

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 19441
of L. J. and E. R. Maddox to Appro-
priate from Mountain Pass Creek and
Application 19469 of J. W. Martin, Jr.,
to Appropriate from Andrews Creek
in Tuolumne County.

Decision 1353

DECISION DENYING APPLICATION 19441
AND APPROVING APPLICATION 19469

L. J. and E. R. Maddox and J. W. Martin, Sr., having filed Applications 19441 and 19469, respectively, for permits to appropriate unappropriated water; a public hearing having been held before the State Water Resources Control Board on March 4, 1969; applicants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of Applications

1. Application 19441 is for a permit to appropriate 0.25 cubic foot per second (cfs) by direct diversion from April 1 to November 1 of each year for irrigation purposes from Mountain Pass Creek, tributary to Green Spring Run and Stanislaus River in Tuolumne County. The point of diversion is to be located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3, T1S, R13E, MDB&M.

2. At the time of the hearing, Application 19469 requested a permit to appropriate 3 cfs by direct diversion from April 1 to December 1 of each year and 67 acre-feet per annum by storage from November 1 of each year to May 31 of the succeeding year from Mountain Pass Creek and two unnamed springs for irrigation, stockwatering, recreation and fish culture purposes. Subsequent to the hearing the application was amended by deleting the direct diversion, the diversion from Mountain Pass Creek and one unnamed spring and by changing the name of the remaining point of diversion from an unnamed spring to Andrews Creek. The point of diversion is located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 3, T1S, R13E, MDB&M.

Applicant Does Not Plan to Develop Project
Under Application 19441

3. During the hearing on the subject applications the representative of L. J. and E. R. Maddox (Application 19441) introduced a letter dated January 17, 1967, from J. W. Martin, Sr. (Application 19469), whereby the latter agreed to enter into a stipulated judgment to settle the rights of both parties to the waters of Mountain Pass Creek. The letter stated that Mr. Martin would be allowed to store appropriate amounts of water behind a dam located on Andrews Creek and that he would not construct dams on Mountain Pass Creek. Several times during the hearing the Maddox representative indicated that Application 19441 would be withdrawn upon the entering of a judgment on the stipulation. To date no judgment has been

entered. No information was introduced by applicant at the hearing concerning the existence of unappropriated water for the proposed use.

On September 5, 1969, a staff engineer interviewed L. J. and E. R. Maddox. The applicants stated that they had no intention of constructing the projects envisioned in Application 19441. Forms to cancel the application were left with applicants but were not returned to the Board.

Since applicants do not intend to proceed with their project and since Application 19469 has been amended (see infra) to cover only diversion and storage on Andrews Creek, Application 19441 should be denied.

Application 19469 - Source of Water and Applicant's Project

4. There are no records of flow on Andrews Creek: however, on February 26, 1969, a staff engineer estimated the flow at applicant's point of diversion to be in excess of 10 cfs (RT 10). The majority of this flow resulted from natural runoff. Water also flows into Andrews Creek, year round, from a spring located at applicant's point of diversion.

Applicant has installed a distribution system from the point of diversion and is presently irrigating 20-25 acres of pasture.

Conclusion

5. Unappropriated water is available to supply the amount requested in amended Application 19469, 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.

6. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19441 should be denied and that amended Application 19469 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Applications 19441 and 19469 and all relevant information on file therewith.

ORDER

IT IS HEREBY ORDERED that Application 19441 be, and it is, denied, and that Application 19469 be, and it is, approved as amended, and that a permit be issued to the applicant 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 67 acre-feet per annum by storage to be collected from about November 1 of each year to about May 31 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

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

3. Construction work shall be completed on or before December 1, 1972.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

5. 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.

6. 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.

7. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that

(1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which

have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

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. Permittee shall adequately maintain the outlet pipe in his dam in order that water entering the reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights.

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

11. If the dam is of such size as to be within the jurisdiction of the Department of Water Resources as to safety, storage of water shall not be commenced until the Department has approved plans and specifications.

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

Dated: January 8, 1970.

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

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

NORMAN B. HUME
Norman B. Hume, Member

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

RONALD B. ROBIE
Ronald B. Robie, Member