

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 22098  
of Warren L. and Virginia J. Smith  
to Appropriate from an Unnamed Stream  
in Contra Costa County

Decision D 1255

ADOPTED AUG 31 1966

DECISION APPROVING APPLICATION

Application 22098 of Warren L. and Virginia J. Smith having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on March 15, 1966, conducted by Board Chairman Kent Silverthorne; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 22098 is for a permit to appropriate 1500 gallons per day by direct diversion and 5 acre-feet per annum (afa) by storage from September 1 of each year to June 1 of the succeeding year for irrigation, recreation, and stock-watering purposes from an unnamed stream in Contra Costa County. The point of diversion is to be located within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 22, T1N, R2W, MDB&M.

2. The unnamed stream heads at an elevation of approximately 500 feet and flows approximately 4,000 feet

in a general northeasterly direction to the applicants' point of diversion. It continues from that point approximately 2.5 miles to join Grayson Creek. On February 21, 1966, the estimated flow of the unnamed stream was 5 gallons per minute.

3. The applicants have relocated the stream by installing a 24-inch concrete culvert along the westerly and northerly boundaries of their property. They have constructed a reservoir with a capacity of 1.5 acre-feet by filling in the original streambed. Water is pumped to the reservoir through a plastic pipe from a concrete junction box which connects the 24-inch culvert with an 18-inch culvert that crosses the Nova Court Subdivision. The water is used for the watering of approximately 50 various small animals and for recreation. In addition to these uses, the applicants plan to use the water for the raising of plants by hydroponics. The applicants claim a riparian right to the use of water from the unnamed stream.

4. Protestants, City of Walnut Creek, and Allen Betz, et al, object to the manner in which the water is being diverted by the applicants. They do not dispute the applicants' contention that there is water in the unnamed stream now going to waste during the proposed diversion season. They claim that the presence of the applicants' pump intake hose, anchoring sandbags, and other obstructions in the junction box has interfered with the function of the culvert as a storm drain. The protestants have no objection to the approval of

Application 22098 if the function of the culvert as a drain is not interfered with. It is within engineering feasibility to divert the water from the culvert without interfering with its function as a drain and the applicants should be required to make any necessary changes in their diversion works to prevent such interference.

5. There is unappropriated water available to supply the applicants, and, subject to suitable conditions, such water may be diverted without causing substantial injury to any lawful user of water.

6. The intended use is beneficial.

7. The permit issued on Application 22098 should contain a term stating that diversion of water from the source shall be made in such a manner as will not interfere with its function as a drain.

8. Although the point of diversion is on their property, the applicants state that the City has been granted an easement of a five-foot strip of land wherein the point of diversion is located for the purpose of access to and maintenance of the culvert. There is some question as to whether the easement was ever submitted to and accepted by the City (RT 56). A copy of the grant of easement that was to be submitted to the Board by the City to clarify the respective rights of the parties to the use of this strip of land (RT 62) has not been received. The permit issued on Application 22098 should contain a term stating that the

issuance of the permit shall in no way be construed as conferring upon permittee right of access to the point of diversion.

From the foregoing findings, the Board concludes that Application 22098 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.

#### ORDER

IT IS HEREBY ORDERED that Application 22098 be, and it is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1500 gallons per day by direct diversion and 5 acre-feet per annum by storage from about September 1 of each year to about June 1 of the succeeding year. Maximum rate of diversion to storage shall be 160 gallons per minute. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

4. 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.

5. 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.

6. 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.

7. 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.

8. The issuance of this permit shall in no way be construed as conferring upon permittee right of access to the point of diversion.

9. Diversion of water from the source shall be made in such a manner as will not interfere with its function as a drain.

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            1966.

/s/ Kent Silverthorne  
Kent Silverthorne, Chairman

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

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