

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24386

EL RIO VINEYARDS

Applicant

EAST BAY MUNICIPAL UTILITY DISTRICT, ET AL.

Protestants

Decision: 1527

Source : Mokelumne River

County : San Joaquin

DECISION APPROVING APPLICATION 24386 IN PART

BY THE BOARD:

El Rio Vineyards having filed Application 24386 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on March 10, 1976; applicant 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 Application

1. Application 24386 is for a permit to appropriate 11.14 cubic feet per second (cfs) by direct diversion as follows: (a) from March 1 to June 30 of each year for irrigation, (b) from March 1 to May 30 for frost protection, and (c) from June 1 to June 30 for heat protection. It also seeks 49.62 acre-feet per annum (afa) by storage to be collected from December 2 of each year to May 15 of the succeeding year. Diversion is to be from Mokelumne River in San Joaquin County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 19, T4N, R8E, MDB&M.

Applicant's Project

2. The applicant seeks to appropriate water for irrigation of 373.5 acres of vineyards. It has completed construction of an L-shaped earth dam, 15 feet high

and 275 by 550 feet long, forming an offstream reservoir with a surface area of about three acres and a capacity of about 49 acre-feet. The applicant acquired the property in 1971 and at that time water was being used to irrigate about 230 acres of peaches, 25 acres of pears, and about 150 acres of row crops. Water for that use was pumped from Mokelumne River at three locations. During the next two or three years, the applicant converted the area to vineyard and put in the current diversion works and offstream storage reservoir.

Protests

3. There are four protests against approval of Application 24386. The protestants are (1) East Bay Municipal Utility District (East Bay), (2) Woodbridge Irrigation District (Woodbridge), (3) North San Joaquin Water Conservation District (North San Joaquin), and (4) The Delta Water Users Association (DWUA). The Department of Fish and Game also protested but that protest was dismissed with the understanding that any permit issued will contain the following term:

In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fish life have been incorporated into the plans and construction of such diversion. The construction, operation or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

4. East Bay holds the following water right filings: Permitted Application 4228, licensed Application 4768, licensed Application 5128, permitted Application 13156, permitted Application 15201, and permitted Application 25056.^{1/} East Bay alleges potential interference with its contracts for delivery of water

^{1/} Permit had not been issued on Application 25056 at the time of hearing. The permit authorizes use of water only for power generation; the use does not affect the downstream flow regimen and therefore has no bearing on this analysis.

from its Pardee and Camanche Reservoirs to downstream users below El Rio Vineyard on Mokelumne River. East Bay is concerned that the released water may be diverted before it reaches the parties to the contract.

5. East Bay releases 60,000 afa in normal years and about 39,000 afa in dry years under an agreement with Woodbridge. That release is in recognition of rights that Woodbridge claims are prior to the rights of East Bay. In addition, East Bay releases water in January, February, March, November, and December in accordance with an agreement with Fish and Game and in March through December to satisfy prior rights and channel losses. Those releases are the ones that East Bay wishes to protect and it feels that there is usually no water available in Mokelumne River beyond its rights, its releases, and existing downstream rights.

6. Woodbridge holds the following licensed applications to appropriate from the Mokelumne River: licensed Application 5708 allowing diversion of 300 cfs from February 1 to October 31; and licensed Application 10240 allowing diversion of 114.4 cfs from May 1 to August 31 and November 1 to January 31. Woodbridge also claims pre-1914 rights which are referred to in a term in its licenses as follows:

The simultaneous diversion under this license, License 5945 and under the appropriative right acquired from Stockton and Mokelumne Canal Company shall not exceed 114.4 cubic feet per second.

Woodbridge, for the last ten years diverted during November in only one year and no water was diverted in December, January, February or March. During that period the flow ranged from 40 cfs to 2698 cfs. Water diverted by Woodbridge is used to irrigate grapes, orchards, permanent pasture, alfalfa and row crops with about one-third of the total irrigated area being in grapes.

7. North San Joaquin diverts water from Mokelumne River under permitted Application 12842 which allows diversion of 500 cfs and storage of 50,000 afa from December 1 to July 1. That application contains a term which indicates that it is for a temporary appropriation of the excess water appropriated by East Bay under Application 13156 (now Permit 10478). It requires that any project under permitted

Application 12842 be so constructed that it may be feasibly integrated at a later date with the East Bay Project. Application 12842 insofar as it requested appropriation from July 1 to December 1 was denied by Decision D858. North San Joaquin implemented its rights under permitted Application 12842 by contracting with East Bay. Under the terms of that contract East Bay stores 20,000 afa in its Camanche Reservoir during the season December 1 to July 1, and releases that water for North San Joaquin during the summer season. The contract further states that it will be terminated when water for the needs of North San Joaquin is available from Folsom South Canal.

8. The Delta Water Users Association claims to represent the owners of over 100,000 acres of land in the Delta and that those owners divert water under riparian, prescriptive and appropriative rights. The Delta Water Users Association was not represented at the hearing for Application 24386.

Availability of Unappropriated Water

9. Analysis of the record on past flow data for Mokelumne River indicates that water is not available for appropriation during March, April, May, and June often enough to warrant approval of Application 24386 for that time period. Based on such data, 49 afa would be available for storage during December, January, and February, 41 to 48 percent of the time. Those numbers are based on East Bay's eventual full development of its water rights. Currently East Bay is using about 61 percent of its full entitlement. It is possible that East Bay may not reach full development for many years thus making water available in the meantime in excess of the 41 to 48 percent figures. Therefore water will be available often enough

to grant El Rio a permit to collect 49 afa to storage during the period December 2 to February 28.

10. During the period from March 1 to June 30, El Rio will have to rely on any riparian or other rights it may have. East Bay considers El Rio to be riparian and a portion of the water it releases is intended for use on the property of El Rio.

11. The intended use is beneficial.

Environmental Considerations

12. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and the State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

Record In This Matter

13. The records, documents, and other data relied upon in determining the matter are: Application 24386 and all relevant information on file therewith, particularly the Engineering Staff Analysis dated March 10, 1976.

Conclusions

14. From the foregoing findings, the Board concludes that Application 24386 should be approved, in part, and a permit issued to the applicant subject to the conditions in the order following.

ORDER

IT IS HEREBY ORDERED that Application 24386 be approved in part and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (5i, 6, 10, 11, 12, and 13)* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 49 acre-feet per annum to be collected from December 2 of each year to February 28 of the succeeding year.
2. The maximum rate of diversion to offstream storage shall not exceed 11.14 cubic feet per second.
3. Complete application of the water to the proposed use shall be made on or before December 1, 1983.
4. The issuance of this permit shall not be construed as placing a limitation on any riparian or decreed right held by the permittee.
5. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fish life have been incorporated into the plans and construction of such diversion. The construction, operation or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

* The Board maintains a list of standard permit terms. Copies of these are available upon request.

Dated: August 16, 1979

/S/ W. DON MAUGHAN
W. Don Maughan, Chairman

/S/ L. L. MITCHELL
L. L. Mitchell, Member

/S/ WILLIAM J. MILLER
William J. Miller, Vice Chairman

/S/ CARLA M. BARD
Carla M. Bard, Member

