

*Amended by
attached Order
dated 9-2-66*

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD



120

ADOPTED DEC 22 1964

In the Matter of Application 21110
of Floyd Myers Marsh and Application
21250 of Estate of Floyd J. Myers to
Appropriate from Cortina Creek
in Colusa County

Decision D 1202

DECISION APPROVING APPLICATIONS IN PART

Floyd Myers Marsh having filed Application 21110 and the Estate of Floyd J. Myers having filed Application 21250 for a permit to appropriate unappropriated water; protests 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 21110 is for a permit to appropriate 1.25 cubic feet per second (cfs) by direct diversion from February 1 to October 15 of each year for stockwatering and irrigation purposes from Cortina Creek in Colusa County. The point of diversion is to be located within the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4, T14N, R2W, MDB&M.

2. Application 21250 is for a permit to appropriate 2.5 cubic feet per second (cfs) by direct diversion from March 15 to November 1 of each year for stockwatering and irrigation purposes from Cortina Creek in Colusa County. The point of diversion is to be located within the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 5, T14N, R2W, MDB&M.

3. No natural flow reaches the applicants' points of diversion during the season requested except during and immediately following periods of heavy rainfall. The supply available during the diversion season requested by the applicants consists mainly of return flow from well water used for irrigation. Regardless of its source, substantially all of the flow in the amounts applied for would, if not diverted, find its way to Colusa Basin Drain or channels tributary to it and thence to the Sacramento River.

4. Board's Decision D 1190 was issued following a hearing on Applications 15846, etc., to appropriate from the Colusa Basin Drainage Canal, Yolo By-Pass and various tributary drainage channels. As explained in that decision, an analysis of the available water supply shows that water surplus to local rights and the Bureau of Reclamation's requirements within the Sacramento River Basin does not occur in Reach 2 of the Sacramento River (Knights Landing to Sacramento) during the months of July and August to justify approval of applications for these months.

5. There is unappropriated water available to supply the applicants except during the months of July and August, 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 Applications 21110 and 21250 should be approved in part and that permits 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: Applications 21110 and 21250 and all relevant information on file therewith, particularly the report of the field investigation made May 21, 1964; "Central Valley Project Operation Study, Shasta Reservoir Operation" for the hydrologic period 1921-22 through 1953-54, dated August 4, 1959; "Source of Data and Column Explanation for Central Valley Project Operation Study, Shasta Reservoir" for the hydrologic period 1921-22 through 1953-54; Report on 1956 Cooperative Study Program, "Water Use and Water Rights along the Sacramento River and in the Sacramento-San Joaquin Delta", Volumes I and II, dated March 1957, together with supplements; and USGS "Arbuckle" quadrangle map of the 7½-minute series.

ORDER

IT IS HEREBY ORDERED that Applications 21110 and 21250, 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. The water appropriated pursuant to Application 21110 shall be limited to the quantity which can be beneficially

used and shall not exceed 1.25 cubic feet per second by direct diversion to be diverted from about February 1 to about June 30 and from about September 1 to about October 15 of each year.

1-b. The water appropriated pursuant to Application 21250 shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 cubic feet per second by direct diversion to be diverted from about March 15 to about June 30 and from about September 1 to about November 1 of each year.

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

3. Actual construction work shall begin on or before June 1, 1965, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1967.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1968.

6. 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.

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 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.

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.

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



STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21110)
of Floyd Myers Marsh and)
Application 21250 of Estate of)
Floyd J. Myers to Appropriate from)
Cortina Creek in Colusa County)

*Adopted
March 2, 1966*

ORDER REINSTATING AND AMENDING DECISION D 1202

On February 17, 1965, the State Water Rights Board adopted an "Order for Reconsideration of Decision D 1202" pursuant to a petition for reconsideration by Floyd Myers Marsh and the Estate of Floyd J. Myers. Said petition for reconsideration challenged the Board's finding that the water covered by the applications has hydraulic continuity with the Colusa Basin Drain.

Applicants have submitted copies of the findings and judgment of the Superior Court of Colusa County in the case of Freeman v. Kalfsbeek (Action No. 10977) in support of their contention that Cortina Creek ends at Ohm Road. The fact that Cortina Creek terminates at Ohm Road is not material to the issue of hydraulic continuity if the water in the creek reaches the Colusa Basin Drain.

The results of further field investigations of the flows of Cortina Creek during the months of July and

August 1965 confirm the Board's finding in Decision D 1202 that substantially all the flow covered by the applications would, if not diverted, find its way to the Colusa Basin Drain or channels tributary to it, and that the Board was correct in ordering the deletion of the months of July and August from the permits to be issued on Applications 21110 and 21250. However, further studies being made by the Department of Water Resources and the U. S. Bureau of Reclamation are in progress to determine the extent of availability of unappropriated water in the Sacramento River and Delta, and the permits to be issued on Applications 21110 and 21250 should contain a permit term reserving jurisdiction in the Board in respect to the season of use under the permits so as to conform them with results of the pending study.

After consideration of further evidence, the Board finds that its Decision D 1202 was fair and should be reinstated with an additional permit term reserving jurisdiction in respect to the season of use under the permits. Also, because of the time that has elapsed since the decision was adopted, the dates specified in the decision for commencing and completing the appropriation of water should be advanced.

ORDER

IT IS HEREBY ORDERED that Decision D 1202 be, and it is, reinstated, and that paragraphs 3, 4 and 5 on page 4 be amended to read:

3. Actual construction work shall begin on or before September 1, 1966, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1968.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1969.

IT IS FURTHER ORDERED that the following additional term be included in the permits issued on Applications 21110 and 21250:

9. The State Water Rights Board reserves jurisdiction over this permit for the purpose of conforming the season of diversion to later findings of the Board on other applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

Adopted as the order of the State Water Rights Board at a meeting duly called and held in Sacramento, California, this _____ day of _____, 1966.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member