

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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In the Matter of Applications 22711
and 22949 of Lewis G. Carpenter, Jr.
to appropriate from Napa River in
Napa County.

Decision 1364

DECISION APPROVING APPLICATIONS IN PART

Lewis G. Carpenter, Jr. having filed Applications 22711 and 22949 for permits to appropriate unappropriated water; protests having been received; the applicant 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(a). Application 22711 is for a permit to appropriate 0.94 cubic foot per second (cfs) by direct diversion from March 1 to November 15 of each year for irrigation, frost protection and heat protection purposes from Napa River in Napa County. The points of diversion are to be located within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 30, T8N, R5W, MDB&M.

(b). Application 22949 is for a permit to appropriate 0.35 cfs by direct diversion from March 15 to November 15 for

the same purposes and from the same source. The point of diversion is to be located within the $SE\frac{1}{4}$ of $SE\frac{1}{4}$, Section 23, T8N, R6W, MDB&M.

Applicant's Project

2(a). Application 22711 covers use of water on approximately 75 acres of vineyard bordering the Napa River within the City of St. Helena. Water is pumped from the unobstructed channel of the river by two portable pumps. From about March 1 to about May 31 water will be pumped into a regulatory pond now under construction which will have a capacity of approximately 10 acre-feet. The water will be used for frost protection. This use will have a seasonal requirement of 132 acre-feet or a continuous flow of 0.74 cfs. From June 1 to about November 15, the water will be used for three irrigations at an average depth of four inches each. This use will require 75 acre-feet a season or a continuous flow of 0.42 cfs. The water will also be used for heat protection purposes during the irrigation season, which will require an additional 33 acre-feet of water but will not require a greater maximum rate of diversion than for irrigation purposes alone. The total annual quantity of water for all purposes will be approximately 240 acre-feet.

(b). Application 22949 covers use of water at a 25-acre vineyard that also borders the Napa River approximately 1.5 miles further upstream. The water is to be used for the same purposes and in the same manner as contemplated by Application 22711 except that no regulatory pond is involved. The

continuous flow diversion rates will be 0.25 cfs for frost protection and 0.14 cfs for irrigation and heat protection for a total annual quantity of 80 acre-feet.

Protestants

3. Protestant Robert E. Connolly irrigates approximately 180 acres of pasture and waters approximately 250 head of cattle with water from the Napa River under claim of riparian and pre-1914 appropriative rights.

Protestants Launce E. and George F. Gamble are now pumping from wells near the Napa River for irrigation of approximately 180 acres of pasture and watering of approximately 300 head of cattle under claim of riparian right. They plan a 355-acre vineyard which will replace the pasture and will require approximately the same amount of water as they are presently using. They are apprehensive that any further upstream diversions will result in the local water table falling below critical levels.

The Department of Fish and Game protested the applications in order to protect the Napa River as a fishery resource.

Availability of Water

4. The records of a U.S.G.S. gaging station on the Napa River just below protestant Connolly show that for the critical months of August and September the average flow of the river has been 1.27 cfs and 0.77 cfs, respectively, considerably more than the quantity required by the applicant under both applications during those months (0.56 cfs).

On July 24, 1968, a dry year, the flow of the river approximately one-quarter mile below this gaging station was an estimated 0.75 cfs.

5. The records of another U.S.G.S. gaging station on the Napa River, which is below the protestants Gamble, show that surplus water has been available during the months of August and September in an average year. On July 24, 1968, the flow in the river immediately below the Gamble wells was an estimated 1.0 cfs.

The aquifers that supply the Gamble wells receive at least a part of their supply from Rector and Conn creeks. Conn Creek is controlled by the City of Napa's Conn Dam (Lake Hennessy) and the city is obligated by agreement with lower users to maintain groundwater levels as they were before construction of the dam.

6. Although the applicant has been using water on his property for several years, including 1968, a dry year, the protestants Gamble and Connolly have not experienced a shortage of water.

Protection of Fishery

7. In consideration of the dismissal of the Department of Fish and Game's protest, the applicant has agreed that any permits issued on Applications 22711 and 22949 contain the following term:

"For the protection and preservation of fishlife during the period from March 1 through May 31, diversion of water will be restricted to and used solely for frost protection of grapes; and from

June 1 through November 15, permittee shall bypass 0.25 cubic foot per second or the natural flow, whichever is less."

As the applicant's use of water for irrigation and heat protection purposes extends from June 1 to November 15 and any permit issued on Applications 22711 and 22949 will restrict the use of water for such purposes to that period, the portion of the proposed permit term restricting diversions for frost protection to the period from March 1 through May 31 is superfluous and should be omitted. The remainder of the term should be included in permits issued on Applications 22711 and 22949 along with a statement that the term is included pursuant to an agreement between the applicant and the department and is not to be construed as a finding by the Board that the amount of water is either adequate or required for the maintenance of fishlife.

8. Unappropriated water is available to supply the applicant, 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 Applications 22711 and 22949 should be approved in part and that permits should be issued to the applicant 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 22711 and 22949 and all relevant information on file therewith, particularly the report of a field investigation made October 17, 1969.

ORDER

IT IS HEREBY ORDERED that Applications 22711 and 22949 be, and they are, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1(a). The water appropriated pursuant to Application 22711 shall be limited to the quantity which can be beneficially used and shall not exceed 0.74 cubic foot per second (cfs) by direct diversion to be diverted from about March 1 to about May 31 of each year for frost protection and 0.42 cfs by direct diversion to be diverted from about June 1 to November 15 of each year for irrigation and heat protection.

The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

The total amount of water appropriated under the permit issued pursuant to Application 22711 shall not exceed 240 acre-feet annually.

(b). The water appropriated pursuant to Application 22949 shall be limited to the quantity which can be beneficially used and shall not exceed 0.25 cfs by direct diversion from about March 15 to about May 31 of each year for frost protection and 0.14 cfs by direct diversion from about June 1 to about November 15 of each year for irrigation and heat protection.

The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

The total amount of water appropriated under the permit issued pursuant to Application 22949 shall not exceed 80 acre-feet annually.

2. Permittee shall during the period from June 1 through November 15 bypass a minimum of 0.25 cubic foot per second or the flow of the stream whenever it is less than 0.25 cubic foot per second at the point of diversion to maintain fishlife.

The provisions of this paragraph are based on a bilateral agreement between permittee and the Department of Fish and Game, and shall not be construed as a finding by the State Water Resources Control Board that they are either adequate or required for the maintenance of fishlife.

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, 1972.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1973.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control 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 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.

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. Upon a judicial determination that the place of use under this permit 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.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Palm Springs, California.

Dated: November 19, 1970

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

RONALD B. ROBIE
Ronald B. Robie, Member

W. W. ADAMS
W. W. Adams, Member