

ADOPTED FEB 15 '62

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19362)
of Ronald C. and James W. Kemp)
to Appropriate from Miller Creek)
in San Diego County)

Decision D 1057

DECISION APPROVING APPLICATION

Ronald C. and James W. Kemp having filed Application 19362 to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Rights Board in San Diego, California, on May 17, 1961, before Board Members Kent Silverthorne, Chairman, Ralph J. McGill, and William A. Alexander; the applicants and protestants having been duly notified of said hearing, and applicants and protestant California Water and Telephone Company appearing; all evidence received at said hearing having been duly considered, the Board finds as follows:

1. Application 19362 is for a permit to appropriate 0.75 cubic foot per second by direct diversion year-round for irrigation purposes from Miller Creek in San Diego County. The point of diversion is located within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 20, T17S, R6E, SBB&M.

2. During most of the year, in years of normal rainfall conditions, water is available in Miller Creek at the applicants'

point of diversion, where a small concrete diversion dam and steel pipeline to the place of use have been constructed. The flow at this point on May 17, 1961, was 35 gallons per minute.

3. Protestant California Water and Telephone Company has diverted by wells from the underflow of the Tia Juana River, to which Miller Creek is a tributary, under Permits 1724 and 3897 and has claimed riparian rights at a point approximately 9 miles downstream from the applicants' point of diversion. Between the years 1952 and 1959, when no diversions were made at the applicants' dam, no surface flow occurred in the channel of Miller Creek below the San Diego and Arizona Eastern Railroad crossing located approximately $3/4$ mile below. Very little subsurface flow exists in this reach of Miller Creek.

4. Water which would be used by the applicants' project would normally be consumed by evaporation and transpiration by native vegetation in the stream channel and would not contribute to the protestants' supply.

5. Other downstream users having failed to appear at the hearing in support of their protests, their protests should be disregarded. Diversion by applicants as proposed in Application 19362 will not decrease the supply to downstream users under present conditions.

6. Robert H. Miller contemplates construction of soil conservation works above applicants' diversion dam which may reduce the flow of water to applicants. Issuance of permit to applicants will give no assurance of an uninterrupted water supply in the future.

7. There is unappropriated water available at times to supply the applicants 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.

8. The intended use is beneficial.

9. The applicants filed a petition to correct the description of the place of use which was improperly described in Application 19362. The correct description of the land upon which water is to be used by applicant is as follows: 25 acres within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 19; 10 acres within the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 19; 5 acres within the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 30; all within T17S, T6E, SBB&M. The petition should be granted, and the application should be amended accordingly.

From the foregoing findings, the Board concludes that Application 19362 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following order:

IT IS HEREBY ORDERED that Application 19362 be, and the same is, approved, 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 to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.75 cubic foot per second by direct diversion to be

diverted year-round. The equivalent of such continuous flow allowance for any 30-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. Complete application of water to the proposed use shall be made on or before December 1, 1965.

4. 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.

5. 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.

6. Permittees 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.

IT IS FURTHER ORDERED that applicants' petition to correct the description of the place of use as described in Application 19362 be, and it is, hereby granted, and the application is amended accordingly.

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