

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21901 of
Estate of William M. Moores and Gertrude
J. Moores and Application 21902 of Estate
of William M. Moores, Gertrude J. Moores,
and Jesse E. Nichols to Appropriate from
Moores Creek and Irish Gulch, Respectively,
in Mendocino County

Decision D 1288

1288

DECISION APPROVING APPLICATIONS

Applications 21901 and 21902 having been filed;
protests having been received; the applicants and protestants
having stipulated to proceedings in lieu of hearing as pro-
vided for by Title 23, California Administrative Code, Sec-
tion 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-(a) Application 21901 is for a permit to appro-
priate 0.1 cubic foot per second (cfs) by direct diversion
and 14.5 acre-feet per annum by storage year-round for fire
protection and recreational purposes from Moores Creek in
Mendocino County. The point of diversion is to be located
in the NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 6, T13N, R16W, MDB&M.

(b) Application 21902 is for a permit to appropriate 1.31 cfs by direct diversion year-round for domestic, municipal, and irrigation purposes from Irish Gulch in Mendocino County.

On May 12, 1967, the applicants filed a petition to amend Application 21902 to include in the place of use an additional 450 acres more or less in Section 1, T13N, R17W, and Section 6, T13N, R16W, MDB&M, more particularly described in exhibits to their petition. On the same date, the applicants filed a petition to amend Application 21902 to designate three variable points of diversion in the S $\frac{1}{2}$ of N $\frac{1}{2}$ of Section 6, T13N, R16W, MDB&M, more particularly described in their petition. The proposed changes will not operate to the injury of any legal user of the water involved and should be approved.

2. Irish Gulch heads at an elevation of approximately 1,600 feet and flows in a general westerly direction approximately three miles to the Pacific Ocean. Moores Creek heads at approximately the same elevation and flows in a general southwesterly direction to enter Irish Gulch approximately one-quarter mile from the ocean.

3. Water from Irish Gulch will be used for domestic purposes at a subdivision now under construction on the Moores' land and for irrigation within approximately 68 acres owned by them and approximately 450 acres owned by Nichols. The

water for domestic use is conveyed by gravity from a point on Nichols' land approximately one mile from the ocean through a 6-inch pipeline to a regulatory storage tank located 2,500 feet downstream. The tank has a capacity of approximately 210,000 gallons. Water from Moores Creek will be impounded in a reservoir which will be used for recreation and fire protection by home owners in the subdivision.

4. Arnold and Lorraine Linscheid, protestants to both applications, are located on Irish Gulch between State Highway No. 1 and the Pacific Ocean. They pump water from the gulch at a sump below the Moores Creek confluence approximately 300 feet from the ocean. The water is used at a home under apparent riparian right. They also hold Permit 14903 (Application 22080), which is junior to Applications 21901 and 21902, for 1,500 gallons per day to cover this use.

5. Irish Gulch flows all year at its mouth and is a gaining stream between the applicants' uppermost point of diversion and the protestants' sump. On July 31, 1967, its flow above the applicants' uppermost point of diversion was 0.21 cfs, 0.45 cfs at the lower limit of their moveable points of diversion, and 0.62 cfs at the protestants' point of diversion. The natural inflow downstream from the applicants' points of diversion is more than adequate to supply protestants' needs.

Moores Creek ceases flowing for all practical purposes during the driest part of the summer. However, sufficient

water occurs during the average year to fill the reservoir and to justify a full season for the diversions proposed by Application 21901.

6. Application 21902 was filed by William M. and Gertrude J. Moores. A protest was filed to the application by Nichols on the grounds of lack of access on the part of the Moores to the proposed point of diversion and alleged interference with Nichols' claimed riparian rights. Later, Nichols and the Moores entered into an agreement providing for the withdrawal of the protest and assignment to Nichols of a one-half interest in the application. Pursuant to this agreement, the applicants filed the aforementioned petitions to amend Application 21902 to include Nichols' land in the place of use and to add points of diversion.

The agreement provides that any permit issued pursuant to Application 21902 shall be expressly conditioned upon full and faithful performance of the agreement. The permit will contain a term stating that it is subject to and limited by the agreement but will further state that the Board does not assume jurisdiction to enforce the agreement.

7. 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.

8. The intended use is beneficial.

9. The applicants claim the place of use designated by Application 21902 is entitled to the use of water by riparian right. The permit should contain a term stating that upon a judicial determination that the place of use under the permit, or a portion thereof, is entitled to use of water by riparian right, the right so determined and the right acquired under the 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.

From the foregoing findings, the Board concludes that Applications 21901 and 21902 should be approved 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 21901 and 21902 and all relevant information on file therewith, particularly the report of the field investigations made August 30, 1966, and July 31, 1967.

ORDER

IT IS HEREBY ORDERED that the petitions to amend Application 21902 by adding additional points of diversion and enlarging the place of use by approximately 450 acres be, and they are, granted.

IT IS FURTHER ORDERED that Applications 21901 and 21902 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 under permit issued pursuant to Application 21901 shall be limited to the quantity which can be beneficially used and shall not exceed 0.1 cubic foot per second (cfs) by direct diversion to be diverted year-round, and 14.5 acre-feet per annum by storage to be collected year-round.

(b) The water appropriated under permit issued pursuant to Application 21902 shall be limited to the quantity which can be beneficially used and shall not exceed 1.31 cfs by direct diversion to be diverted year-round. The equivalent of such continuous flow allowance under permit issued pursuant to Application 21902 for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

2. After the initial filling of the storage reservoir, permittee's right under permit issued pursuant to Application 21901 extends only to water necessary to keep the reservoir full by replacing water used for fire protection or lost by evaporation or seepage, and to refill if emptied for necessary maintenance or repair.

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

4. Construction work shall be completed on or before December 1, 1970.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

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.

9. Water entering the reservoir or collected in the reservoir under permit issued pursuant to Application 21901 shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized

under permit. 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 to comply with this paragraph.

10. Upon a judicial determination that the place of use under permit issued pursuant to Application 21902, 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.

11. The permit issued pursuant to Application 21902 and all rights acquired or to be acquired thereunder shall be subject to and limited by the agreement entered into between Jesse E. Nichols and William M. Moores and Gertrude J. Moores, a copy of which is on file with the State Water Rights Board. The State Water Rights Board does not assume jurisdiction to enforce said agreement.

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

Dated: **NOV 30 1967**

/s/ George B. Maul
George B. Maul, Chairman

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

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