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STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the matter of Application	)	
17417 by Boyd, Joseffa, and	)	Source: Two unnamed streams
Jo Ann Stewart.	)	County: Marin
	)	
	)	

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Decision No. D 910

Decided: July 9, 1958

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In attendance at investigation conducted by the staff  
of the State Water Rights Board on November 7, 1957:

Boyd Stewart	Applicant
Harlan M. Richter	Attorney for applicants
Fred Roumage	Engineer for applicants
J. C. Oglesby	Engineer for applicants
Willis A. Evans	Representing protestant Department of Fish and Game
Thomas H. Means	Engineer for protestants S. A. and Alberta Smoot, V. J. and Mary C. Bloom, Vedanta Society of Northern California, and Bear Valley Ranch
Francis C. Hutchens	Attorney for protestant Bear Valley Ranch
Mr. Beatty	Foreman of Bear Valley Ranch
S. A. Smoot	Protestant

Horace Edrington	Tenant of S. A. and Alberta Smoot
A. T. Clifton	Representing protestant Vedanta Society of Northern California
V. J. Bloom	Protestant
Frank Santori	Protestant
A. Simondi	Interested Party
James Colli	Interested Party
Donald R. Jeffs, Assistant Hydraulic Engineer	) Representing the State ) Water Rights Board
Arthur N. Webb, Assistant Hydraulic Engineer	

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### DECISION

#### Substance of the Application

Application 17417, filed January 7, 1957, is for a permit to appropriate 0.15 cubic foot per second from November 1 to May 31 and 0.2 cubic foot per second from June 1 to October 31, from two unnamed tributaries of Olema Creek from the west; or a total of .30 cfs and .40 cfs respectively from the combined sources; also 35 acre-feet per annum by offstream storage from the same streams to be collected between November 1 and May 31. The water is wanted for the industrial purpose of filling a log pond and keeping it filled and flushed in connection with operation of a sawmill. The log pond is located between the two unnamed streams and about 1/4 mile west of Olema Creek. It is to be

formed by an earth dam and is to be 5 acres in surface area and 35 acre-feet in capacity. The proposed points of diversion are both described as being within the NW $\frac{1}{4}$  of projected Section 20, T2N, R8W, MDB&M. Diversion is to be effected from the stream farthest north by gravity and from the stream farthest south by pumping. The water is to be conveyed from the points of diversion to place of use by 1,200 lineal feet of 4-inch pipe.

### Protests

Frank Santori, an alleged riparian owner, protests that the proposed appropriation will deprive him of sufficient water to maintain his trout farm, vegetable garden, fruit trees, and home. He further claims that he has used the water for the last 12 years and that the applicants have other sources of supply which would not cause him damage.

S. A. and Alberta Smoot, alleged riparian owners and holders of License 3800 (Application 13322) protest that the proposed appropriation will deprive them of sufficient water to operate their dairy. They indicate that the protest may be disregarded and dismissed if a satisfactory agreement is worked out with the applicants and if their riparian and appropriative rights are not infringed upon.

The Vedanta Society of Northern California, asserting riparian rights, protests that the amount sought by the applicants is more, in dry years, than one-third of the total flow of Olema Creek. This protestant states that although its rights are not at present being exercised, it is certain that in the course of

time development of the lands of the Society will make use of water from the stream imperative.

Bear Valley Ranch, asserting both riparian and prior appropriative rights, contends that the proposed appropriation will deprive it of water that is necessary and has been beneficially used for the past twelve years or more. It claims that the average use for the past eight years has been about 146,000,000 gallons (448 acre-feet) per year.

V. J. and Mary C. Bloom assert rights based upon use of water from the two streams for more than 50 years. They apprehend that the proposed appropriation will impair their rights and may entirely prevent their use of water from this source. They claim to use about 8,000 gallons (0.025 acre-feet) per day for stockwatering and washing of a dairy barn.

The California Department of Fish and Game apprehends violation of the provisions of Section 525 (renumbered 5937) of the Fish and Game Code. It protests that the proposed appropriation would cause the destruction of fish because the amount to be diverted is greater than the known minimum flow of the streams. It states that its protest may be disregarded and dismissed if the permit contains a clause requiring the permittees to release at all times 300 gallons per minute or the natural flow whenever such flow is less than 300 gallons per minute.

