

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 22526
of Malcolm C. McGuire to
Appropriate from San Antonio Creek
in Marin County

Decision D 1278

DECISION APPROVING APPLICATION

Malcolm C. McGuire having filed Application 22526 for a permit to appropriate unappropriated water; protests having been received; the applicant and 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 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. Application 22526 is for a permit to appropriate 0.1 cubic foot per second (cfs) by direct diversion from April 1 to October 31 of each year for irrigation purposes from San Antonio Creek in Marin County. The point of diversion is to be located within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 20, T4N, R7W, MDB&M.

2. San Antonio Creek heads at an elevation of approximately 800 feet, near San Antonio Mountain, and flows in a general easterly direction to empty into the Petaluma River. The applicant intends to pump water from the creek at an existing check structure approximately six miles above the mouth of the creek for the sprinkler irrigation of approximately 11 acres of Christmas tree stock. He claims a riparian right to the use of water from the creek.

3. Protestants Elvira Mazza, et al, are located approximately three miles downstream from the applicant's point of diversion. They pump from the underflow of San Antonio Creek for the irrigation of approximately 15 acres of Sudan grass. Their use of water is under claim of riparian right.

4. On February 7, 1966, the time of the field investigation of Application 22526, approximately 85 cfs was flowing past the protestants' point of diversion and only 60 cfs was flowing past the applicant's point of diversion. The creek usually goes dry at the applicant's point of diversion sometime in June or July, while water is available at the protestants' point of diversion throughout the irrigation season. The approval of Application 22526 will not result in harm to the protestants.

5. Unappropriated water is available to supply the applicant, 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 the water.

Application 22526 should be approved for the entire diversion season in order to cover the infrequent years in which water is available to the applicant after the months of June or July.

6. The intended use is beneficial.

7. The applicant claims that the place of use under Application 22526 is entitled to water under riparian right. The permit issued on Application 22526 should contain a term stating that the right under the permit and the right under any riparian right the permittee may have shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

The inclusion of this term will satisfy the protestant Charmaine Veronda.

From the foregoing findings, the Board concludes that Application 22526 should be approved and that a permit should be issued to the applicant 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: Application 22526 and all relevant information on file therewith, particularly the report of the field investigation made February 7, 1966.

ORDER

IT IS HEREBY ORDERED that Application 22526 be, and it is, approved, 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 0.1 cubic foot per second by direct diversion to be diverted from about April 1 of each year to about October 31 of each year. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

2. The maximum quantity herein stated 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, 1971.

4. 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.

5. 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.

6. 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.

7. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

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

Dated: July 6, 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