
Decision No. D 891

Decided: February 28, 1958

Appearances at Hearing Conducted at Sacramento on September 24, 1957, by W. P. Rowe, Member, State Water Rights Board:

For the Applicant:

Casse Crow

Noel Dyer, of Pillsbury,
Madison & Sutro, Attorney

For the Protestants:

John D. Martin, Effie L. Martin and Charles Martin

John D. Martin, Attorney

Dean A. Eyre and Roy Recht

Noel Dyer, Attorney

DECISION

Application 16622, filed September 26, 1955, is for a permit to appropriate 47.5 acre-feet of water per annum to be diverted between November 1 and June 30 of each season for storage and later use for irrigation and incidental stockwatering, domestic and recreational purposes. Four proposed points of diversion are located on North Canyon, which is tributary to Bird

Creek, and four points of diversion are located on Bird Creek, which, in turn, is tributary to San Benito River, in San Benito County.

Protests filed by Dean A. Eyre, Roy Recht, and by John D. Martin, Effie L. Martin and Charles Martin were based on riparian ownership and use antedating 1914.

A hearing was held on Application 16622 at Sacramento on September 24, 1957, before W. P. Rowe, Member of the Board. At the hearing the applicant and all protestants were present or represented by counsel. It was agreed that all protests were to be considered as withdrawn, provided the permit be issued subject to the terms of an agreement to be executed by all parties, which agreement was received in evidence in draft form. It was stipulated that the executed agreement might be submitted at a later date and be substituted for the document received in evidence. On December 6, 1957, the Board received from counsel for applicant a conformed copy of an agreement dated September 23, 1957, between (a) E. L. Martin, John D. Martin and Charles D. Martin, (b) Howard W. Harris and Casse Crow, (c) Dean A. Eyre and Katherine Wigmore Eyre, (d) Roy Recht and Dorothy Recht, and (e) Paul J. Hudner, Charles W. Hudner, Helen Hudner and Amelia Dougherty. Said executed agreement is hereby substituted by the Board for the aforesaid draft agreement. Other evidence having been offered and received at said hearing, the matter was submitted for decision.

The Board finds that there is unappropriated water in the sources designated in Application 16622 of Casse Crow available

to supply applicant without injuring any other lawful user of water, that the proposed uses are beneficial, and that said application should be approved subject to the usual terms and conditions and to the limitations in said agreement between the parties dated September 23, 1957, and recorded December 5, 1957, in the Official Records of San Benito County, Volume 236, page 350.

ORDER

Application 16622 for a permit to appropriate unappropriated water having been filed, protests having been made, a public hearing having been held, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16622 be, and the same is, hereby approved, and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 47.5 acre-feet per annum by storage, to be collected from about November 1 to about June 30 of each season; all as more explicitly set forth in paragraph 2(b) of this approved application.

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

3. Actual construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1959.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1960.

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. In accordance with that certain agreement between the parties dated September 23, 1957, it is provided that during each ensuing period extending from the 1st day of November to 30th day of June, permittee may divert water to storage but only after Bird Creek has, upon at least one occasion during each such period, had visible surface flow throughout its entire course, to termination upon interception by the San Benito River, and then only when there is a visible, recognizable surface flow in said creek at each of the following points:

(a) Opposite the white oak stump marked "SJ2", which is a monument marking a portion of the boundary between Ranchos San Justo and Cienega del Gabilan;

(b) Under the Cienega Road bridge, where Cienega Road crosses Bird Creek within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 27, T13S, R5E, Mount Diablo Base and Meridian; and

(c) At the junction of Bird Creek and the San Benito River.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 28th day of February, 1958.

/s/ Henry Holsinger
Henry Holsinger, Chairman

(SEAL)

/s/ W. P. Rowe
W. P. Rowe, Member

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 16776)	Source: North Fork
by George W. Nunes)	Callayomi Brook
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In the Matter of Application 16922)	
by Joe Mortara)	
In the Matter of Application 16923)	
by Charles L. Lamp)	
In the Matter of Application 16924)	
by Earle M. Hanson, and)	
In the Matter of Application 16925)	Source: Callayomi Brook
by Burnell Cooley)	County: Lake
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Decision No. D 892

Decided: February 28, 1958

In attendance at investigation conducted by the
staff of the State Water Rights Board on May 28, 1957:

George W. Nunes	Applicant
Burnell Cooley	Applicant
Lemuel D. Sanderson	Attorney for all Applicants
Thomas E. Healy	Attorney for Protestant, Callayomi Water Users' Association
R. R. Wood	Of Athearn, Chandler & Hoffman, Attorneys for Protestant, Ralph K. Davies
S. A. Bell	Protestant Davies's Ranch Superintendent

W. T. Dinneen	Interested Party
J. J. Keeling	Interested Party
Mrs. Huff	Interested Party
J. J. Heacock, Senior Hydraulic Engineer	Representing the State Water Rights Board

DECISION

Substance of the Applications

Application 16776, filed on December 8, 1955, is for a permit to appropriate 3,000 gallons per day to be diverted from January 1 through December 1 of each year from North Fork Callayomi Brook, tributary to Callayomi Brook thence Putah Creek, for domestic use and the irrigation of three-quarters of an acre of lawns, gardens, and trees. Water will be diverted by a rubble masonry dam 4 feet high by 19 feet long, below natural springs, located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 14, T11N, R8W, MDB&M, and will be conveyed by gravity through about 260 feet of galvanized pipe, ranging from 2-inch to 1 $\frac{1}{4}$ -inch in size to the place of use within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 14.

