

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 16613)
Of John A., Sarah Joan, and Katherine)
M. Burns to Appropriate from Aetna)
(Star) Creek in Napa County)

Decision No. D 960

ADOPTED MAR 22 '60

ORDER APPROVING APPLICATION IN PART

John A., Sarah Joan, and Katherine M. Burns having filed Application 16613 for a permit to appropriate unappropriated water, a protest having been received from George B. and Ruth V. Heibel; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for under Section 737 of the California Administrative Code, Title 23, Waters; and an investigation having been held by the State Water Rights Board pursuant to said stipulation; the Board, relying upon Application 16613 and all relevant information on file therewith, particularly the report of the field investigation made on November 20, 1959, USGS "Calistoga" and "St. Helena" quadrangles, both 15-minute series, finds as follows:

1. Application 16613 is for a permit to appropriate 0.5 cubic foot per second by direct diversion to be diverted from may 1 to October 31, and 40 acre-feet per annum by offstream storage in an existing reservoir of 46.5 acre-feet capacity, to be collected from November 1 of each year to May 1 of the succeeding year from Aetna Creek, Napa County.

The water is to be used for irrigation and stockwatering purposes within a 40-acre parcel of land approximately $\frac{1}{2}$ mile southeasterly from the point of diversion and is to supplement the 48 acre-feet per annum applicants are now entitled to at the same reservoir from an unnamed stream under Permit 9495 (Application 15258).

2. The reasonable needs of the protestants, George B. and Ruth V. Heibel, require all the available surface flow of Aetna Creek from May 1 to October 31 of each year, the period of direct diversion set forth in the application.

3. There is unappropriated water available to supply the applicant from November 1 of each year to May 1 of the succeeding year and such water may be diverted and used in the manner proposed by the applicant without causing substantial injury to any lawful user of water.

4. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 16613 should be approved as it applies to storage and denied as it applies to direct diversion and that a permit should be issued to the applicants subject to the usual terms and conditions plus a special condition that the amount to be diverted under Application 16613 and under Permit 9495 shall not exceed 48 acre-feet per annum.

ORDER

Application 16613 for a permit to appropriate unappropriated water having been filed, a protest having

been filed, applicants and protestants having submitted stipulations to the proceedings in lieu of hearing as provided for under Section 737 of the California Administrative Code, Title 23, Waters, an investigation having been held by the Board, and the Board now being fully informed in the premises;

IT IS HEREBY ORDERED that Application 16613 be, and the same is, approved in part, and that a permit be issued to the applicants subject to vested rights and the following terms and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 40 acre-feet per annum by storage to be collected from about November 1 of each year to about May 1 of the succeeding year.

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

3. Actual construction work shall begin on or before September 1, 1960, and shall 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, 1962.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1963.

6. Progress reports shall be filed promptly by

permittees 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. The total quantity of water diverted under this permit and Permit 9495 shall not exceed 48 acre-feet per annum.

IT IS HEREBY FURTHER ORDERED that Application 16613, insofar as it refers to the direct diversion of 0.5 cubic foot per second from May 1 to October 31 of each year, be, and the same is, denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at _____, California, on this _____ day of _____, 1960.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member