

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23912 of  
DARYL and MARGARET E. NELSON and  
DONALD J. and MARY L. EMERSON, Applica-  
tion 23953 of DARYL AND MARGARET E.  
NELSON, and Application 23940 of  
ROBERT L. and LORRAINE S. MARTIN, to  
Appropriate from Middle Branch Huerhuero  
Creek and Unnamed Stream Tributary  
thereto in San Luis Obispo County

Decision 1424

DECISION APPROVING APPLICATIONS

Daryl and Margaret E. Nelson having filed Applications 23912 and 23953, and Robert L. and Lorraine S. Martin having filed Application 23940, for permits to appropriate unappropriated water; protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Applications

1. Application 23912, which has been assigned in part to Donald J. and Mary L. Emerson, is for a permit to appropriate 49 acre-feet per annum (afa) by storage to be collected from



November 1 of each year to May 1 of the succeeding year for irrigation, stockwatering, recreational and wildlife enhancement purposes from Middle Branch Huerhuero Creek in San Luis Obispo County. The point of diversion is to be located within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 4, T29S, R14E, MDB&M.

2. Application 23940 is for a permit to appropriate 10 afa by storage to be collected from November 1 of each year to April 1 of the succeeding year for irrigation, stockwatering, recreational and wildlife enhancement purposes from an unnamed stream tributary to Middle Branch Huerhuero Creek in San Luis Obispo County. The point of diversion is to be located within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 9, T29S, R14E, MDB&M.

3. Application 23953, as amended, is for a permit to appropriate 0.17 cubic foot per second (cfs) by direct diversion from January 1 to December 31 of each year for recreational and domestic purposes from Middle Branch Huerhuero Creek in San Luis Obispo County. The point of diversion is to be located within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 5, T29S, R14E, MDB&M.

#### Applicants' Projects

4. Application 23912. The applicants' dam and reservoir are already constructed and an outlet pipe is installed. The reservoir was dry at the time of the investigation, April 13, 1972. During construction of the reservoir the underground seepage into the excavated keyway was about two gallons per minute (gpm). The dam has an inner core of relatively watertight material.



Mr. and Mrs. Nelson sold the property where the reservoir is located to Donald J. and Mary L. Emerson, reserving one-half of the water right.

5. Application 23940. The applicants' dam and reservoir are already constructed and an outlet pipe is installed. The reservoir was dry at the time of the investigation. During construction, excavation was continued down to bedrock in order to put in a watertight core. No underflow was observed during the keyway excavation. The core is 15 feet thick and extends to the bedrock. The core material is not clay but it was considered tight enough by the contractor to control seepage.

6. Application 23953. This application was filed by Daryl and Margaret E. Nelson for direct diversion of 2.9 cfs from the subsurface flow of Middle Branch Huerhuero Creek. The applicants have drilled a well 74 feet deep to bedrock and filled it back with sand to 71 feet. On April 13, 1972 the surface-to-water level distance was 40 feet. During a 3-hour pump test at 20 gpm, the well water level did not change; when pump tested on April 25, 1972, the well produced 120 gpm and the drawdown was six feet.

According to Mr. Nelson, during the summer of 1971 protestant Bacon irrigated for six weeks from his two adjacent wells without affecting the waterlevel in the nearby Nelson well.

The applicants' property is contiguous to Middle Branch Huerhuero Creek, and they claim riparian rights to divert water from their well for the irrigation of their riparian lands.



A portion of Application 23953, as filed, related to water required for applicants' recreational campsite located within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 4, T29S, R14E, MDB&M. This property is not riparian to Middle Branch Huerhuero Creek.

The applicants are licensed for 45 campsites at present. They plan to construct a total of 200 campsites and expect to provide recreational facilities for 1,000 persons.

Application 23953 was amended after the investigation to reduce the amount of direct diversion to 75 gpm (0.17 cfs) needed for domestic uses at applicants' camper recreation ranch, which is located outside the watershed of Huerhuero Creek, and to delete the irrigation portion of the application.