Applications 16922, 16923, 16924, and 16925, all filed on March 8, 1956, are each for a permit to appropriate 4,000 gallons per day to be diverted from January 1 to December 31 of each year from Callayomi Brook, tributary to Putah Creek, for domestic use on summer home lots within Section 14, T11N, R8W, MDB&M. Diversion from Callayomi Brook will be effected by a gravity system consisting of a

rubble masonry dam about $2\frac{1}{2}$ feet high by 14 feet long, located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 14, and water will be conveyed to the places of use through 400 feet of 3-inch pipe, 600 feet of 2-inch pipe, and varying lengths of $\frac{3}{4}$ -inch pipe.

Protests and Answers

Protests against approval of the applications were filed by Callayomi Water Users' Association, protesting all five applications on the basis of "prior contract with owner of point of diversion, riparian rights, profits and prescription". The protestant alleges that the proposed appropriation will deprive Association members and other users of water for necessary domestic and household use, and will infringe upon contract rights of the Association members and other water users as described in Answer to Protests filed in the matters of Applications 14784, 14787, 14788, and 14846. The protest states that the protest may be disregarded and dismissed if applications are withdrawn or rejected and applicants join protestants in joint application for community and municipal use and development of water source in question.

Edward G. Chandler, of the law firm of Athearn, Chandler and Hoffman, filed protests in behalf of Ralph K. Davies against approval of the applications on the basis of riparian rights and an old appropriative right initiated prior to 1914. The protestant stated that the protest may be disregarded and dismissed if

"applicant(s) would specifically recognize the prior rights of the Diamond D Ranch lands and would refrain from diverting when the Putah Creek flow available for protestant's requirements is inadequate or when applicants' diverting might tend to diminish the flow available to protestant below his requirements".

Subsequent to the field investigation the Board suggested to the applicants' attorney that Applications 16922, 16923, 16924, and 16925 each be reduced to 1,800 gallons per day. By letter dated June 21, 1957, from Attorney Sanderson, he stated, "It would appear that the water allocation per day in gallons, in paragraph two of your letter, is satisfactory to my clients". By letter dated September 24, 1957, from Attorney Chandler, "... Mr. Ralph K. Davies has now authorized the withdrawal of his protest, subject to the following:

"(1) That the amounts of water specified in the proposed permits not exceed 3,000 gallons per day for Application 16776, and 1,800 gallons per day each for the other four applications, and

"(2) That the permits be issued in the usual form 'subject to vested rights'."

In answer to the protest of Callayomi Water Users' Association, the applicants state that the protests filed by protestant against approval of Applications 14784, 14787, 14788, and 14846 were overruled and permits granted; that while most of the lots in said subdivision of protestants have been sold, very few of them have been built upon,

and consequently, very little of the water claimed by protestants has been used; that there has been very little change, if any, in use since the said prior protests were filed; that the applicants have all been using the water applied for for many years without protest by said Association.

Field Investigation

The applicants and the protestants, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of a hearing as provided for under Section 737 of the Board's rules, and a field investigation was conducted on May 28, 1957, by an engineer of the Board. The applicants and the protestants were all represented during the investigation.

Records Relied Upon

Applications 14784, 14787, 14788, 14846, 16776, 16922, 16923, 16924, 16925, and all information on file therein, with particular reference to, "Report of Field Investigation on Applications 16776, 16922, 16923, 16924 and 16925", dated October 4, 1957; Decision D803 regarding Applications 14784, 14787, 14788, and 14846; and United States Geological Survey Quadrangles "Lower Lake" and "Capay".

Information Secured by Field Investigation

North Fork Callayomi Brook, the source under Application 16776, rises in a spring about 100 feet northerly of the springs heading Callayomi Brook and flows about 300 feet easterly to its confluence with the brook. Flow was measured at the spring on May 28, 1957, at about 0.3 cubic foot per second.

Callayomi Brook, the source under the last four applications, heads in a spring in the easterly slopes of Cobb Mountain, flowing in an easterly, thence southeasterly direction for about three miles to its confluence with Anderson Creek, thus forming Putah Creek. Flow was partially measured at the spring and full flow was estimated to be 0.7 cubic foot per second, giving a combined flow in both sources of approximately one cubic foot per second.

The points of diversion under Applications 16922, 16923, 16924, and 16925 are at the same location as the points of diversion under Applications 14784, 14787, 14788, and 14846, previously considered in Decision D803.

Use of water by protestant Callayomi Water Users' Association is substantially as found at the investigation made on May 14, 1953, previous to Decision D803, and as enumerated in that decision. Approximately 5,500 gallons per day of the protestant's use is produced by an old hydraulic ram, whose intake is below the point of diversion of the subject applications.

