

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 22073 and
22370 of James E. and Joseph A. Nichelini,
and William J. Green, respectively,
to Appropriate from unnamed streams
in Napa County

Decision D 1279

DECISION APPROVING APPLICATIONS

James E. and Joseph A. Nichelini having filed Application 22073 and William J. Green having filed Application 22370 for permits 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-(a). Application 22073 is for a permit to appropriate 20 acre-feet per annum by storage from November 1 of each year to April 30 of the succeeding year for the irrigation of approximately 70 acres of vineyard from an unnamed stream tributary to Sage Creek in Napa County. The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, T8N, R4W, MDB&M.

(b). Application 22370 is for a permit to appropriate 8 acre-feet per annum by storage from November 1 of each year to May 1 of the succeeding year for the irrigation of approximately 50 acres of orchard and for frost protection from two unnamed streams tributary to Chiles Creek in Napa County. The points of diversion are to be located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 20, T8N, R4W, MDB&M.

2. The storage reservoir described in Application 22073 has been constructed. It is immediately north of the channel of the unnamed stream and is approximately one-quarter of a mile above the confluence of the stream and Sage Creek. Sage Creek continues from its confluence with the unnamed stream approximately three miles to enter the east side of Lake Hennessey.

The reservoir described in Application 22370 has been constructed in the channel of an unnamed stream. In addition to impounding water to this stream, it also is used for offstream storage of water diverted from another tributary of Chiles Creek at a maximum rate of 0.65 cubic foot per second. Chiles Creek continues from its junction with the unnamed stream approximately 1.5 miles to enter the north side of Lake Hennessey.

Sufficient water occurs in the sources to fill the proposed reservoirs in most years.

3. Protestant City of Napa holds Permit 6960 (Application 10990) for 30,500 acre-feet by storage and 30 cubic feet per second by direct diversion from November 1 of each year to about May 1 of the succeeding year for its Lake Hennessey project. The safe yield of the project is approximately 11,000 acre-feet annually, which includes releases to satisfy downstream rights. The City used approximately 6,300 acre-feet during the year 1963-64; 6,000 acre-feet in 1965, and 8,000 acre-feet in 1966. The project has improved the ground-water conditions in the downstream basin. Now less water is released to satisfy downstream prior rights than provided by an agreement between the City of Napa and downstream riparian users entered into in the year 1947.

4. Lake Hennessey filled in December 1966 and was spilling at the end of April 1967. Assuming a dry period such as that encountered during the years 1929 through 1936, the City would not be short of water until about the year 1972.

5. The protestant requests that any permits issued on Applications 22073 and 22370 contain a term requiring the permittees to release water from their reservoirs in each year that Lake Hennessey does not fill. Such a term would result in waste of water, as the major portion of the water released from the reservoirs would spill at Lake Hennessey in following years. Protestant will be adequately protected

by a permit term stating that the permits are subject to the City's Permit 6960 (Application 10990) and that they may be reduced in amount or terminated upon a showing of interference with rights acquired under the protestant's permit.

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 Applications 22073 and 22370 should be approved and that permits 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: Applications 22073, 22370, 20616, and 10990 and all relevant information on file therewith, particularly the report of the field investigation made on November 3, 1966; United States Geological Survey publications: 7½-minute quadrangle, Chiles Valley and Yountville, California; Water Supply Papers, Pacific Slope Basins in California, Part 11; Surface water Records of California 1961-1964; Water Resources Data for California, 1965. Department of Water Resources' publications: Bulletin No. 141, California State Water Project; Water Supply Contracts, Volume I, dated November, 1965; and Bulletin No. 132-66, The California State Water Project in 1966, dated January, 1966.

ORDER

IT IS HEREBY ORDERED that Applications 22073 and 22370 be, and they are, approved, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions:

1-(a). The water appropriated under permit issued pursuant to Application 22073 shall be limited to the quantity which can be beneficially used and shall not exceed 20 acre-feet per annum by storage to be collected from about November 1 of each year to about May 1 of the succeeding year.

(b). The water appropriated under permit issued pursuant to Application 22370 shall be limited to the quantity which can be beneficially used and shall not exceed 8 acre-feet per annum by storage to be collected from about November 1 of each year to about May 1 of the succeeding year. The maximum rate of diversion to offstream storage is to be 0.65 cubic foot per second.

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

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

4. Construction work shall be completed on or

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

6. 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.

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. 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.

9. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittee shall, when required by the State Water Rights Board, install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the natural stream channel, or provide other means satisfactory to the State Water Rights Board to comply with this paragraph.

10. This permit and all rights acquired there-
under are and shall remain subject to Permit 6960 (Applica-
tion 10990), and may be reduced in amount or terminated
upon a showing of interference with rights acquired under
said permit after notice and an opportunity for a hearing
by the State Water Rights Board.

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

Dated: AUG 31 1967

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

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

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