#### Protests

7. Clyde G. Bacon protested Applications 23912, 23940 and 23953. The Bacon well is located about 75 feet upstream from the Nelson well and about 250 feet from the stream channel of Middle Branch Huerhuero Creek. At the time of the investigation, April 13, 1972, surface-to-water depth was 40 feet.

Mr. Bacon claims use of about 105,000 gallons per day for domestic, stockwatering and irrigation purposes. His pump is capable of delivering 120 gpm to his storage tank located near the top of the low range defining the limits of the watershed near his well. He and his wife own about 40 acres within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 4, T29S, R14E, MDB&M. About half of the Bacon property is located within the watershed of Middle Branch Huerhuero Creek; the other half is located within the



watershed of East Branch Huerhuero Creek. Mr. Bacon's claim of right to take water from Middle Branch Huerhuero Creek is based on riparian right and prior appropriation. He irrigates about eight acres within the Middle Branch Huerhuero Creek watershed. He irrigates an additional two or three acres outside the watershed and uses water at his residence, which consists of two buildings and is also located outside the watershed. He has not run short of water in the past. Mr. Bacon has pending before the Board Application 24174 for these nonriparian uses.

8. Helen Howard Silva protested Application 23940 (Martin reservoir). The Silva well was drilled during 1968. At the time of the investigation, surface-to-water depth was 36 feet. The well was pump tested during January 1968. At 100 gpm the drawdown was four feet.

Mrs. Silva claims to have a riparian right to take water from the underflow of Middle Branch Huerhuero Creek. She needs water from this source for her domestic water requirements and for water to irrigate about one-half acre of pasture. She claims that the Martin dam would cut off the underflow to her well.

The log for the Silva well indicates that decomposed granite was hit at 50 feet below the surface. This well does not penetrate a sufficient thickness of water-bearing strata to produce as much water as some of the wells in the vicinity.

9. Torben and Elizabeth Nielsen protested Application 23940 (Martin reservoir). The Nielsens divert water from the underflow of the unnamed tributary to Middle Branch Huerhuero Creek described in the application. Their two wells are located



about one-half mile downstream from the Martin reservoir and a short distance upstream from the Helen Silva well. They maintain that the Martin dam will cut off the underflow of the unnamed stream. The Nielsens claim a riparian right to take water from the underflow of the unnamed stream. They filed Statement of Water Diversion and Use No. S 7865 with the Board. They claim a maximum annual use of 35,000 gallons. The Nielsens have two homes and a cottage. They use the water for domestic purposes and they also irrigate a few fruit trees. They have not had a water shortage in the past.

10. Edgar H. Shahan protested Application 23953 (Nelson direct diversion well). Protestant Shahan diverts from the underflow of Middle Branch Huerhuero Creek about two miles downstream from applicant Nelson's well. Mr. Shahan developed his ranch seven or eight years ago at great expense depending on the availability of water supply from Middle Branch Huerhuero Creek. He has never run out of water and does not object to appropriation of water from the creek as long as his water requirements are satisfied. He installed a 7,000-foot underground water line and put 80 acres under irrigation. Mr. Shahan irrigates about 20 acres within the Middle Branch Huerhuero Creek watershed and about 60 acres within the East Branch Huerhuero Creek watershed. He also maintains a small reservoir on an unnamed tributary to East Branch Huerhuero Creek with water exported from Middle Branch Huerhuero Creek.

The Shahan well was drilled to 67 feet in 1966. Granite was hit at 64 feet. The surface-to-water depth is 25-30 feet



depending on pumpage and water conditions. During 1971, PG&E tested his pump and found that his well could produce 390 gpm.

#### Hydrologic Conditions

11. The Martin dam (Application 23940) has a tributary watershed of approximately 1,800 acres. Based on 32 years of record, the mean total annual rainfall within the tributary area is approximately 2,550 acre-feet. The Nelson dam (Application 23912) has a tributary area of approximately 8,600 acres upon which the mean annual rainfall is approximately 12,200 acre-feet. The transmission capacity of the water-bearing sediments underlying the streams is limited so that the major portion of the outflows from the two parts of the watershed occurs as surface runoff.

