

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20362  
of Capitola Berry Farms, Inc.  
to Appropriate from Ano Nuevo Creek  
in San Mateo County

Decision D 1132

ADOPTED MAY 22 1963

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DECISION APPROVING APPLICATION

Capitola Berry Farms, Inc., having filed Application 20362 for a permit 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 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 20362 is for a permit to appropriate 561 acre-feet per annum by storage from November 1 of each year to May 1 of the succeeding year for irrigation, recreational, stockwatering and fish culture purposes from Ano Nuevo Creek in San Mateo County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of projected Section 28, T9S, R4W, MDB&M.

2. Ano Nuevo Creek rises on the slopes of Chalk Mountain at an elevation of approximately 1,300 feet and courses in a general southwesterly direction approximately 3 miles to the applicant's point of diversion and continues from that point approximately one mile to the Pacific Ocean.

3. The applicant proposes to construct a dam and reservoir with a capacity of 258 acre-feet at its point of diversion. When this reservoir fills, the inflow will be diverted to a reservoir to be constructed on Piney Creek by pumping through 1,250 feet of 10-inch pipe. This reservoir will have a capacity of 118 acre-feet. Water will be diverted from the Piney Creek reservoir into Green Oaks Creek to flow down the creek for storage in two existing reservoirs, designated by the applicant as Green Oaks No. 1 and No. 2 which will be enlarged, and at a third and lowermost reservoir, designated as No. 3 which is to be constructed. Water will be diverted from these three reservoirs for the irrigation of approximately 300 acres of berries and vegetables.

4. The estimated average annual runoff of the Ano Nuevo Creek watershed which is available to the applicant at its point of diversion during its proposed diversion season is approximately 1,000 acre-feet. On May 24, 1962, the flow of the creek just above the applicant's point of diversion was 250 gallons per minute.

5. Protestants Worden W. and Betty May Steele and Catherine B. Steele divert directly from Green Oaks Creek and Green Oaks Lake, located below Green Oaks reservoirs Nos. 1 and 2, and impound water in said reservoirs. They hold Permits 12352, 12353, 12356, and 12357 to appropriate from Green Oaks Creek and claim riparian rights. Their protests state that the applicant's project will interfere with their supply of water from Green Oaks Creek, will flood lands belonging to them, interfere with a pipeline right-of-way, is in violation of an agreement to which the applicant's predecessor and the protestants are parties, referred to as the

"Green Oaks Agreement" of 1926, and that the amount of water applied for is excessive in relation to the number of irrigable acres contained in the applicant's place of use. No contention is made by the protestants that there is not sufficient unappropriated water available in Arroyo Nuevo Creek to satisfy the applicant.

6. The applicant's project will not diminish the supply of water available to the protestants from Green Oaks Creek. Any increased evaporation or seepage losses resulting from the construction of reservoir No. 3 and the enlarging of reservoirs Nos. 1 and 2 will be more than offset by an increase in the water supply of the Green Oaks Creek watershed resulting from the return flow of the applicant's imported water.

7. The amount of water covered by the application is not unreasonable considering the duty of water for the contemplated crops in the locality. An appropriative right obtained pursuant to permit is eventually measured by the amount of water placed to beneficial use at the time of the issuance of license. No harm can result to the protestants if the applicant's estimate of its needs is excessive, particularly in view of the fact that the protestants claim no rights to water from the source named in the application.

8. There is unappropriated water available at times to supply the applicant, and subject to suitable conditions, such water may be diverted and used in the manner proposed during those times without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

10. The matter of the respective rights and obligations of the applicant and protestants under the Green Oaks Agreement is not within the jurisdiction of the Board. However, terms should be included in the permit issued pursuant to Application 20362 stating that the permit is subject to the so-called "Green Oaks Agreement," dated May 2, 1926, and recorded in Volume 242, page 144, of the Official Records of San Mateo County, California, and stating that the issuance of the permit shall in no way be construed as confirming in the permittee the right to flood lands of others within the proposed reservoir areas.

11. The usual permit terms requiring the permittee to install and maintain proper measuring devices and facilities for the release or bypass of water will adequately protect the protestants from interference with their rights on Green Oaks Creek by the applicant's project.

From the foregoing findings, the Board concludes that Application 20362 should be approved and that a permit should be issued to the applicant 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 20362 and all relevant information on file therewith, particularly the report of the field investigation made May 24, 1962, the files of License 6323 (Application 3286); Permit 12351 (Application 17230); Permit 12352 (Application 17568); Permit 12353 (Application 17569); Permit 12354 (Application 17570); Permit 12355 (Application 17572);

Permit 12356 (Application 17573); Permit 12357 (Application 17574); Permit 13382 (Application 20273); United States Geological Survey Ano Nuevo and Franklin Point Quadrangles, 15-minute series, both dated 1955; State Water Resources Board Bulletin No. 1, "Water Resources of California," dated 1951.

IT IS HEREBY ORDERED that Application 20362, be and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 561 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, 1963, 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, 1965.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1966.

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

10. Permittee shall install and maintain outlet pipes of adequate capacity in Ano Nuevo, Piney, Green Oaks No. 1, Green Oaks No. 2, and Green Oaks No. 3 dams as near as practicable to the bottom of the natural stream channels or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoirs or collected in the reservoirs during and after the current storage season may be released into the downstream channels to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

11. Permittee shall install and maintain suitable measuring devices (a) upstream from the high water elevation of Ano Nuevo reservoir and (b) immediately below Ano Nuevo dam in order that accurate measurement can be made of the quantity of water flowing into and out of said reservoir.

12. Permittee shall install and maintain suitable measuring devices (a) in the conduit system which conveys water from Ano Nuevo Reservoir to Piney Reservoir and (b) immediately below Piney storage dam in order that accurate measurement can be made of the quantity of water being diverted into and out of said reservoir.

13. Permittee shall install and maintain suitable measuring devices (a) upstream from the high water elevation of Green Oaks Reservoir No. 1 and (b) immediately below Green Oaks No. 3 dam or immediately below Green Oaks No. 2 dam in the event No. 3 is not constructed in order that accurate measurement can be made of the quantity of water intercepted by Green Oaks Reservoirs Nos. 1, 2, and 3.

14. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed Ano Nuevo and Piney reservoirs of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

15. A separate application for approval of plans and specifications for construction of the Ano Nuevo and Piney Creek

dams described in this approved water right application shall be filed with and approved by the Department of Water Resources prior to commencement of construction of the dams.

16. This permit is subject to the so-called "Green Oaks Agreement," dated May 2, 1926, and recorded in Volume 242, page 144, of the Official Records of San Mateo County, California.

17. The issuance of this permit shall in no way be construed as confirming in the permittee the right to flood lands of others within the proposed reservoir areas.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at California, on the \_\_\_\_\_ day of \_\_\_\_\_, 1963.

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Kent Silverthorne, Chairman

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Ralph J. McGill, Member

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W. A. Alexander, Member