

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23316 of )  
Gus P. Plessas, et al., and Applica- )  
tion 23460 of Hazen A. Dennis, Jr., )  
and Margaret Dennis, dba Anderson ) Decision 1438  
Springs Water Company to Appropriate )  
from Gunning Creek and Other Sources )  
Tributary to Upper Putah Creek in )  
Lake County. )

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DECISION APPROVING APPLICATION 23460 IN PART  
AND DENYING APPLICATION 23316

BY BOARD VICE CHAIRMAN ROBIE AND MEMBER DODSON:

Gus P. Plessas, Betty L. Plessas, Clarissa Donaldson and Martha Jean Chapman having filed Application 23316 and Hazen A. Dennis, Jr., and Margaret Dennis, doing business as Anderson Springs Water Company having filed Application 23460 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on May 24, 1972; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Applications

1. Application 23316 is for a permit to appropriate a total of 2.5 cubic feet per second (cfs) by direct diversion from May 1 to November 30 of each year for irrigation purposes from Gunning Creek and three unnamed streams in Lake County.

1438

The points of diversion are to be located within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$ , SE $\frac{1}{4}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 22, T11N, R8W, MDB&M.

At the hearing the applicant amended Application 23316 to reduce the quantity of water applied for to 0.86 cfs to be diverted from May 15 to October 15 with an annual diversion limit of 207 acre-feet (RT 19, 47).

2. Application 23460 is for a permit to appropriate 0.22 cfs (total) by direct diversion, year-round, for domestic purposes from Gunning, Anderson, and Hanson Creeks, an unnamed spring and Horse Spring in Lake County.

The maximum rate of diversion is 0.1 cfs from each of the creeks and 0.05 cfs from each of the springs. The total annual diversion is not to exceed 115 acre-feet.

The points of diversion are to be located within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of projected Section 26, NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of projected Section 25, SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of projected Section 36, NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 26 and SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 26, respectively; all in T11N, R8W.

#### Source of Water and Water Supply

3. Gunning Creek and Anderson Creek rise on the southern slope of Cobb Mountain. Gunning Creek flows into Anderson Creek which continues in an easterly direction approximately two miles to join Putah Creek which rises on the eastern slope of Cobb Mountain. The reach of Putah Creek above its confluence with Anderson Creek is sometimes referred to as English Creek.

Hanson Creek (unnamed on USGS maps) flows into Bear Canyon Creek which continues approximately one-fourth mile in a general northeasterly direction to enter Anderson Creek.

The three unnamed streams are upper tributaries of Gunning Creek. The unnamed spring and Horse Spring flow into Anderson Creek below the Gunning Creek junction.

4. The only streamflow records for the sources covered by the applications, other than spot measurements, have been recorded at the USGS gaging station "near Guenoc" on Putah Creek approximately 12 miles below the Anderson Creek confluence. The Department of Fish and Game made streamflow measurements at five locations in the general area during the year 1970. A study of these measurements and the records of the USGS gaging station "near Guenoc" shows that the flow in Putah Creek and its tributaries, while ample during the winter and spring, recedes rapidly in late spring. By July 1, or earlier in dry years, the base flow in Anderson Creek is reached.

#### Applicants' Projects

5. Applicants Plessas, et al., (Application 23316) plan to establish a 200-acre Christmas tree farm near the headwaters of Anderson Creek and Putah Creek. This will be a progressive development with an initial two-acre experimental plot of 5,000 trees planted by March 1974 (RT 14). Production plantings will begin in the year 1976 at an initial rate of 35,000 trees per year. The entire 200 acres will not be planted until the year 1989 (RT 15). The trees will be marketed when they are seven years old which, except for experimental plantings, will not commence until the year 1983.

6. Applicant Anderson Springs Water Company (Application 23460) is a public utility serving domestic water to homes adjoining the lower one and one-half mile reach of Anderson Creek. The water applied for is to meet the present demands of 150 customers, which require a maximum rate of diversion of 0.13 cfs, and to meet the requirements of an estimated 115 future customers (RT 88).

#### Protests

7. Protestant U. S. Bureau of Reclamation (hereinafter referred to as "Bureau") holds Permits 10657, et al. for its Solano Project on Putah Creek, the principal feature being Monticello Dam. Protestant Solano County Flood Control and Water Conservation District, as beneficiary of the full yield of the Solano Project, joins in the Bureau's protest. These protestants will be satisfied if any permits issued pursuant to Applications 23316 and 23460 contain a suggested term (Bureau's Protests; RT 5, RT 171). The suggested term has been adopted by the Board as a standard term to be contained in all permits to appropriate water by direct diversion from Putah Creek above Monticello Reservoir (Lake Berryessa) and should be included in any permits issued pursuant to these applications.

The Department of Fish and Game protested only Application 23316 to protect resident, migrating and stocked rainbow trout in Anderson and Gunning Creeks.

Anderson Springs Water Company protested Application 23316 on the basis of claimed riparian right and rights obtained by its predecessor through agreement.