12. Surface flows occur in the Middle Branch Huerhuero Creek and in the unnamed tributary of the creek only during rare occasions and for short periods of time during and immediately after periods of heavy rainfall. Once a surface flow of water reaches State Highway 58 crossing, the water-bearing sediments of the stream will have been filled and any additional water would be surplus to the needs of the downstream prior rights. In fact, subsequent events during recent heavy rainfalls have proven that when a surface flow of water reaches this bridge, the area is extremely wet, the ground is saturated and the retention of surplus runoff and floodwater becomes more desirable to the protestants than not.

13. Protestants Bacon and Shahan have diverted from the underflow of the Middle Branch Huerhuero Creek since 1957



and 1966, respectively, for use outside the watershed without acquiring rights to appropriate water pursuant to Division 2 of the Water Code. That portion of the underflow of the stream so diverted is unappropriated water available to the applicants and is considerably more than flow required to provide the direct diversion applied for by Daryl and Margaret Nelson in Application 23953.

#### Reservation of Jurisdiction

14. The protestants expressed a willingness to withdraw their protests against Applications 23912 and 23940 provided a permit term reserving jurisdiction is included in any permit issued to the applicants. Such a term should be included reserving jurisdiction for a period of three years so that the Board can determine whether the special provisions in the permits for protection of downstream prior rights are adequate.

#### Water Quality

15. The Central Coast Regional Water Quality Control Board's staff has reviewed the notices of Applications 23912, 23940 and 23953. It stated that the approval of the above applications would not cause any adverse effect on the water supply which may remain in the source. Waste discharge requirements are not required during or after the development of these projects.

16. 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.

17. The intended use is beneficial.



From the foregoing findings, the Board concludes that Applications 23912, 23940 and 23953 should be approved and that permits should be issued to the applicants 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 23912, 23940 and 23953 and all relevant information on file therewith, particularly the reports of field investigations made January 10 and April 13, 1972.

#### ORDER

IT IS HEREBY ORDERED that Applications 23912, 23940 and 23953 be, and they are, approved, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions:

1-a. Application 23912. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 49 acre-feet per annum by storage to be collected from November 1 of each year to May 1 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.

1-b. Application 23940. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 acre-feet per annum by storage to be collected from November 1 of each year to April 1 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.

1-c. Application 23953. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.17 cubic foot per second by direct diversion from January 1 to December 31 of each year and the maximum amount diverted under this permit shall not exceed 100 acre-feet per year.

2. The maximum quantity authorized for appropriation may be reduced in the license if investigation warrants.

3. Application 23953. Construction work shall be completed on or before December 1, 1974.

4. Applications 23912 and 23940. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

5. Application 23953. Complete application of the water to the proposed use shall be made on or before December 1, 1975.

6. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

7. All rights and privileges under this permit and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to

meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

8. 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.



9. 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.

10. Applications 23912 and 23940. Should a visible surface flow of water not occur at least once during the period of November 1 to May 1 of each season in the natural stream channel between the permittee's dam and State Highway 58 crossing in Section 5, T29S, R14E, MDB&M, permittee shall release from his reservoir as soon after May 1 as feasible all water collected in his reservoir during the November 1 to May 1 period. Permittee shall install and maintain a staff gage in his reservoir and shall include in his annual progress report to the Board the staff gage reading on November 1 of each year.

11. On or before June 1 of each year permittee shall report to the State Water Resources Control Board whether release of water was required by condition 10 and if so, date that said release was completed.

12. The State Water Resources Control Board retains continuing jurisdiction for a period of three years from the date of this order to determine if the provisions of condition 10 are adequate to protect the prior vested rights of downstream users.

13. Applications 23912 and 23940. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam



as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

Dated: April 19, 1973

W. W. ADAMS

W. W. Adams, Chairman

RONALD B. ROBIE

Ronald B. Robie, Vice Chairman

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN

W. Don Maughan

