

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 18739)
of LEE L. ANDERSON to Appropriate)
from Coyle Creek in Santa Cruz County)

Decision D 1039
ADOPTED SEP 26 '61

DECISION APPROVING APPLICATION

Lee L. Anderson having filed Application 18739 for a permit to appropriate unappropriated water; protests having been received; a hearing having been held in Santa Cruz on January 19, 1961, by the State Water Rights Board, Chairman Kent Silverthorne presiding; the Board having considered the evidence finds as follows:

1. Application 18739 is for a permit to appropriate 10,000 gallons per day by direct diversion year-round for domestic use for a proposed subdivision from Coyle Creek, tributary to Bean Creek, thence Zayante Creek, thence San Lorenzo River in Santa Cruz County. The point of diversion is to be located within the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 5, T10S, R1W, MDB&M.

2. The applicant is subdividing the proposed place of use, and the application states that the water is to be used to serve 99 persons in 30 homes, and that it is proposed to transfer all water rights to a mutual water company composed of subdivision lot owners. The applicant owns a total of 281 acres in the Coyle Creek-Glenwood area, consisting of most of the northerly half of

said Section 5 and adjoining portion of Section 4 on which Coyle Creek rises. The place of use indicated by the map accompanying subject application is about 110 acres in the NE $\frac{1}{4}$ of Section 5. Applicant has already subdivided his unit No. 1, consisting of about 18 acres located within the place of use. A mutual water corporation is in existence and has installed water mains from sources other than and independent of Application 18739 to serve this subdivision. Other subdivisions are expected to be established with lots ranging from a minimum of 1 acre to about 4 acres.

3. Applicant anticipates that altogether there may be about 120 homesites on the 281-acre area (Reporter's Transcript, page 21). About two-thirds of the lots would depend on Coyle Creek as their source of water supply (RT p. 22). No evidence was submitted of any source of supply other than Coyle Creek to serve this area. No evidence was submitted of any right to serve the place of use indicated by Application 18739, other than the request for direct diversion contained in said application, and the indicated possibility that the applicant may have a riparian right to Coyle Creek. Applicant has no project and no provision for storage to supply water in summer months. It is in the public interest that any permit issued hereon be subject to a condition that a supplementary supply of water be available to serve anticipated lot purchasers on a year-round basis.

4. Coyle Creek originates approximately 1/2 mile southeasterly of the proposed point of diversion at about elevation 1,300 feet. It joins Bean Creek about 1/4 mile northwesterly and

downstream from the point of diversion at about elevation 800 feet. From this confluence, Bean Creek flows in a general southwesterly direction for about six miles to a confluence with Zayante Creek. One-half mile downstream from this confluence, Zayante Creek flows into the San Lorenzo River.

5. The protestant City of Santa Cruz operates a municipal pumping and treatment plant which diverts water of the San Lorenzo River just inside the city limits of the City of Santa Cruz. Appropriation by the City is pursuant to License 1553 (Application 4017), which confirms the right to appropriate 6.2 cubic feet per second (cfs) from San Lorenzo River, and Permit 2738 (Application 5215), which authorizes an additional diversion of 25 cfs. Maximum monthly diversion to date by the City from this source was in August 1957 at an average rate of 12.3 cfs. Diversions by the City have been limited by insufficient water 3 years out of 23 years of record during the months of July, August, and September.

6. The protestants of record, other than the City of Santa Cruz, were Mrs. Alfred Ward, M. D. Weinmann and L. R. Weinmann. None appeared at the hearing, although the last-named protestant submitted a supplementary letter received just before the hearing. Mrs. Ward's protest was based on anticipated injury to her diversion of Bean Creek for domestic use and irrigation of 2 acres pursuant to Permit 11240 (Application 17747). Her point of direct diversion from Bean Creek is about 2 miles downstream from the confluence of Coyle and Bean Creeks and is about 100 yards upstream from the point where Mackenzie Creek joins Bean Creek. The Weinmanns are

about half a mile downstream from Mrs. Ward's point of diversion and pump from wells under claim of riparian and pre-1914 appropriative rights. According to L. R. Weinmann, in about 5 summer months of a normal year there is no surface flow in the part of Bean Creek that flows through most of his property. A spot check on July 21, 1960, (Staff Exh. 1, Folder 2, p. 4), showed that while there was no surface flow passing most of the Weinmann property, there were about 3 gallons per minute flowing from Coyle to Bean Creek, about 0.2 cubic foot per second at Mrs. Ward's point of diversion, and about 0.4 cubic foot per second flowing by the lower end of the L. R. Weinmann property.

7. Direct diversion by the applicant pursuant to the subject application would interfere with vested downstream rights in the summer months of most years. In unusually wet years, there would be no interference during most or all of the year. In unusually dry years, interference with vested rights might be for more than the summer months. It appears reasonable to anticipate that there would be no interference with the rights of any legal user if the applicant's right to diversion is limited to such times as water is flowing by the point of diversion of protestant Ward.

8. There is unappropriated water available at times to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed during those times without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 18739 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

IT IS HEREBY ORDERED that Application 18739 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations 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 10,000 gallons per day by direct diversion to be diverted between January 1 and December 31 of each year. Diversions under the permit to be issued on this application shall be made only when surface flow of Bean Creek exists at the county road crossing immediately above the junction of Bean Creek with Mackenzie Creek in Section 7, T10S, R1W, MBD&M.
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, 1962, and 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, 1964.
5. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

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. Diversion shall not be made under this permit until permittee has shown evidence satisfactory to the State Water Rights Board that permittee can and will acquire a supplemental source of water to supply permittee's needs when the flow of Bean Creek is insufficient to meet the requirements of holders of prior downstream rights.

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 , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member