN PART

The Milligan Water Users Association having filed Application 18180 for a permit to appropriate unappropriated water; protest having been received; the applicant and protestant 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 18180 is for a permit to appropriate one cubic foot per second by direct diversion from South Fork of Jackson Creek in Amador County between May 1 and November 1 each year and 525 acre-feet per annum to be collected by storage between October 1 of each year and July 1 of the succeeding year for irrigation, recreation, stockwatering and domestic uses. The proposed storage dam would be in Section 16, T6N, R12E, MDB&M, and recreational use would be in the storage reservoir. A dozen downstream points of diversion

or redirection would be used to convey water for irrigation, stockwater, and domestic purposes to 556 acres located within parts of seven sections adjacent to or near the source in T6N, R12E, and T6N, R11E, MDB&M.

2. Applicant does not own the site of its proposed dam and reservoir but for the purpose of acquiring the same and operating its project, it proposes to form a district with the power of eminent domain if a permit is issued on subject application. The Milligan Water Users Association consists of nine individuals, families, or partnerships.

3. The sole protestant to subject application is the Jackson Valley Irrigation District which was organized in 1956 and contains 12,800 acres lying along Jackson Creek in western Amador County. The easterly boundary of Jackson Valley I.D. is about 8 miles westerly and downstream from the westerly boundary of applicant's proposed place of use. When Jackson Valley I.D. is fully developed, it expects to irrigate about 6,000 acres a year and to require a net supply of about 18,000 acre-feet a year for that purpose.

4. Jackson Creek, including the South Fork thereof, ordinarily dries up in June. Various well-established rights and uses on Jackson Creek and recent permits authorizing direct diversion make it clear that after about April 1 of each year there is no unappropriated water in Jackson Creek, and accordingly, applicant's request for direct diversion must be denied. There remains for consideration the question of

the availability of unappropriated water in the source during the storage season and its relation to the Jackson Creek Project of protestant.

5. Under Permits 11589 and 11124 (Applications 12342A and 17605) Jackson Valley Irrigation District is entitled to store 36,000 acre-feet per annum from Jackson Creek as well as divert a considerable quantity by direct diversion. The district is allowed until April 1, 1963, within which to complete construction, and until September 1, 1965, within which to place water to beneficial use. The district's application for a loan pursuant to the Small Reclamation Project Act has been approved, and Congress has made an initial appropriation in connection therewith. Jackson Creek Reservoir will be protestant's only storage reservoir on Jackson Creek. It is to have a storage capacity of 26,000 acre-feet and is expected to produce an annual net yield of about 10,000 acre-feet of water. The project's feasibility report by Kaiser Engineers contains an operation study based on the period 1922 through 1941. The tabulation indicates that in the 20 years included in the study there would be 10 years when there would be unappropriated water as indicated by spill from the reservoir varying from 36,400 acre-feet in 1922-23 to 1700 acre-feet in the water year 1925-26. The tabulation also indicates that there would be seven consecutive years of no spill for the period 1928-29 through 1934-35. There is unappropriated water available in

a sufficient number of years to warrant approval of the application, provided applicant's project is so constructed and operated as to insure the protection of protestant's downstream prior rights. A condition will be added to the permit for that purpose.

6. In approving subject application, the board does not intend in any way to indicate or imply that applicant's project appears to be economically sound and should be constructed. These are matters for applicant's careful consideration, and conceivably, applicant's project might be justified if it places great value on a small supplementary supply. However, the Board believes it to be in the public interest to emphasize certain marginal features of the project before applicant spends money on the formation of a district and construction of the project. Even in a year of ample supply and full use, the project would yield less than one acre-foot per irrigated acre. If the project were operated for a firm yield on the basis of future 7-year dry cycles, the project would yield less than 1/10 of an acre-foot per acre to be irrigated. However, it is also very much in the public interest for unappropriated water to be used beneficially, and the Board in approving subject permit leaves the decision involving economic feasibility to the applicant and its members.

7. There is unappropriated water available to supply the applicant, 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.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 18180 should be approved and that a permit should be issued to the applicant subject to the terms and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 18180 and all relevant information on file therewith, with particular reference to the report of the May 21, 1959, investigation; Permit 11589 (Application 12342A), Permit 11224 (Application 17605), of Jackson Valley Irrigation District and all relevant information on file therewith; "Feasibility Report on Jackson Creek Project, Mokelumne River Basin" dated February, 1958, by Kaiser Engineers; State Water Resources Board, Bulletin No. 1, "Water Resources of California," 1951; United States Geological Survey, "Mokelumne Hill," 1948, and "Sutter Creek," 1941 quadrangles, 15-minute series.

IT IS HEREBY ORDERED that Application 18180 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 525 acre-feet to be collected between about

October 1 of each year and about April 1 of the succeeding year, but only during such times and to the extent that water otherwise would spill from the reservoir to be constructed by Jackson Valley Irrigation District under Permit 11224 and Permit 11589 (Applications 17605 and 12342A). At all other times the entire inflow to permittee's reservoir shall be by-passed beyond permittee's dam and all its points of rediversion. The word "spill" as used in this condition shall mean water flowing over the spillway or released through the outlet of the dam for other than project uses.

2. For the purpose of complying with Condition No. 1, permittee shall install, maintain, and operate an outlet pipe of not less than 12-inch diameter through the dam at stream bed level.

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

4. Actual construction work shall begin on or before June 1, 1961, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1962.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1963.

7. 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.

8. 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.

9. In accordance with Water Code Section 1393 permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

10. A separate application for approval of plans and specifications for construction of the dam shall be filed with and approved by the Department of Water Resources prior to the construction of the dam described in the approved water right application.

IT IS FURTHER ORDERED that Application 18180, except as expressly approved herein, should be and is denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at _____, California, on the ____ day of _____, 1960

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member