

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications)
25302, 25303, 25318, 25676,)
25868 and 25950,)
EDWARD CAMPINOTTI, ET AL.,)
Applicants)
NORTHERN CALIFORNIA COUNCIL OF)
FLY FISHING CLUBS, ET AL.)
Protestants)

Decision: 1567
Source: Butano and Pescadero
Creeks
County: San Mateo

DECISION APPROVING APPLICATIONS
25302, 25303, 25318, 25676, 25868 AND 25950

BY THE BOARD:

Edward Campinotti, Sylvia Di Vecchio and Lena Bandini (A25302 and 25303), Bernard J. Burns, Jr., Lorene Y. Burns, and Debbie Kleffer (A25318), Coastside Wholesale Florist, Inc. (A25676), Lorene Y. Burns and Debbie Kleffer (A25868) and OKU, Inc. (A25950), having filed applications for permits to appropriate unappropriated water; protests having been received, one protest having been dismissed upon acceptance of dismissal terms; the applicants and remaining protestants 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 Resources Control Board pursuant to said stipulations; the Board, having considered all available information, finds as follows:

Substance of the Applications

1. Application 25302 is for a permit to divert 49 acre-feet per annum (afa) from November 1 to May 1 from an unnamed stream and from Butano Creek to offstream storage for recreation, fire protection and irrigation of 50 acres. Water will be diverted from points within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 9 and SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 16, T8S, R5W, MDB&M.

2. Application 25303 is for a permit to divert 49 acre-feet per annum from November 1 to May 1 from an unnamed stream and from Butano Creek to offstream storage for recreation, fire protection and irrigation of 50 acres. Water will be diverted from points within SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 9 and NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 17, T8S, R5W, MDB&M.

3. Application 25318 is for a permit to divert 49 acre-feet per annum from December 1 to May 1 from an unnamed stream and from Pescadero Creek to offstream storage for recreation, stockwatering, fire protection and irrigation of 94 acres. Water will be diverted from points within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 11, T8S, R5W, MDB&M.

4. Application 25676 is for a permit to divert 10 acre-feet per annum from December 1 to May 1 from Pescadero and Bradley Creeks to offstream storage for fire protection and irrigation of 33 acres. Water will be diverted from points within NW $\frac{1}{4}$, Section 10, T8S, R5W, MDB&M.

5. Application 25868 is for a permit to divert 0.5 cubic foot per second (cfs) by direct diversion from December 1 to May 1 and 25 acre-feet during the same season from an unnamed stream and Butano Creek by offstream storage for stockwatering, recreation, fire protection and irrigation of 35 acres. Water will be diverted from points within Section 14, T8S, R5W, MDB&M.

6. Application 25950 is for a permit to divert 0.1 cfs by direct diversion from December 1 to June 1 and 10 acre-feet to offstream storage from December 1 to May 1 from an unnamed stream and Butano Creek for irrigation of 43 acres. Water will be diverted from points within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 14, T8S, R5W, MDB&M.

7. Butano Creek is tributary to Pescadero Creek below all diversions and about 1/3 mile above the ocean.

Applicants' Projects

water to offstream storage to be used mainly for irrigation of flowers or other crops. The rate of diversion to offstream storage will be 1 cfs or less. All reservoirs have been constructed except those filed under Applications 25868 & 25950. The existing reservoirs have six inch outlet pipes.

Protests

9. All of the applications were protested by the Department of Fish and Game and by Northern California Council of Fly Fishing Clubs (Council). Applications 25318 and 25868 on Pescadero Creek were protested by Thelma Keyes and John Dias and Sons. The applicants and the Department of Fish and Game have come to an agreement under which 13 cfs is to be bypassed on all the Pescadero Creek applications and 9.4 cfs is to be bypassed on all Butano Creek applications.

10. The Council believes the flow bypass amounts requested by Fish and Game are adequate but that these amounts should be measured on both creeks at points below all diversions.

