

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22975 of)
John T. and Nina A. McGiveran to)
Appropriate from Palo Colorado Creek)
in Monterey County)

Decision 1336

DECISION APPROVING APPLICATION

John T. and Nina A. McGiveran having filed Application 22975 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on August 28, 1968; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Application 22975 is for a permit to appropriate 2,000 gallons per day (gpd) by direct diversion from January 1 to December 31 of each year for domestic purposes from Palo Colorado Creek, tributary to the Pacific Ocean, in Monterey County. The point of diversion is to be located within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 3, T18S, R1E, MDB&M.

2. Palo Colorado Creek commences at an elevation of 2,600 feet and flows 4 miles westward to the Pacific Ocean

at a point about 12 miles south of the town of Carmel. The applicants' point of diversion is approximately one mile downstream from where the creek commences. Downstream from the point of diversion are the cabins of summer and year-round residents, some of whom have protested the application.

3. Several protestants assert that applicants' diversion would deprive them of water needed for fire protection. However, these protestants have no storage facilities and therefore diversions from the creek for fire fighting would be made only during times of an actual fire. It would be unreasonable to prohibit diversions of unappropriated water for domestic use merely because some water might be required in the future to fight fires. During the periods of time when waters of the creek are not used for actual fire fighting, diversions should be permitted.

4. Protestant Electra Grimes, who has lived adjacent to the creek for 40 years, is the last diverter from the creek prior to its discharge to the ocean. Neither protestant Grimes nor the other protestants have ever seen the creek dry below the Grimes point of diversion.

5. One riparian protestant asserts that a full riparian use is presently being made of the creek since its flow is required to preserve adjacent natural vegetation. However, the Board's staff collected flow data on Palo Colorado

Creek at a point below all diversions from the stream and springs tributary thereto during the period July 26 to September 23, 1968. The average daily minimum flows exceeded 36,000 gpd while the average daily maximum flows exceeded 73,440 gpd. These flows constitute the amount of unappropriated water which flows unused to the ocean.

6. Unappropriated water is available to supply the applicants, 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22975 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 22975 be, and it is, approved, 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

2,000 gallons per day by direct diversion to be diverted from January 1 to December 31 of each year.

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

3. Actual construction work shall begin on or before September 1, 1969, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1971.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1972.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control 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 Resources Control 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 and to carry out legally established water quality objectives.

8. Permittee shall allow representatives of the State Water Resources Control 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. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Santa Rosa, California.

Dated: March 20, 1969

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

GEORGE B. MAUL
George B. Maul, Member

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member