

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19079)
of Fred J. and Mary E. Powers and)
Frank L. and Florence C. Elliott to)
Appropriate from North Fork Murray)
Creek and an Unnamed Stream Tributary)
thereto in Calaveras County)

Decision D. 1048

ADOPTED NOV 13 '61

1048

DECISION APPROVING APPLICATION

Application 19079 for a permit to appropriate unappropriated water having been filed; a protest having been received; the applicants and protestant 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 19079 is for a permit to appropriate 0.33 cubic foot per second (cfs) by direct diversion from March 1 to October 1 of each year from North Fork Murray Creek and a total of 25 acre-feet per annum by storage from October 1 of each year to April 30 of the succeeding year from North Fork Murray Creek and an unnamed stream tributary thereto for irrigation and stockwatering purposes in Calaveras County. The points of diversions are to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 4, T4N, R12E, MDB&M.

2. The applicants' proposed point of direct diversion is located on North Fork Murray Creek approximately 1.5 miles upstream from its confluence with Murray Creek. The proposed point of diversion to storage is located on the unnamed stream in the same vicinity, where a dam will impound water pumped from the North Fork of Murray Creek along with available water in the unnamed stream. Water will be released from this reservoir (capacity 25 acre-feet) into three regulatory dams of 1-acre foot capacity and conveyed from there by gravity to the place of use.

3. The flow at the applicants' proposed point of diversion on North Fork Murray Creek was 0.4 cubic foot per second (minimum) in September, 1959, a year of subnormal rainfall and 0.8 cubic foot per second on March 17, 1960.

4. A correlation of the stream flow at the applicants' proposed point of diversion on North Fork Murray Creek with the flow of Murray Creek "near San Andreas" shows that even in the driest years there is more than 25 acre-feet passing the point of diversion on North Fork Murray Creek during the period from October 1 of each year to April 30 of the following year.

5. Protestant Charles W. Neilsen diverts from Murray Creek at two dams located approximately one-quarter of a mile apart just below the confluence of San Andreas Creek and Murray Creek. His use is for stockwatering and the irrigation of approximately 65 acres, being supplied, in part, by a well and diversions from Chili Gulch and North Fork Calaveras River. The protest asserts a right to the

use of the waters of Murray Creek dating prior to the year 1914 but makes no objection to storage by the applicants from November 1 of each year to April 1 of the following year.

6. The record of the flows of Murray Creek at USGS gaging station "near San Andreas," located approximately 0.5 mile above the protestant, shows that during the period 1950-59 there was water in excess of the protestant's requirements and in sufficient quantities to supply the applicants during the months of March, April, May and June.

7. During the months of July, August, September and October the flows of Murray Creek consist almost entirely of sewage effluent from San Andreas Creek which enters the stream below both the applicants' point of diversion and the gaging station. There has been ample water to supply the protestant from this source during these months.

8. There is unappropriated water 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.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19079 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 19079 and all relevant

information on file therewith, particularly the report of the field investigations made March 25, 1960, and January 25, 1961, United States Geological Survey (USGS) Water Supply Papers, Part 11, "Pacific Slope Basins in California," with particular reference to stream-flow records of Murray Creek "near San Andreas," and USGS topographical quadrangles "Mokelumne Hill" and "San Andreas," 15-minute series, dated 1948 and 1945, respectively.

IT IS HEREBY ORDERED that Application 19079 be, and the same is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.33 cubic foot per second by direct diversion to be diverted between about March 1 and about October 1 of each year and a total of 25 acre-feet per annum by storage to be collected from about October 1 of each year to about April 30 of the succeeding year. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

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

3. Actual construction work shall begin on or before June 1, 1962, and 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, 1964.

5. Complete application of the water to be proposed use shall be made on or before December 1, 1965.

6. 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 Rights Board, 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 and/or to the extent that appropriation of water is not authorized under this permit.

7. This permit does not authorize collection of water to storage during the period from about May 1 to about September 30 to offset evaporation and seepage losses or for any other purpose.

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. 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.

10. 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.

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 , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member