

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the matter of Application 20487
of Thelma S. Schwimley and
Application 21398 of Sierra-Nevada
Water Co. to appropriate from
Madden Creek and Lake Tahoe
in Placer County

Decision D 1207

ADOPTED DEC 22 1964

DECISION APPROVING APPLICATIONS IN PART

Application 20487 of Thelma S. Schwimley and Application 21398 of Sierra-Nevada Water Co. both request permits to appropriate from Lake Tahoe or a tributary thereof. Protests having been filed, a consolidated hearing was held on May 21, 1964, in Tahoe City, California, before the State Water Rights Board, conducted by Chairman Kent Silverthorne and Board Member Ralph J. McGill. No appearance was made at the hearing by the protestants.

The key issues to be considered in connection with Applications 20487 and 21398 may be summarized by quoting from Decision D 1152 (adopted December 19, 1963), at page 3:

"The evidence and issues relative to water supply, vested rights, unappropriated water, interstate division of interstate waters, and conditions and limitations to be imposed in the public interest are to a large extent identical with the evidence and issues discussed by the Board in its Decision D 1056, adopted February 15, 1962, of which the Board takes official notice. In that decision the Board assumed to be surplus and unappropriated the water from

Lake Tahoe and the Truckee River stream system 'flowing by Derby Dam which is not required to satisfy decreed downstream Indian rights and which wastes into Pyramid Lake.' An analysis of studies of the Department of Water Resources indicated the availability of unappropriated water. The same conclusion is indicated by the 'Joint Report on the Use of Water in the Lake Tahoe Watershed,' prepared by the State Engineers of Nevada and California, and dated June 1949 (Staff Exh. 3). As was the case in Decision D 1056, careful consideration must be given to quantitative diversion limitations expected to be imposed by the California-Nevada Compact, covering allocation of water in the Lake Tahoe Basin. Accordingly, individual applications will be considered on their own merits and then with respect to maximum monthly and annual limitations based on requirements."

Because no long-term water development projects are involved, and because of anticipated Compact diversion limitations, maximum requirements will be based on the year 1970, as was done in Decisions D 1056 and D 1152.

Thelma S. Schwimley (dba Madden Creek Water Co.)
Application 20487 is for a permit to appropriate 3 cubic feet per second (cfs), year-round, from Madden Creek, tributary to Lake Tahoe, to serve the community of Homewood. About 0.5 cfs is now being diverted from Madden Creek at a point about 1/4 mile upstream from Lake Tahoe under claim of an unadjudicated 1909 appropriative right (RT 10). Mrs. Schwimley expects to use an additional one second foot from the same source and same point of diversion within the next 10 years.

On a peak day an estimated 2,000 persons are now being served within the service area of the Madden Creek Water Company. This peak load exists approximately 10 days each summer month (RT 18 and 19). Projections for future use indicate that the population will be about 3,000 maximum in 1969 (RT 20).

It is anticipated that winter usage will be about 25 per cent of maximum summer use (RT 24). The applicant indicated that the requirement determinations for maximum month and for total yearly quantity to be diverted could be calculated by use of the study made by the Board's staff (RT 35).

The evidence justifies a finding that in 1970 the average population to be served by the applicant during the two maximum summer months of July and August will be about 3,000 and will average about 2,000 for the entire year. Allowing a summer use of 250 gallons per day per person, this is equal to a continuous diversion of 1.16 cfs, or 72 acre-feet in a maximum month of 31 days. This quantity includes the 0.5 cfs already in use under claimed prior right. Yearly use is expected to follow the pattern reported in the study of the Board's staff for Tahoe City Public Utility District and would not exceed 444 acre-feet by 1970.

Sierra-Nevada Water Co. Application 21398 is for a permit to appropriate a supplementary supply of 0.35 cfs, year-round, from Lake Tahoe for domestic and recreational purposes. A continuous diversion of 0.33 cfs is requested for domestic purposes and the balance for a swimming pool. This application is almost identical in all respects with Sierra-Nevada's Application 19111, which was approved by Decision D 1152 for the same service area but predicated on average annual requirements of only 100 gallons per person per day. In Application 21398, Sierra-Nevada requests a supplementary permit based on an annual average requirement of 200 gallons per person per day. It is found that the substantial, year-round residences being built

in applicant's service area justify the requested increase. With respect to Application 19111, it was found that the quantity of water appropriated should not exceed 22 acre-feet in any month (equivalent to a continuous flow of 0.35 cfs). It is now found that appropriation under Applications 19111 and 21398 combined should not exceed 44 acre-feet in a maximum month and 254 acre-feet in a year. The annual requirement is based on information supplied by the applicant's engineer by letter of March 7, 1962 (File, Application 19111).

There is unappropriated water available to supply both applicants, and such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 20487 and 21398 should be approved in part and that permits should be issued to the respective applicants, subject to the limitations and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Applications 20487 and 21398 be, and they are, approved in part and that permits be issued to the applicants, subject to vested rights and to the following limitations and conditions:

1a. The water appropriated under the permit issued pursuant to Application 20487 shall be limited to the quantity which can be beneficially used and shall not exceed 1.16 cubic feet per second by direct diversion, year-round. The instantaneous

rate of diversion under the permit may exceed said rate, provided that the quantity of water appropriated shall not exceed 72 acre-feet in any month (equivalent to a continuous flow of 1.16 cfs). Total appropriation under this permit shall not exceed 444 acre-feet in any one year.

b. The water appropriated under the permit issued pursuant to Application 21398 for domestic and recreational purposes shall be limited to the quantity which can be beneficially used and shall not exceed 0.35 cubic foot per second by direct diversion, year-round. The instantaneous rate of diversion under the permit may exceed said rate, provided that the quantity of water appropriated shall not exceed 22 acre-feet in any month (equivalent to a continuous flow of 0.35 cfs). Total appropriation under this permit and under the permit issued pursuant to Application 19111 shall not exceed 254 acre-feet in any one year.

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

3. Construction work shall be completed on or before December 1, 1969.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

5. 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.

6. 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.

7. 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.

8. Upon a judicial determination that the place of use under permit issued pursuant to Application 20487 or a portion thereof is entitled to the use of water by a prior appropriative right, the right so determined and the right acquired under the permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two 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 , 1964.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member

