

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20664)
of Albert E. and Katherine K. Bryson)
to Appropriate from Newberry Creek)
in Monterey County)

Decision D 1176

ADOPTED MAR 18 1964

DECISION APPROVING APPLICATION IN PART

Application 20664 to appropriate unappropriated water having been filed; a protest having been received; a public hearing having been held before the State Water Rights Board in Monterey, California, on October 9, 1963, Kent Silverthorne, Chairman, presiding; applicants and protestants having appeared and presented evidence; the evidence received at said hearing having been duly considered, the Board finds as follows:

1. Application 20664 is for a permit to appropriate 14,000 gallons per day by direct diversion, year-round, from Newberry Creek for domestic purposes at a home and for the irrigation of a one-acre tract in Monterey County. The points of diversion are within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 35 and the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 36, T16S, R1W, MDB&M.

2. The applicants propose to divert from an existing dam on the property of the protestant Natale D'Ambrogio located just above them and at a point approximately 1,000 feet further downstream where Newberry Creek crosses their property.

3. Protestant diverts from Newberry Creek at the above-mentioned diversion dam under claim of riparian right to serve a home and surrounding lawn and garden. He has refused the applicants access to the dam. In view of the applicants' failure to show that they can obtain access to this point of diversion, the application in this respect is denied.

4. The applicants contend that any riparian rights that the protestant's property had to water from Newberry Creek have been lost through severance arising from a grant by the protestant's predecessor of an intervening parcel to the County for road purposes. The applicants' contention is in error, as by the grant the County received only an easement for road purposes and any riparian rights the property might have are not lost by this conveyance (Sts. & Hy. Code, Sec. 905; City of Los Angeles v. Pac. Elec. Ry., 168 C.A.2d 224, 335 P.2d 1042).

5. No definite information was submitted at the hearing in regard to the flows in Newberry Creek. The protestant claims that he diverts the entire flow of the stream during the months of April through October in a year of average water supply (RT 52). The applicants claim that there is flow past the protestant's diversion dam that reaches the proposed point of diversion on his property as late as the middle of June and as early as the month of October (RT 30). Approval of the application for the latter period if restricted to the applicants' lower point of diversion will not result in interference with the rights of the protestant

during periods of shortage of water due to the upstream location of the protestant's point of diversion.

6. There is unappropriated water available to supply the applicants from about October 1 of each year to about June 15 of the succeeding year, 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.

7. The intended uses are beneficial.

8. From the foregoing findings, the Board concludes that Application 20664 should be approved in part and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

ORDER

IT IS HEREBY ORDERED that Application 20664 be, and the same is, approved in part and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 14,000 gallons per day by direct diversion to be diverted at a point within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 35, T16S, R1W, MDB&M, from about October 1 of each year to about June 15 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 September 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

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 _____, 1964.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member