

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application )  
22632 of Juel L. Christensen )  
and Irma M. Christensen to )  
Appropriate from an Unnamed )  
Creek in Santa Clara County )

Decision 1298

DECISION APPROVING APPLICATION

Juel L. Christensen and Irma M. Christensen having filed Application 22632 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 (predecessor of the State Water Resources Control 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 22632 is for a permit to appropriate 25 acre-feet per annum by off-stream storage between January 1 and June 1 of each year for irrigation and

domestic use from an unnamed creek, tributary to Saratoga Creek in Santa Clara County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 15, T8S, R2W, MDB&M. The place of use described in the application is a 56-acre parcel consisting of 40 acres in SE $\frac{1}{4}$  of NE $\frac{1}{4}$  and 16 acres in SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Section 15,

2. Applicants own and operate a wholesale nursery business on land traversed by two unnamed tributaries of Saratoga Creek. Applicants now appropriate water by direct diversion and storage from the easterly of these creeks under permits issued on Applications 18743 and 19745, as approved in part by Decision D 1044. The subject application requests supplementary storage from the westerly creek for use on the same acreage owned by the applicants, which is the authorized place of use under the existing permits.

3. Protestant San Jose Water Works is a public utility which diverts water from Saratoga Creek approximately 2.2 miles downstream from the applicants' acreage. The flows of Saratoga Creek and the protestant's claimed rights and usage are well documented in the files of Applications 18743 and 19745 and in Decision D 1044. That decision included a finding that surplus

water is available in most years during the months of February through June, and in some years in substantial quantities in January. For the protection of protestant's rights, the permits were issued subject to the condition that the permittee be allowed to divert water only at times when water is flowing past protestant's diversion dam.

4. In a letter to the Board, dated September 19, 1967, the protestant offered to withdraw its protest with the understanding that the permit would be issued subject to eight specific conditions. The applicants agreed to the first seven conditions as proposed. However, conditions 5 and 6 are standard permit terms which are designed for on-stream reservoirs. They are not appropriate for an off-stream reservoir, and will not be included in the permit for that reason. Protestant cannot be prejudiced by diversion of water that would otherwise flow unused past its diversion works. A permit term limiting diversion to such unused flow is proposed by condition 2, is agreed to by the applicants, and will be included in the permit.

5. Proposed condition 8, as amended by protestant's letter dated October 10, 1967, would require the applicants to pay protestant at its tariff rates

for all water diverted for commercial purposes outside the periods of time authorized by the permit. Such a clause relates to matters outside the jurisdiction of this Board and is, therefore, not appropriate for inclusion as a permit condition.

6. Unappropriated water is 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22632 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 22632 and all relevant information on file therewith, particularly the report of the field investigation made October 20, 1967, the files of Applications 18743 and 19745, and Decision D.1044.

ORDER

IT IS HEREBY ORDERED that Application 22632 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 amount of water to be appropriated shall be limited to the amount which can be beneficially used on that certain 56-acre parcel of real property described in Application 22632 and shall not exceed 25 acre-feet per annum by storage to be collected from January 1 to June 1 of each year. Maximum rate of diversion to off-stream storage shall be 0.60 cubic foot per second.

2. Notwithstanding any other provision of this permit, permittee may divert under this permit only so long as water is passing the diversion dam of San Jose Water Works situated approximately 11,500 feet downstream from permittee's point of diversion (said diversion dam of San Jose Water Works being known as Congress Springs Intake No. 1).

3. This permit shall not authorize any diversion of water during the period from June 1 of any year to January 1 of the succeeding year.

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

5. Actual construction work shall begin on or before September 1, 1968, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

6. Construction work shall be completed on or before December 1, 1970.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

8. 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.

9. 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.

10. Permittee shall allow representatives of the San Jose Water Works and 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.

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

Dated: **APR** 4 1958

/s/ George B. Maul  
George B. Maul, Chairman

Absent  
W. A. Alexander, Vice Chairman

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

/s/ E. F. Dibble  
E. F. Dibble, Member

/s/ Norman B. Hume  
Norman B. Hume, Member