

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 19962 )  
of Anthony L. Lopes to appropriate )  
from an Unnamed Drain Tributary to )  
Los Banos Creek in Merced County )

---

Decision D 1088  
**ADOPTED JUN 26 '62**

DECISION APPROVING APPLICATION

Anthony L. Lopes having filed Application 19962 for a permit to appropriate unappropriated water; a 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 stipulations; the Board, having considered all available information and now being fully advised in the premises; finds as follows:

1. Application 19962 is for a permit to appropriate 3 cubic feet per second (cfs) by direct diversion from February 1 to October 31 of each year and 300 acre-feet per annum by storage from October 31 of each year to January 31 of the succeeding year for irrigation and recreational purposes from an unnamed drain in Merced County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 9, T9S, R9E, MDB&M.

2. The unnamed drain is a constructed drainage channel which originates near "Main Canal" and joins a natural drain. From that point the water flows into a swampy area, thence, during certain times of the year, into Los Banos Creek. Los Banos Creek empties into the San Joaquin River at a point approximately 12 miles north of the applicant's point of diversion.

3. On November 17, 1961, the flow in the unnamed drain at the applicant's point of diversion was 2 cfs and flows occur at that point at various times year-round.

4. The unnamed drain is supplied by seepage from "Main Canal" and subsurface drainage from surrounding property. There was no surface flow during the summer months in the immediate area prior to construction of the drain.

5. Protestant Twin Oaks Irrigation Company diverts under claimed riparian rights and License 1064 for the irrigation of approximately 2400 acres located approximately 17 miles downstream from the confluence of the San Joaquin River and Los Banos Creek. Its protest asserts that the approval of the application will interfere with the supply available to satisfy these rights which is already inadequate in quantity and inferior in quality.

6. Water from Los Banos Creek does not reach the San Joaquin River during the irrigation season and therefore does not contribute to the supply available to satisfy the protestant's rights.

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 19962 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.

The records, documents, and other data relied upon in determining the matter are: Application 19962 and all relevant information on file therewith, particularly the report of the field investigation made November 17, 1961; the files of License 1064 (Application 4237), Permit 11093 (Application 16393) and Permit 11094 (Application 16909); USGS Ingomar, Gustine, Mitchell School and Crows Landing quadrangles, 7.5-minute series, dated 1960, 1948 and 1952 respectively and Decision D 873 of the State Water Rights Board dated September 30, 1957.

IT IS HEREBY ORDERED that Application 19962 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 3 cubic feet per second by direct diversion to be diverted from about February 1 to about October 31 of each year and 300 acre-feet per annum by storage to be collected from about October 31 of each year to about January 31 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 December 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 the 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. This permit does not authorize collection of water to storage during the period from about February 1 to about October 31 of each season to offset evaporation and seepage losses or for any other purpose.

9. 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 \_\_\_\_\_, 1962.

\_\_\_\_\_  
Kent Silverthorne, Chairman

\_\_\_\_\_  
Ralph J. McGill, Member

\_\_\_\_\_  
W. A. Alexander, Member