#### Answers

The applicants, through their attorneys, state in answer to the protests that the protestant Santoni diverts from

only one of the proposed sources, that a recent study indicates that the supply is sufficient both for the protestants including protestant Santori and for the applicants, that there are numerous springs between the applicants' proposed point of diversion and the Santori property and that if the applicants' project affects protestant Santori adversely, they (the applicants) will not object to his tying on to their proposed conduit and taking therefrom his present entitlement; that the Smoot property is upstream from the applicants' project and therefore cannot be affected thereby; that since the Vedanta Society of Northern California is not currently using water, its protest is insufficient and that in any event the effect at that protestant's property of the applicants' proposed diversion will be negligible; that the effect at the Bloom and Bear Valley Ranch properties will also be negligible.

No reply to the protest by the California Department of Fish and Game is of record.

#### Field Investigation

The applicants and the protestants, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules, and a field investigation was conducted on November 7, 1957, by Donald R. Jeffs and Arthur N. Webb, engineers of the Board. The applicants and protestants were present or represented at the investigation.

### Records Relied Upon

The records relied upon in support of this decision are Applications 13322 and 17417 and all relevant information on file therewith, with particular reference to the report of the above-mentioned field investigation; United States Geological Survey, Double Point and Inverness Quadrangles, 1954; and Bulletin No. 5, Department of Public Works, "Flow in California Streams" dated 1923.

### Information Obtained by Field Investigation

The two unnamed streams rise on the eastern slopes of the Inverness Ridge within projected Section 29, T2N, R8W, MDB&M, and course in a general northeasterly direction about one mile to their confluences with Olema Creek. The watershed areas above the points of diversion are (1) about 0.2 square mile above the northerly point of diversion and (2) about 0.3 square mile above the southerly point of diversion. The watershed area above protestant Santori on the northerly stream is about 0.3 square mile. The point of diversion on the southerly stream is about 1/4 mile upstream from the latter's confluence with Olema Creek. The point of diversion on the northerly stream is about 1,000 feet above protestant Santori's intake and about 1/2 mile upstream from Olema Creek. The watersheds of the unnamed streams have a heavy covering of brush and large trees.

Olema Creek, the creek to which the unnamed streams are tributary and the source of supply for all of the protestants except protestant Santori, rises on the western slopes of the

Bolinas Ridge at about elevation 1,200 feet, flows southwesterly about 1.5 miles, thence northwesterly about 9.5 miles and joins Lagunitas Creek. Approximate distances upstream from the junction of Olema and Lagunitas Creeks are:

To Bear Valley Ranch point of diversion - 2 miles

To Vedanta Society proposed point of diversion - 4.5 miles

To Bloom points of diversion - 4.5 miles

To confluence of the northerly stream and Olema Creek -  
5.5 miles

To Smoot point of diversion - 6.25 miles

To confluence of the southerly stream and Olema Creek -  
6.5 miles

Approximate areas of tributary watershed are:

Above the confluence of Olema and Lagunitas Creeks -  
14.5 square miles

Above Bear Valley Ranch point of diversion - 12 square miles

Above Vedanta Society and Bloom - 9 square miles

Above Smoot - 2.5 square miles

The applicants propose to divert water from the two unnamed streams into the log pond by means of pipe lines and, after the pond is full, to divert water at a rate sufficient to keep the pond flushed out. All water released from the pond will flow into the upper (southerly) source. The intake structures and pipelines have not yet been installed. The dam, a log slide, and the outlet header box (of concrete) have been completed and the mill is under construction. The header box contains a 10-inch outlet pipe. Except for evapo-transpiration the proposed use appears to be nonconsumptive.

The protestants Smoot are using water under License 3800 (Application 13322) which confirms a right to 13,000 gallons per day, year-round, for domestic and industrial purposes. The water is diverted at a point within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 28, T2N, R8W, MDB&M, and used within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  and NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said projected Section 28. The use is for a dairy and about one-half acre of garden and orchard. Drinking water for the Smoot house is obtained from a spring. The Smoot project could be affected only by diversion from the southerly stream.

Protestant Santori's use is from the northerly unnamed stream and is made under a claim of riparian right. The water is used for domestic purposes at his house, for a small garden and fish pond. At the time of the field investigation on November 7, 1957, about 15 gallons per minute were flowing into the fish pond.

