

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24325 of )  
AL AND DEANNA BALTINS )  
Applicants )  
CALIFORNIA DEPARTMENT OF FISH AND GAME, )  
ET AL. )  
Protestants )

Decision: 1516  
Source : Robinson Creek  
County : Mendocino

DECISION APPROVING APPLICATION IN PART

BY THE BOARD:

Arthur M. and Jean A. Kruckman having filed Application 24325 for a permit to appropriate unappropriated water; Application 24325 having been duly assigned to Al and Deanna Baltins; protests having been received; the applicants 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 Resources Control Board pursuant to said stipulations; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 24325 is for a permit to appropriate 1.56 cubic feet per second (cfs) from March 15 to May 15 and from October 1 to November 1 for frost protection and 0.13 cfs from April 1 to November 1 for irrigation from Robinson Creek tributary to the Russian River in Mendocino County. The maximum amount to be diverted under this application is 45 acre-feet per annum. The point of diversion is within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 7, T14N, R12W, MDB&M.

### Applicants' Project

2. The applicants intend to divert water directly from Robinson Creek by pumping into a pipeline which will be installed through an existing culvert under Robinson Creek County Road to a 15-acre vineyard. They have two existing wells which supply water for domestic use and garden irrigation.

### Protests

3. Application 24325 was protested by 18 protestants, including the Department of Fish and Game (DFG). DFG claimed that the appropriation would injure the valuable steelhead trout fishery but withdrew its protest when the applicants agreed to inclusion of permit conditions for minimum stream bypasses. The essence of the other protests is that the applicants' diversion would seriously deplete the available instream and groundwater supplies thereby causing injury to the protestants.

4. Water needs of 20 downstream users on Robinson Creek were considered. Eight of these users do not have permits, licenses, or Statements of Water Diversion and Use currently on file with the Board. Their properties border the creek and their claims of riparian rights appear valid.

### Availability of Unappropriated Water

5. Available streamflow data on Robinson Creek are limited to 1976 and are meager. Based on a correlation of available flow data with long term annual precipitation records, it appears that the requested 0.13 cfs and 1.56 cfs are available respectively, for irrigation from April 1 to June 30, and for frost protection from March 15 to May 15. Diversion for frost protection is very

sporadic and much of the water diverted returns to the creek. However, July through October must be excluded because water is not available in excess of the needs of downstream users during that period. The annual limit of 45 acre-feet must accordingly be reduced to about 22 acre-feet. Fish and Game's proposed term will be modified accordingly.

6. The applicants' well, the alternate source of water, is capable of yielding an estimated 50 gallons per minute. This is probably adequate for the summer irrigation of 12.5 acres of grapes and two acres of pasture but is inadequate to provide frost protection in October.

#### Environmental Considerations

7. Subsequent to the proceedings in lieu of hearing, 47 signatories, including most of the protestants, signed a petition disagreeing with the findings in the Negative Declaration. The principal contentions of the petition are that there will be adverse impacts on water quantity and that the applicants should use groundwater for "non essential agricultural demands on a piece of property not even adjacent to the creek". Regarding the first contention, the Board's staff has duly investigated the availability of unappropriated water and found periodic shortages which dictate a shortening of the diversion season. Regarding the latter contention, the Board's task is not to evaluate the economics of water use but rather to ensure that water use is beneficial and will not cause significant degradation of the environment.

8. 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. The Board determines that there will be no significant effect on the environment as a result of the project.

9. An archeological site is located on the west edge of the vineyard. The site could be damaged if buried pipelines are installed for irrigation or frost protection. A special term should be included in the permit to protect the site.

#### Other Considerations

10. Right of access to the point of diversion is unresolved. Mr. and Mrs. William H. Widney claim ownership of both sides of the creek for a distance of 1,470 feet along the creek. The applicants claim the point of diversion is on a county right-of-way. The County of Mendocino Department of Public Works has stated that it will issue an encroachment permit for installation of a water line across the county road reservation. The Department also agrees to consider allowing a pump to be installed within the road reservation. It is uncertain as to how far the Robinson Creek Road reservation extends toward Robinson Creek. The Board, according to Section 749 of Title 23, California Administrative Code, will not determine title to land or the right to occupy or use land or other property. A dispute concerning the applicants' title or right to occupy or use land or property necessary for development of the proposed appropriation is not cause for denial of the application. An appropriate permit term will be included in any permit issued.

#### Conclusion

From the foregoing findings, the Board concludes that unappropriated water is available and Application 24325 should be approved for direct diversion of 0.13 cfs from April 1 to June 30 for irrigation and 1.56 cfs from March 15 to May 15 for frost protection. The maximum annual diversion should be limited to 22 acre-feet. A permit should be issued to the applicants subject to the limitations and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED THAT Application 24325 be approved in part and that a permit be issued to the applicants subject to vested rights. The permit shall contain all applicable standard permit terms (6, 7, 10, 11, 12, and 13)<sup>1/</sup> 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) 0.13 cubic foot per second by direct diversion from April 1 to June 30 of each year for irrigation,
- (b) 1.56 cubic feet per second by direct diversion from March 15 to May 15 of each year for frost protection.

The maximum amount diverted under this permit for all uses shall not exceed 22 acre-feet per year.

2. Construction of the project shall be completed on or before December 1, 1982, and complete application of the water to the proposed use shall be made on or before December 1, 1983

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.

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<sup>1/</sup> The Board maintains a list of standard permit terms. Copies of these are available upon request.

4. Permittees shall not exercise any other existing right to the use of water named herein so long as this permit or any license issued pursuant thereto remains in effect.

5. This permit shall not be construed as conferring upon the permittees right of access to the point of diversion.

6. For the protection of fish and wildlife, permittees shall during the period:

- (a) from March 15 through April 30 bypass a minimum of 10 cubic feet per second.
- (b) from May 1 through May 31 bypass a minimum of 3 cubic feet per second.
- (c) from June 1 through June 30 bypass a minimum of half a cubic foot per second.

The total flow shall be bypassed whenever it is less than the designated amount for that period.

7. No water shall be diverted under this permit until permittee has installed a staff gage or other devices satisfactory to the State Water Resources Control Board, which are capable of measuring the flows required by the conditions of this permit. Said installations shall be properly maintained.

8. The archeological site described in the Cultural Resource Survey Report dated March 15, 1979 shall not be impacted by any project developments related to the planned water distribution facilities. Such impacts include any subsurface excavations (e.g., buried pipelines) or surface modifications (e.g., leveling) that relate to the planned water use.

Dated: JUL 19 1979

ABSENT

W. Don Maughan, Chairman

L. L. Mitchell

L. L. Mitchell, Member

William J. Miller

William J. Miller, Vice Chairman

Carla M. Bard

Carla M. Bard, Member

