

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19866)
of Nelson Ashby and Naomi Ashby to
Appropriate from Peterson Creek
in Madera County

Decision D 1205

ADOPTED DEC 22 1964

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DECISION APPROVING APPLICATION IN PART

Nelson Ashby and Naomi Ashby having filed Application 19866 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Rights Board in Madera, California, on March 10, 1964, conducted by Board Members Ralph J. McGill, presiding, and W. A. Alexander; applicants and protestants having appeared and presented evidence; the evidence received at said hearing having been duly considered, the Board finds as follows:

1. Application 19866 is for a permit to appropriate 0.01 cubic foot per second (cfs) by direct diversion from June 1 to September 1 of each year and 14 acre-feet per annum (afa) by storage from September 1 of each year to June 1 of the succeeding year for recreational use from Peterson Creek in Madera County. The point of diversion is to be located within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 30, T6S, R21E, MDB&M.

2. The applicants' project includes a dam and reservoir of approximately 14 acre-foot capacity, constructed about 1961, on Peterson Creek, which is tributary to Miami Creek, thence to Fresno River. At the time of construction, no outlet pipe was placed in the dam. The reservoir usually fills during the first heavy rain of the fall season, and subsequent flow in Peterson Creek goes over the spillway of the dam. Direct diversion is requested by the applicants in order to make up reservoir losses due to seepage and evaporation. Peterson Creek usually ceases to flow at applicants' point of diversion between July 15 and August 15.

3. Protestants Davis rely on a pre-1914 appropriative right of 3 cfs from Miami Creek for irrigation of approximately 200 acres of pasture. The protestants also hold Permit 12313 (Application 17208) for the appropriation of 3 cfs from Fresno River for the same purpose of use. Normally, the flow of Miami Creek is sufficient for the protestants' needs until about the first or middle of June. Thereafter, the supply comes from stored water on Crooks Creek and from Fresno River.

4. After September 1, whenever Peterson Creek begins to flow, there is sufficient water from other sources available for the protestants so that the applicants can divert to storage without injury to the protestants. The storage portion of the application, therefore, should be approved. However, a direct diversion during the late spring and early summer by the applicants could cause injury to the protestants' existing rights, and that portion of the application, therefore, should be denied.

5. There is no continuity of flow between the Fresno River below Miami Creek and the San Joaquin River during September. Therefore, diversion to storage during that month by applicants will not injure any user of water from the San Joaquin River or Delta, even though there is a shortage of water during that month in the San Joaquin River and Delta.

6. A siphon or other suitable means should be provided by the applicants so that natural streamflow can be bypassed after the authorized storage season.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19866 should be approved in part and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

ORDER

IT IS HEREBY ORDERED that Application 19866 be, and it is, approved in part, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 14 acre-feet per annum by storage to be collected from about September 1 of each year to about June 1 of the succeeding year.

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

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

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.

7. This permit does not authorize collection of water to storage during the period from about June 1 to about September 1 of each season to offset evaporation and seepage losses or for any other purpose.

8. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary

to satisfy downstream prior rights and/or to the extent that appropriation of water is not authorized under this permit. Permittees shall provide a siphon of adequate capacity or other means satisfactory to the State Water Rights Board to comply with this paragraph.

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