

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20868
of Louis A. Mitchell to appropriate
from Grizzly Creek and Hampshire
Creek in Yuba County.

Decision D 1174

ADOPTED

DECISION APPROVING APPLICATION

1174

Louis A. Mitchell having filed Application 20868 for a permit to appropriate unappropriated water; protests having been received; a hearing having been held by the State Water Rights Board in Marysville, California, on July 24, 1963, before Board Member W. A. Alexander; the Board, having considered all the evidence, finds as follows:

1. Application 20868 is for a permit to appropriate for domestic use 49 acre-feet per annum by storage from Grizzly Creek, tributary to Oroleve Creek thence South Fork Feather River in Yuba County, and 49 acre-feet per annum by storage from Hampshire Creek, tributary to North Yuba River in Yuba County, the requested storage seasons for both appropriations being between October 1 and the following June 1. The point of diversion on Grizzly Creek is within the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 36, T20N, R7E, and the point of diversion on Hampshire Creek is within the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 1, T19N, R7E, MDB&M.

2. Applicant owns substantial portions of the two sections referred to above, also of four adjoining sections on the east. The application states that a subdivision is proposed, initially 170 homes, with a boys' camp in Section 36 for 400 boys. Within seven or eight years it is proposed to establish on 1,700 acres a total of 2,100 units, including cabins and trailer park units. This development may require in excess of the 98 acre-feet requested in Application 20868.

3. The proposed dam and reservoir on Hampshire Creek were not protested and that portion of subject application is approved. Hampshire Creek is a flowing stream during the summer months, and an outlet pipe should be installed near the base of the dam to insure that water is not stored during the unauthorized season.

4. The protest of the Oroville-Wyandotte Irrigation District to the proposed Grizzly Creek appropriation is based on "prior application...and use begun prior to December 19, 1914." The District claims the entire flow of the stream from the first of June through September, and also the months of "May and October of many years; and a flow of 40 cfs during all other months." Some water flowing down Grizzly Creek into Oroleve Creek is diverted by the District through its Forbestown Ditch, and some water originating in Grizzly Creek is diverted further downstream by the District's Palermo Canal above Enterprise Dam. Water flowing by Enterprise is not used by the District. In the period of record from 1936-37 through 1960-61 each of the months of

November through May shows streamflows passing Enterprise Dam substantially in excess of the number of acre-feet of storage requested by applicant for appropriation in an entire season. The evidence does not indicate that said District would be prejudiced by the requested appropriation. The Yuba County Water District presented no evidence but asked that it be allowed to rely for support of its protest on the showing of the Oroville-Wyandotte Irrigation District.

5. Bean and Nieland, Inc., is a family-holding company with land immediately downstream from the applicant. Its usage consists of irrigation of about 12 acres, watering of about 500 head of cattle, and at present there is also domestic use by 17 families. Some of the flow of Grizzly Creek is used by Bean and Nieland year-round; the entire flow is diverted for use from about May 1 to about November 1 of every year (RT 67-68). A dam and 10 acre-foot reservoir belonging to this protestant are located several hundred yards downstream from applicant's proposed damsite. The Bean and Nieland dam has a large pipe near its base with a valve which is kept open during the winter months and is not usually closed until sometime in May at the beginning of the irrigation season.

6. Bean and Nieland uses water from Grizzly Creek under a claim of right dating back to 1860 (RT 48). Certain documents presented at the hearing fail to support this protestant's claim to ownership of the springs located on applicant's property which supply Grizzly Creek. The documents make no reference to any

springs. They refer to two ditches and also "all water rights belonging to or in any wise appertaining to said ditches." Both ditches or ditch sites are located downstream from the site of the proposed dam, and no evidence identified or specified what water rights were intended to appertain to said ditches.

7. Bean and Nieland claimed at the hearing that the applicant's proposed dam would be downstream from certain springs, including Big Grizzly Creek Spring, and would interfere with protestant's summer supply. At a field investigation by the Board's staff made subsequent to the hearing by agreement of the parties (RT 155-157), the applicant pointed out the damsite at a location about 400 feet upstream from said spring, where the streambed was dry and showed no evidence of summer flow.

8. Applicant's proposed dam would not interfere with the rights and usage of Bean and Nieland, providing (1) the storage season is limited to the period between November 1 and May 1, (2) the dam is located upstream from Big Grizzly Creek Spring, and (3) a pipe is installed in the base of the dam to allow release of inflow, if any, subsequent to May 1 and prior to November 1.

9. 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 lawful user of water.

10. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20868 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.

ORDER

IT IS HEREBY ORDERED that Application 20868 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 49 acre-feet per annum by storage to be collected on Hampshire Creek between October 1 and June 1 of the succeeding year, and 49 acre-feet per annum by storage to be collected on Grizzly Creek between November 1 and May 1 of the succeeding year.

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

3. Actual construction work shall begin on or before December 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.

9. This permit does not authorize collection of water to storage during the period from June 1 to October 1 of each season on Hampshire Creek or from May 1 to November 1 of each season on Grizzly Creek to offset evaporation and seepage losses or for any other purpose.

10. Permittee shall install and maintain an outlet pipe of adequate capacity in each of his dams as near as practicable to the bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoirs or collected in the reservoirs during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

11. Permittee, if and when required by the State Water Rights Board, shall install and maintain suitable measuring devices (a) upstream from the high water elevation of each reservoir and (b) immediately below each storage dam in order that accurate measurement can be made of the quantity of water flowing into and out of said reservoirs.

12. Permittee's dam on Grizzly Creek shall be located upstream from Big Grizzly Creek Spring.

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 _____, 1964.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member