11. Protestant Keyes opposes the diversion seasons under Applications 25318 and 25868 because they overlap her diversion season during April under the first filing and during April and May under Application 25868. Mr. Dias' protests against Applications 25318 and 25868 are similar to Protestant Keyes in that he is concerned about the length of diversion season.

Prior Board Decisions

12. A number of Board decisions have been adopted concerning Pescadero Creek. Decision 125 dated October 21, 1926, found no unappropriated water in Pescadero Creek from June 15 to October 31. In Decision 315, dated April 14, 1932, the Board found no unappropriated water from May 15 to November 30. This record has been supplemented with 26 years of accurate streamflow data found in the USGS Water Resources records. There are no Board Decisions affecting Butano Creek.

Availability of Unappropriated Water

13. Pescadero Creek rises in the Coast Range Mountains near the boundary between San Mateo and Santa Cruz Counties, flows northwesterly a distance of about nine miles and thence westerly about six miles to the Pacific Ocean. A U. S. Geological Survey gaging station is located about 5.3 miles above the mouth of Pescadero Creek and above all applicants and most other users. This station was established in April, 1951, and measures the flow from 45.9 square miles of drainage area.

14. The past twenty-six years of daily streamflow records on Pescadero Creek have been analyzed to determine whether or not unappropriated water exists to satisfy Applications 25318 and 25676 during the season requested. The analysis provided for bypass of the 13 cfs requested by Fish and Game and agreed to by the applicants and for bypass of additional flows required to satisfy known prior downstream diversions. Other pending related applications were taken into consideration in the analysis. All applications would have been fully satisfied in every year except the two drought years of 1976 and 1977. From this, it is determined that surplus water is usually available to satisfy Applications 25318 and 25676 during the season requested, December 1 to April 30.

15. Streamflow records are available on Butano Creek for the 12 year period ending in 1974. The records have been analyzed to determine whether or not unappropriated water is available to satisfy Applications 25302, 25303, 25868 and 25950 and the season that such water is normally available. The analysis provided for bypass of 9.4 cfs requested by Fish and Game and agreed to by applicants and for additional flows required to satisfy known prior downstream rights. Water would have been available to totally satisfy the storage portion of the four applications in nine of the twelve years. The applications would have been satisfied to varying degrees in the other three years. In all probability, the applications could have been partially satisfied during the 1976 and 1977 drought

The records also show that surplus water is normally available to satisfy Applications 25868 and 25950 during the season December 1 through April 15 by direct diversion. November should be excluded from the diversion season.

16. No known diverters exist below Applications 25302 and 25303 on Butano Creek. On Pescadero Creek there is only one wintertime diverter (Application 19847, 1.22 cfs) below Application 25676 and three summertime riparian diverters. Most diversions by riparian users are made during the summer months and not during the diversion season under the subject applications, which starts on December 1 and which ends as required by this decision April 30 on Pescadero Creek and April 15 on Butano Creek. Furthermore, inflow from tributary streams adds to the fish maintenance flow. The instream flows for fish passage could be measured at the points of diversion associated with each application or at one downstream point as requested by the Council.

Other Matters

17. The Department of Fish and Game made field studies using the Oregon Game Commission procedure to determine minimum instream flows for fish passage necessary to satisfy the needs of anadromous silver salmon and steelhead. After reviewing the field data and the subsequent report we conclude that all of the conditions of the Oregon procedure were not met. Therefore, the Department or the staff of the State Water Resources Control Board should conduct further studies to determine the proper bypass amounts and submit its report to the Board for consideration.

Environmental Considerations

18. The Board has prepared a Negative Declaration for each of the applications under consideration in this decision in accordance with the Environmental Quality Act (Public Resources Code Section 21000, et seq.) and the State Guidelines and has determined that the projects will not cause any significant adverse effects on the environment.

