

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20408
of A. W. and Eunice C. Hawks to
Appropriate from an Unnamed Stream
Tributary to Wooden Valley Creek in
Napa County.

Decision D 1133

ADOPTED MAY 22 1963

1133

DECISION APPROVING APPLICATION

A. W. and Eunice C. Hawks having filed Application 20408 for a permit to appropriate unappropriated water; a protest 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 20408 is for a permit to appropriate 14 acre-feet per annum by storage from November 1 of each year to April 30 of the succeeding year for irrigation, domestic, and stockwatering use from an unnamed stream tributary to Wooden Valley Creek, thence Suisun Creek in Napa County. The point of diversion is to be located within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 9, T6N, R3W, MDB&M.

2. The unnamed stream from which the applicants seek an appropriation contains a 108-acre watershed above the applicants' proposed dam. The applicants' reservoir would have a

capacity of 14 acre-feet and would cover a spring area which is a source of supply for water diverted and used by protestant Walter A. Barnes. The proposed dam would be located about 500 feet upstream from Highway 37 and about 200 feet upstream from the protestant's point of diversion.

3. There are no available records of flow for the subject unnamed stream. At the time of the field investigation on March 14, 1962, the flow of the unnamed stream was estimated to be about one cubic foot per second at the applicants' proposed damsite. At a supplementary investigation on September 18, 1962, the protestant was diverting an estimated 1.5 gallons per minute, which was substantially the entire flow of springs in the proposed reservoir area. Since the annual rainfall in this area averages about 30 inches, it is apparent that in most years the winter and spring runoff would be more than ample to fill the proposed reservoir. Applicants and protestant agreed that the winter flow of the unnamed stream is largely unused.

4. Protestant Barnes's claim of right is based upon a judgment of the Napa County Superior Court filed April 23, 1910, in Action No. 2687, entitled J. W. Barnes v. (J. B. Gardner et al. Said judgment established the right of the plaintiff to enter upon the "Second" tract of land described in the Complaint (now largely owned and occupied by the applicants) for the purpose of constructing diversion works, and a right to collect and convey the waters of said stream "subject to the rights of other riparian proprietors thereon," to the plaintiff's riparian lands which are now largely, if not wholly, owned and farmed by protestant Walter A.

Barnes. The protestant uses water for stock, for domestic use, and for some irrigation on his property. An investigation on March 14, 1962, revealed that the protestant's water requirements are about 2100 gallons per day. The summer flow of stream is often insufficient to supply this amount.

5. At the time of the field investigation on March 14, 1962, applicants agreed to deliver to protestant Barnes the same amount of water from the proposed reservoir as protestant is entitled to divert from the stream. The protestant objected to this proposal because the water from the reservoir may be of inferior quality to the water now being received as a result of use of the reservoir by cattle. The applicants subsequently consulted with representatives of the Soil Conservation Service to see if the damsite could be moved to another location and concluded that it could not be moved.

6. It is true that the proposed reservoir would cover the springs which supply the protestant with water in the summer. However, the protestant does not take water directly from any of the springs in the reservoir area. He diverts water from a point about two or three hundred feet downstream from said springs, and cattle presently have access to the springs and to the intervening stream area above the point of diversion. It is speculative whether construction of the reservoir would degrade the water used by the protestant.

7. There is unappropriated water 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.

From the foregoing findings, the Board concludes that Application 20408 should be approved and that a permit 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: Application 20408 and all relevant information on file therewith, particularly the reports of the field investigation dated March 19, and September 26, 1962; USGS "Capell Valley" and "Mt. George" quadrangles, 7.5-minute series dated 1951; and Judgment in Action No. 2687 of the Superior Court of the State of California in and for the County of Napa, dated April 23, 1910.

IT IS HEREBY ORDERED that Application 20408 be, and the same is, approved and that a permit be issued to the applicants 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 14 acre-feet per annum by storage to be collected from about November 1 of each year to about April 30 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 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. Permittees 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 October 31 of each season to offset evaporation and seepage losses or for any other purpose.

10. Permittees shall install and maintain an outlet pipe of adequate capacity in their dam as near as practicable to the bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoir or collected in the reservoir during and

after the current storage season may be released into the downstream channel 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. Permittees shall release water into the stream channel immediately below their storage dam in such amounts and at such times and rates as will be sufficient to satisfy the requirements of protestant Walter A. Barnes under vested prior right, not to exceed 2100 gallons per day.

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 _____, 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member