The Estate of Ralph Davies which diverts from Putah Creek approximately one mile below the Anderson Creek confluence under claim of riparian and pre-1914 appropriative rights originally protested both applications. It withdrew its protest against Application 23460 at the hearing (RT 3, 89).

Steve Bianchi and other users of water from lower Gunning Creek claiming riparian and adjudicated rights protested Application 23316.

Audrey B. Anderson protested Application 23460. She holds License 9789 (Application 15607) to divert from Putah Creek approximately two miles downstream from the Estate of Davies.

8. Without question substantially all of the water in the Putah Creek stream system is needed to satisfy existing rights as concluded by the State Water Rights Board (predecessor of this Board) in its Decision D-869. However, that decision, which approved the Bureau's applications to appropriate water for its Solano Project, provides that the Bureau's permits are subject to a depletion of 33,000 annual acre-feet (afa) by future appropriations for use within the Putah Creek watershed upstream from Monticello Reservoir, provided such future appropriations shall be initiated and consummated pursuant to law prior to full beneficial use of water within the Solano Project service area.

9. The present face value of the applications to appropriate water from the Putah Creek stream system now on file which depend upon the 33,000 annual acre-foot reservation now exceeds 33,000 acre-feet (USBR Exh. 7). Actual depletions are much less than the face value of the applications on file. The face value of the applications does not take into account projects that are not developed, water returning to the sources, and

diversions which are less than specified in the applications. By Bureau estimate, actual depletions under the reservation are now approximately 12,000 afa (RT 172). After allowing for upstream depletions under the reservation, uses in the Solano Project service area will equal the project yield in approximately the year 1976 (USBR Exh. 10).

10. The applicants Plessas, et al., have failed to show that they will be able to develop their project and place a substantial quantity of the water applied for to beneficial use until after the Bureau has placed the water under its permits to beneficial use, thereby terminating the reservation. There are no plans for an alternate or exchange supply of water which will be available to these applicants by the time the reservation terminates (RT 178). Application 23316, therefore, should be denied for lack of unappropriated water.

11. The Anderson Springs Water Company is presently using water in excess of its claimed existing rights and will continue to increase its use until the 33,000 afa reservation is terminated. The company should be aware of the proximity of the termination of the 33,000 afa reservation which will fix use of water under any permit issued pursuant to Application 23460.

12. The company now diverts 0.13 cfs of which 0.08 cfs is under the claim of an old right (Supplement to applicant's Statement of Water Diversion and Use dated May 17, 1973). The average annual use under the old right is an estimated 38 af (Memo to file on Application 23460 dated May 30, 1973). The company's estimated use will reach 0.22 cfs by 1990. Since this estimate includes 0.08 cfs which is diverted under an old right,

any permit issued pursuant to Application 23460 should be limited to 0.14 cfs. Further, the maximum annual diversion under any permit issued pursuant to Application 23460 should be the difference between the 115 af applied for and the 38 af annually used under prior right, or 77 af.

13. Unappropriated water is available to supply the applicant Anderson Springs Water Company 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.

14. The intended use is beneficial.

15. The Board's initial study of applicant's project pursuant to the California Environmental Quality Act indicated that the project would not have a significant effect on the environment. A Negative Declaration to that effect was prepared and circulated in accordance with administrative regulations. No adverse comments having been received, the Board confirms the Negative Declaration.

From the foregoing findings, the Board concludes that Application 23316 should be denied and Application 23460 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

#### ORDER

IT IS HEREBY ORDERED that Application 23316 be denied.

IT IS FURTHER ORDERED that Application 23460 be approved in part and that a permit be issued to the applicant 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 0.14 cubic foot per second by direct diversion, year-round.

The rate of diversion from Gunning, Anderson and Hanson Creeks shall not exceed 0.10 cubic foot per second, each, and the rate of diversion from an unnamed spring and Horse Spring shall not exceed 0.05 cubic foot per second, each.

The maximum amount diverted under this permit shall not exceed 77 acre-feet per year.

2. The amount authorized for appropriation 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, 1980.

4. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

5. All rights and privileges under this permit and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to



determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

6. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

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. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California

Regional Water Quality Control Board, Central Valley Region, pursuant to Water Code Section 13260 and the regional board or State Water Resources Control Board has prescribed waste discharge requirements (unless a waiver has been issued by the regional board or the regional board fails to act within 120 days after the report has been filed). Thereafter, water may be diverted only during such times as all requirements prescribed by the regional board or State Board are being met.

9. 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, in the absence of permittee's diversion, hydraulic continuity would exist between the permittee's diversion point and Monticello Reservoir, permittee shall not make any diversion and shall allow all streamflow at his diversion works to pass undiminished to the downstream channel, unless replacement water is provided on an exchange basis. Nothing in this condition, however, shall preclude permittee from diverting water under any prior right.

Dated: July 18, 1974

We Concur:

RONALD B. ROBIE  
Ronald B. Robie  
Vice Chairman

W. W. ADAMS  
W. W. Adams, Chairman

ROY E. DODSON  
Roy E. Dodson  
Member

MRS. CARL H. (JEAN) AUER  
Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN  
W. Don Maughan, Member