Record in this Matter

19. The records, documents and information used in deciding this

25318, 25337, 25338, 25598, 25676, 25868 and 25950, and all information on file therewith, especially the Engineering Staff Analysis of Record dated November 7, Statements of Water Diversion and Use 1047, 8621, 9321, 9322, 9367, 9550, 9553, 9654 and 9655.

Conclusion

20. From the forgoing findings, the Board concludes that Applications 25302, 25303, 25318, 25676, 25868 and 25950 should be approved and that permits should be issued to the applicants subject to the limitations and conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Applications 25302, 25303, 25318, 25676, 25868 and 25950 be approved and that permits be issued to the applicants subject to vested rights. The permits shall contain all applicable standard permit terms (6, 8, 9, 10, 11, 12, and 13*) in addition to the following conditions:

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

2. Construction work shall begin within two years of the date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

3. Construction work shall be completed before December 1, 1983.

4. Complete application of the water to the proposed use shall be made before December 1, 1984.

*The Board keeps a list of standard permit terms. Copies of these are obtainable upon request.

5. The State Water Resources Control Board reserves jurisdiction over this permit to change the fish bypass amounts to conform to the results of a comprehensive field study to be completed by the Department of Fish and Game or the staff of the State Water Resources Control Board to determine minimum stream flows required to protect fishlife. Action to change the bypass amounts will be taken only after notice to interested parties and opportunity for hearing.

6. "No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow required by the conditions of this permit. Said measuring device shall be properly maintained. However, a single measuring device, installed and maintained jointly by all water users on lower Pescadero Creek (or Butano Creek) located at a position on the creek acceptable to the Department of Fish and Game and the Board may be substituted."

7. "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 fishlife 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."

8. The State Water Resources Control Board retains continuing authority over this permit to require permittee to develop and implement a water conservation program, after opportunity for hearing.

In addition to the above, each application shall be conditioned as follows

Application 25302

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 1 of each year to April 15 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 1.0 cubic foot per second.

2. "For protection of fish and wildlife, permittee shall during the period December 1 to April 15 bypass a minimum of 9.4 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period."

Application 25303

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 1 of each year to April 15 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 1.0 cubic foot per second.

2. "For the protection of fish and wildlife, permittee shall during the period from December 1 to April 15 bypass a minimum of 9.4 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period."

Application 25318

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 1 of each year to April 30 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 1.0 cubic foot per second.

2. "For the protection of fish and wildlife, permittee shall during the period from December 1 to April 30 bypass a minimum of 13 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period."

Application 25676

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 1.0 cubic foot per second.

2. "For the protection of fish and wildlife, permittee shall during the period from December 1 to April 30 bypass a minimum of 13.0 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period."

Application 25868

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.5 cubic foot per second by direct diversion and 25 acre-feet per annum by storage from December 1 of each year to April 15 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 0.5 cubic foot per second.

2. "For the protection of fish and wildlife, permittee shall during the period from December 1 to April 15, bypass a minimum of 9.4 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period."

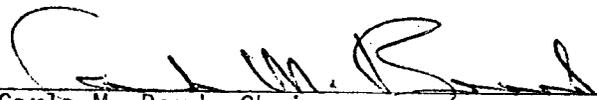
Application 25950

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.1 cubic foot per second by direct diversion and 10 acre-feet per annum to be diverted and to be collected from December 1 of each year to April 15 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 0.5 cubic foot per second.

2. "For the protection of fish and wildlife, permittee shall during the period from December 1 to April 15 bypass a minimum of 9.4 cubic feet per second. The total streamflow shall be bypassed whenever it is less than the designated amount for that period."

Dated: September 18, 1980


Carla M. Bard, Chairwoman

/s/ William J. Miller
William J. Miller, Vice-Chairman

/s/ L. L. Mitchell
L. L. Mitchell, Member

/s/ Jill B. Dunlap
Jill B. Dunlap, Member

ABSENT
F. K. Atjibury, Member