

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19897
of Robert J. Wilson to Appropriate
from an Unnamed Stream Tributary to
Rock Creek in Mono County

Decision D 1120

ADOPTED APR 4 1969

DECISION APPROVING APPLICATION

Robert J. Wilson having filed Application 19897 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 19897 is for a permit to appropriate 0.2 cubic foot per second (cfs) by direct diversion, year-round, and 2 acre-feet per annum by off-stream storage from February 15 to April 15 for irrigation purposes from an unnamed stream tributary to Rock Creek in Mono County. The point of diversion is to be located within the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 24, T5S, R30E, MDB&M.

2. The applicant proposes to divert from an unnamed stream at a point approximately 2 miles below its point of

origin and approximately 5 miles above the point where it enters Rock Creek. Water will be diverted from an existing concrete box in the channel of the unnamed stream and will flow by gravity through a pipeline approximately 2600 feet to a proposed off-stream reservoir for the irrigation of approximately 80 acres. The pipeline will have a capacity 0.2 cfs.

3. A protest to the application was filed by the City of Los Angeles, Department of Water and Power, stating that approval of the application would interfere with its right to divert from the unnamed stream under riparian and pre-1914 appropriate rights for the irrigation of 5 acres and stockwatering. The protestant diverts from the stream at a point approximately one mile below the applicant's point of diversion.

4. On July 19, 1961, a dry year, the flow of the unnamed stream was 0.133 cfs at the applicant's point of diversion and 0.082 at the protestant's point of diversion. On May 23, 1962, the flow at these points was 0.280 and 0.267, respectively. On both of these occasions the protestant had placed a temporary dam in the channel and was diverting all of the flow of the stream.

5. The applicant, in support of his answer to the protest, submitted certain documents tending to prove that the property designated in the protest is without either riparian or appropriate rights, copies of which were apparently mailed to the protestant. No evidence pointing to a contrary conclusion

has been submitted by the protestant. The protestant has failed to establish any right to its past use of the waters of the unnamed stream.

6. The protestant has informed the Board that it is the owner of approximately 10 acres of land located in the same section as the 5 acres referred to in its protest, which is contiguous to the unnamed stream. It intends to use the water from the unnamed stream on this property for irrigation and stock-watering purposes under claim of riparian right in the event that the rights to the use of water asserted in its protest are not recognized by the Board.

A prospective riparian use is not a bar to the approval of a present application to appropriate water. However, the applicant's attention should be drawn to the probable assertion of the prior riparian right in order that he may consider the amount of water that will be available for his project pursuant to the permit to be issued to him.

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 present lawful user of water.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19897 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 19897 and all relevant information on file therewith, particularly the report of the field investigation made on May 23, 1962, and USGS 15-minute quadrangle sheets, "Mount Tom, 1949," and "Casa Diablo Mountain, 1953."

IT IS HEREBY ORDERED that Application 19897 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 appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.2 cubic foot per second by direct diversion to be diverted year-round and 2 acre-feet per annum by off-stream storage to be collected from about February 15 to about April 15 at a maximum rate of 0.2 cfs. 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, 1963, 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, 1965.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1966.

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.

9. This permit does not authorize collection of water to storage during the period from about April 15 of each year to about February 15 of the succeeding year to offset evaporation and seepage losses or for any other purpose.

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 _____, 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member

1
2
3