Use under Application 16776 is proposed for a fully plumbed house occupied by five persons and for irrigation of scattered areas of lawns, flowers and gardens. Indicated maximum use will not exceed 3,000 gallons per day.

Use under Applications 16922, 16923, 16924, and 16925 is proposed at fully plumbed houses, with some irrigation of lawns and gardens at each place. Maximum use would be for about 10 persons per house, and with irrigation and incidental uses, should not exceed 1,800 gallons per day under each application.

The parties present agreed that late summer flow would amount to about 25 per cent of the flow measured at the time of the investigation on May 28, 1957. All use by the applicants would be within the Callayomi Brook watershed.

Information from Other Sources

In the discussion on page 7, Applications 14784, 14787, 14788, 14846, Investigation Report dated June 11, 1954, it is stated:

"As previously shown in this report the normal low flow of Callayomi Brook, above the point of inflow of Parnasis Spring, is about 160,000 gpd with the total maximum use by protestants and non-protestants, prior to the date of this investigation, being about 49,450 gpd, about 110,550 gpd therefore appears to be unappropriated of which total amount sought by applicants is only 10,000 gpd.

"The Association has as yet acquired no water rights nor has it filed an application on any of the sources of supply proposed to be used by it. In consequence it has little or no grounds for protest. In filing the protest it was acting as agent for the members of the Association who all claim individual

water rights. In this connection some of them may claim to be riparian but the balance appear to be diverting without any color of right. Their use commenced subsequent to December, 1914 and none of them have filed applications for water nor does it appear that any of them have acquired prescriptive rights since they do not appear to have performed all acts required to perfect prescriptive rights. Such rights, if acquired, would not affect applicants since their diversion is above that of protestants.

"The same conditions hold for those lot owners who did not file protests."

The only records of stream flow near the points of diversion appear to be spot measurements made by personnel of the Board or its predecessors, and are as follows:

July 31, 1952	- Estimated 0.75 cfs
May 14, 1953	- Estimated 1.00 cfs
October 23, 1956	- Estimated 0.25 cfs
May 28, 1957	- Partially measured and estimated 1.00 cfs.

Discussion

There has been no material change in conditions in the Callayomi Brook area as to water supply or use of water since the investigation of May 14, 1953. The applicants or their predecessors under both groups of applications have been using water from the brook for several years, so do not constitute a new draft on the supply.

The Callayomi Water Users' Association state their protest may be withdrawn if "...and applicants join protestants in joint application for community and municipal use and development of water source in question" appearing to be a tacit admission of sufficient water for all users.

Both the investigations of May 14, 1953, and May 28, 1957, indicate that during the period of low flow

in late summer there is in excess of 100,000 gallons per day over the present use in the Whispering Pines area.

Protestant Davies authorized withdrawal of his protest contingent upon the reduction of the amount under Applications 16922, 16923, 16924, and 16925, from 4,000 gallons per day each to 1,800 gallons per day each.

Summary and Conclusions

The applicants seek to appropriate a total of 10,200 gallons per day year-round from North Fork Callayomi Brook and Callayomi Brook, tributary to Putah Creek in Lake County, for irrigation and domestic purposes, within "Whispering Pines Subdivision No. 2", lying within Section 14, T11N, R8W, MDB&M. The applicants originally filed for a collective total of 19,000 gallons per day, subsequently reduced to 10,200 gallons per day, with the approval of their attorney.

The only protest not withdrawn is from Callayomi Water Users' Association which alleges the proposed diversion by the applicants would at times prevent present users from diverting amounts required for their needs.

It was found in the course of proceedings under Rule 737 that there is in excess of 100,000 gallons per day available during the period of low stream flow over the use of the members of the protestant Association and other users in the area.

The information indicates, and the Board finds, that unappropriated water exists in the sources filed upon,

that such water may be taken and used beneficially in the manner proposed by the applicants without encroachment upon the rights of other users, and that the protests are insufficient to bar approval of the applications. It is therefore the conclusion of the Board that Application 16776 should be approved and that Applications 16922, 16923, 16924, and 16925 should be approved in part and that permits be issued subject to the usual terms and conditions.

ORDER

Applications 16776, 16922, 16923, 16924 and 16925 having been filed, protests having been submitted, proceedings in lieu of a hearing having been taken under the Board's rules by stipulation of the parties, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16776 be and the same is hereby approved, subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed: 3,000 gallons per day to be diverted as follows: (a) from about March 1 to about November 15 for irrigation purposes and (b) throughout the year as required for domestic purposes.

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

3. Actual construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

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.

IT IS FURTHER ORDERED that Applications 16922, 16923, 16924, and 16925 each be and the same is hereby approved in part, subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed: 1,800 gallons per day each, to be diverted from January 1 to December 31 of each year.

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

3. Actual construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

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. To the extent that Applications 16922, 16923, 16924, and 16925 each seek water in excess of 1,800 gallons per day the same is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 28th day of February, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member