

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24352)
to Appropriate from Witherell Creek)
Tributary to Anderson Creek Thence)
Navarro River.)

RALPH E. AND ELISABETH M. VAN HOORN,)
Applicants,)

CALIFORNIA DEPARTMENT OF FISH)
AND GAME)
Protestant)

Decision: 1511
Source: Witherell Creek
County: Mendocino

DECISION APPROVING APPLICATION

BY THE BOARD:

Ralph E. and Elisabeth M. Van Hoorn having filed Application 24352 for a permit 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 Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 24352 is for a permit to appropriate one cubic foot per second (cfs) for frost protection and 0.1 cfs for irrigation from March 1 to May 31, and to appropriate by storage five acre-feet per annum (afa) from November 1 to May 31. The diversion is from Witherell Creek in Mendocino County tributary to Anderson Creek thence the Navarro River and is within the SW¼ of NW¼ of Section 35, T14N, R14W, MDB&M.

Applicants' Project

2. The applicants have constructed an earth dam about 19 feet high by 150 feet long forming a reservoir with a surface area of about 0.75 acre and a capacity of about five acre-feet. Water is pumped from the reservoir by a 500 gallon per minute capacity pump for irrigation and frost protection.

Protests

3. The application was protested by the Department of Fish and Game (Fish and Game) on the basis of the project's potential impact on the spawning and migration of silver salmon and steelhead trout and on the riparian habitat of wildlife in the area. Fish and Game submitted proposed permit terms which would satisfy its protest. The applicants were not agreeable to the terms since they feel their project will have no adverse effects.

Availability of Unappropriated Water

4. The Witherell Creek watershed upstream of the point of diversion covers about 0.67 square mile and produces sufficient water to supply the five acre-feet per annum portion of the application even in minimum flow years. It would also produce sufficient water under average conditions to supply the direct diversion feature of the project except sometimes in May. However, when the proposed Fish and Game terms are included, the source would not produce sufficient water to supply both the terms and the applicants' needs.

5. Fish and Game acknowledges that there is no known fishlife in Witherell Creek and indicates its main concern is the Anderson Creek fishery. In years of high flows, diversion from Witherell Creek has negligible impacts on Anderson Creek because of ample flow in Anderson Creek from other sources. In years of low flows, diversions from Witherell Creek would also have a negligible

flow impact on Anderson Creek inasmuch as the contributory flows from Witherell Creek would be extremely low. In years of average flow, the Department of Fish and Game conditions would cause only minor flow increases in Anderson Creek amounting to: 1.4 percent in March, 1.9 percent in April, and 1.7 percent in May. Moreover, sporadic, short-term frost protection diversions should have minimal flow effects in Anderson Creek.

Environmental Considerations

6. The project involves an existing five acre-foot reservoir and direct diversion for frost protection and irrigation of a 30 acre vineyard. Only about three percent of the runoff will be diverted and riparian vegetation and wild life habitat should not be affected. Such project constitutes only minor alterations in the condition of land, water, and/or vegetation which do not result in significant loss of mature natural vegetation. The project is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with Section 15104, Chapter 3, Title 14, California Administrative Code.

Other Considerations

7. The records, documents and other data relied upon in determining the matter are: Files of Application 24352 and all relevant information on file therewith, including the flow estimates of Fish and Game and information gathered during the field investigation set forth in the Report of Field Investigation and Engineering Staff Analysis.

Conclusions

From the foregoing findings, the Board concludes that unappropriated water is available to satisfy the proposed uses of the applicants and that they have a project which can make beneficial use of the water appropriated. It is further concluded that the terms proposed by Fish and Game are not required.

ORDER

IT IS HEREBY ORDERED that Application 24352 be approved and that a permit be issued to the applicants subject to vested rights. The permit shall contain all applicable standard permit terms (5g, 6, 9, 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 (A) by direct diversion:

(1) one cubic foot per second from March 1 to May 31 for frost protection;

(2) 0.1 cubic foot per second from March 1 to May 31 for irrigation purposes; and

(B) by storage, five acre-feet per annum to be collected from November 1 of each year to May 31 of the succeeding year.

The total amount of water to be taken from the source for all uses shall not exceed 55 acre-feet per water year of October 1 to September 30.

2. Complete application of the water to the proposed use shall be made on or before December 1, 1982.

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

3. The State Water Resources Control Board reserves jurisdiction over this permit to impose any appropriate conditions at some future date to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

Dated: JUNE 21, 1979

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

/S/ WILLIAM J. MILLER
William J. Miller, Member

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

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

