

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22042 )  
of California Leisure Lands, Inc., ) Decision 1307  
et al., to appropriate from Pope )  
Creek in Napa County )

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DECISION APPROVING APPLICATION IN PART

Application 22042 of California Leisure Lands, Inc., et al., having been filed; protests having been received; a public hearing having been held before the State Water Rights Board (predecessor of the State Water Resources Control Board) on March 28, 1967; 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 22042 is for a permit to appropriate 3 cubic feet per second (cfs) by direct diversion from November 1 of each year to July 30 of the succeeding year for irrigation, domestic, industrial, stockwatering and recreational purposes from Pope Creek in Napa County. The points of diversion are to be located within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 10 and the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 9, T9N, R5W, MDB&M.

2. Applicants raise cattle on approximately 3,000 acres of land which eventually may be subdivided into recreational home sites. They propose to use water from Pope Creek for the irrigation of permanent pasture on 700 acres of this land which borders the creek approximately 3 miles above Lake Berryessa (RT 23, 36). Water from the creek will also be used for attracting ducks and the raising of fish (RT 40). Domestic use of water from the creek by the applicants is at least 10 years in the future and plans for such use are indefinite (RT 27, 29).

Any permit issued on Application 22042 should be only for irrigation, stockwatering, fish culture and recreational purposes.

3. The only unappropriated water in Pope Creek is a reservation of 33,000 acre-feet per annum for use within the watershed of Putah Creek above Lake Berryessa provided by the State Water Rights Board's Decision D 869 (Staff Exh. 1). The use proposed by Application 22042 is within the terms of this reservation.

4. A correlation of the flows of Pope Creek recorded at a U.S.G.S. gaging station with spot measurements made by the Board's staff shows that there is no surplus water in the creek during the month of July. During the remainder of the applicants' diversion season surplus water is available to supply the applicants in most years.

5. Protestants United States Bureau of Reclamation and Solano County Flood Control and Water Conservation District have agreed to the withdrawal of their protests provided any permit issued pursuant to the application contains a term prohibiting diversions in years when there is no water available to the applicants under the reservation. Applicants accepted such a term and it should be included in any permit issued on Application 22042.

6. Protestant Department of Fish and Game has requested the bypass of certain flows by the applicants to protect Pope Creek as a fishery resource.

No catchable trout have been planted in Pope Creek during the last few years and landowners have denied the public access to the stream; therefore the applicants should not be required to bypass water during the months of May and June for the benefit of fishermen. However, Mr. George Nokes, a fisheries biologist for the Department of Fish and Game, testified that the stream is a valuable spawning area for trout from Lake Berryessa and for that purpose a minimum flow of 5 cfs is necessary between January 1 and April 30 of each year. In most years the stream runoff is sufficient to both maintain this flow and to supply the applicants. Based upon the record of the hearing of this application, including evidence of the water supply that is available to the applicants during the spawning season, the Board finds

that the permit issued on Application 22042 should require the bypass of 5 cfs, or the natural flow if less than 5 cfs, between January 1 and April 30 for the protection and preservation of fishlife.

7. Unappropriated water is available to supply the applicants from November 1 to July 1 of each season 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.

9. As the proposed use may be covered by riparian right, the permit issued on Application 22042 should contain a clause to the effect that the 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.

From the foregoing findings, the Board concludes that Application 22042 should be approved in part 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 22042 be, and it is, approved in part, 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 3 cubic feet per second by direct diversion to be diverted from about November 1 of each year to about July 1 of the succeeding year for irrigation, stockwatering, fish culture and recreational purposes on 700 acres of land within the place of use described in the application and in the accompanying map. 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.

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

3. Construction work shall be completed on or before December 1, 1971.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1972.

5. 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.

6. 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.

7. 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.

8. 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.

9. For the protection and preservation of fishlife, permittee shall, during the period from January 1 to April 30 of each year, bypass a minimum flow of 5 cubic feet per second or the natural flow, whichever is less.

10. Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the watershed upstream from Monticello Reservoir in Decision D 869.

During the portion of such years that hydraulic continuity exists between the permittee's diversion point and Monticello Reservoir, permittee shall not divert water but shall open his diversion works and allow the water to flow downstream. Nothing in this term, however, shall preclude permittee from purchasing replacement water on an exchange basis.

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

Dated: JUL 18 1968

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

/s/ W. A. Alexander  
W. A. Alexander, Vice Chairman

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

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

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