

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

1024

In the Matter of Application 17840)
of Guido and Ernest Righetti to)
Appropriate from West Corral de)
Piedra Creek in San Luis Obispo)
County)

Decision D 1024

ADOPTED JUL 19 61

DECISION APPROVING APPLICATION

Application 17840 was filed on October 1, 1957, for a permit to appropriate 500 acre-feet per annum by storage from West Corral de Piedra Creek between October 1 of each year and May 31 of the succeeding year for irrigation and stockwatering purposes. The point of diversion is to be located within the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 9, T31S, R13E, MDB&M.

Protests were filed by landowners located adjacent to West Corral de Piedra Creek and Pismo Creek into which West Corral de Piedra Creek flows, contending that the proposed appropriation would interfere with their rights to the surface and subsurface flow in the sources named and that the ground water underlying their property would be diminished, resulting in salt-water intrusion. Protest also was filed by the Department of Fish and Game.

A public hearing was held in San Luis Obispo, California, on August 5, 1959, by Chairman Kent Silverthorne and Board Member Ralph J. McGill, of which all parties were duly notified.

Evidence introduced at the hearing having been duly considered, the Board finds as follows:

1. A stipulation between the applicants and almost all of the protestants was filed at the time of the hearing and submitted to the Board for approval wherein the protestants agreed to withdraw their protests and the applicants agreed that the following terms and conditions be included in any permit issued to them.

a. Permittee will install suitable stream-flow measuring devices to ascertain the surface and sub-surface inflow to and outflow from the proposed reservoir.

b. Permittee will allow the total surface and underground inflow during the period from June 1 to November 30 of each year to pass undiminished in quantity through the reservoir.

c. Permittee will allow the release into the natural stream channel below the point of diversion of a minimum flow of 1.5 cubic feet per second, or the natural surface and underground flow of the stream near the point of diversion, whichever is less, during the period from December 1 of each year through May 31 of the succeeding year.

d. The State Water Rights Board will retain continuing jurisdiction over this permit and subsequent license to be acquired for the regulation and protection of downstream vested water rights.

2. An average of 1,375 acre-feet of water is available at the applicants' proposed point of diversion during the months of October through May of each season.

3. Protestant C. M. Holmes diverting directly from West Corral de Piedra Creek principally for livestock and domestic purposes under alleged pre-1914 and apparent riparian rights, will be sufficiently protected during the storage season by releases the applicants have stipulated to make for the benefit of other downstream users. As the applicants have also stipulated to the bypassing of the entire flow of the stream during the remainder of the year, no harm can result to this protestant by the granting of the application.

4. Protestant A. V. Sequeira pumps from wells located within 1/4 mile of Pismo Creek and contends that the proposed diversion will interfere with his ground-water supply. The primary source of ground water available to overlying owners in the area is water pumped from the underlying aquifers of the Upper Pismo Basin. The draft of the Upper Pismo Basin could be increased by approximately 700 acre-feet per annum without violating safe yield criteria. The granting of the application will not harm this protestant.

5. Protestant M. Machado has withdrawn his protest since the hearing following settlement of a dispute with the applicants over access to the reservoir site specified in the application.

6. There is unappropriated water in West Corral de Piedra Creek available to supply the applicants, and the intended use is beneficial.

7. Applicants and protestant California Department of Fish and Game entered into an agreement providing that any permit issued to the applicants contain the following condition:

"Permittee should during the period December 1 to March 31 bypass a minimum of 1.5 cubic feet per second or the natural flow of the stream, whichever is less, and during the period April 1 to May 31 bypass 0.5 cubic foot per second or the natural flow of the stream, whichever is less, to maintain fish life."

The permit will be conditioned to require bypass of not less than the foregoing flows.

8. The Board finds that the proposed terms and conditions stipulated by the applicants and downstream users relating to the release and bypassing of water to satisfy downstream rights are proper and should be included in the permit. However, the Board has no authority to "regulate" downstream water rights as proposed by condition (d) of the stipulation, nor does the evidence justify retention of jurisdiction pursuant to Water Code Section 1394.

From the foregoing findings, the Board concludes that Application 17840 should be approved, and a permit should be issued to the applicants subject to the terms and conditions set forth in the following Order.

IT IS HEREBY ORDERED that Application 17840 be, and the same is, approved, and that a permit be issued to the applicants subject to vested rights and 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 500 acre-feet per annum by storage from about December 1 of each year to about May 31 of the succeeding year for irrigation and stockwatering purposes.

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

3. Permittees shall install suitable stream-flow measuring devices to ascertain the quantity of inflow to and outflow from the proposed reservoir.

4. Permittee shall release into the natural stream channel below the point of diversion authorized by this permit a minimum flow of 1.5 cubic feet per second, or the natural surface and underground flow of the stream above the point of diversion, whichever is less, during the period between December 1 of each year and May 31 of the succeeding year.

5. Permittees shall allow all of the surface and underground inflow to pass through the reservoir undiminished in quantity during the period from June 1 to November 30 of each year.

6. Actual construction work shall begin on or before December 1, 1961, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

7. Said construction work shall be completed on or before December 1, 1963.

8. Complete application of water to the proposed use shall be made on or before December 1, 1964.

9. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights Board until license is issued.

10. 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.

11. In accordance with the requirements of Water Code Section 1393, permittees shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

12. A separate application for the approval of plans and specifications for construction of the dam shall be filed with, and approved by the Department of Water Resources prior to commencement of construction of the dam described under this approved water right application.

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