The use on the Bloom property is for stockwatering and is made under a claimed riparian right. The stock drink directly from the stream but at times protestant Bloom also pumps stock-water from the stream into a small pond.

No use has been made by the Vedanta Society and the reason for the protest was to protect the riparian right which may be used sometime in the future.

Water is used on the Bear Valley Ranch for irrigation of pasture under a claim of riparian right. The water is pumped at two points and is applied by means of a sprinkler system. There are 27 acres irrigated from one pump and 37 acres from the other. Engineer Means, representing Bear Valley Ranch, indicated that the pumps will each divert about one cubic foot per second and that



when this amount is available it is fully used. Irrigation usually commences about the middle of May and ends in October.

Measurements and estimates of streamflow reported as having been made on behalf of one or another of the parties are as follows:

Measured by Engineer Roumage in September of 1956:

Northerly unnamed stream, some 600 feet below the proposed point of diversion - about 50 gallons per minute.

Southerly unnamed stream, some 1,000 feet below the proposed point of diversion - about 65 gallons per minute.

Estimated by Engineer Means on August 24, 1957:

Olema Creek at Hagameir Bridge (approximately one mile above Smoot Ranch) - about 0.03 cfs.

Olema Creek at Smoot Ranch - about 0.39 cfs.

Olema Creek at Smoot Ranch above pump - about 0.4 cfs.

Olema Creek at south end of Vedanta Society property - about 1.4 cfs.

Olema Creek at Vedanta Bridge (just south of Olema) - about 1.2 cfs.

Olema Creek at Bear Valley Ranch pump - about 2.0 cfs.

Measured by Engineer Oglesby on November 5, 1957:

Northerly unnamed stream (approximately same location as Roumage measurement) - 46.5 gallons per minute.

Southerly unnamed stream (also same location as Roumage measurement) - 56.3 gallons per minute.

Northerly stream at point of diversion - 42 gallons per minute.

Olema Creek above confluence with southerly stream - 480 gallons per minute.

About 600 feet north of the northerly stream from which the applicants seek to appropriate there is another unnamed stream which Engineer Oglesby also measured on November 5, 1957, and found to be discharging 71.4 gallons per minute. This stream is tributary to Olema Creek above all of the protestants except Protestants Santori and Smoot.

In the course of the field investigation Olema Creek was estimated to be discharging between 1.5 and 2.0 cubic feet per second at the Smoot Ranch and about 3.0 cubic feet per second at the Vedanta Society property. According to Mr. A. T. Clifton the flow passing the last named property was about 4 times the normal low water flow within that reach. On June 24, 1952, during the course of an inspection in connection with Application 13322 the flow of Olema Creek at the Smoot point of diversion was observed to be about 0.3 cubic foot per second.

It was agreed by the parties during the November 7, 1957, investigation that the only consumptive use under Application 17417 would be evaporation, and protestants indicated that they had no objection to the storage feature of the application or to direct diversion by the applicants in winter.

Estimates by the parties' engineers as to losses to be expected from evaporation from the proposed reservoir ranged from 0.5 to 25 gallons per minute. In that connection Engineer Oglesby

stated, on the basis of some 45 years of experience in Marin County, that the reservoir in question is subject to summer fogs "... to the extent that grass remains alive all during the summer, ...", that the reservoir is sheltered from the wind, that the temperature in the area is moderately cool, that there is a spring in the reservoir area, and that during the summer of 1957 when the lake was partially filled and evaporation and seepage were taking place but no water was being supplied from the proposed sources, there was very little change in the elevation of the lake surface.

As to water shortages experienced by downstream users, Mr. Beatty, foreman, and Mr. Hutchens, attorney, for Bear Valley Ranch, indicated that when two cubic feet per second are available 64 acres of pasture are irrigated by sprinkler, that 1957 was the first time in 9 years that they had been able to use their two pumps all season, but that they are almost always able to use one of the pumps, and that Olema Creek has never, to their knowledge, gone completely dry. Mr. Bloom stated that never since 1880 has the creek been completely dry. James Colli and A. Simondi, who operate a 250 gallon per minute pump between the two Bear Valley Ranch pumps and irrigate 38 acres of truck garden, both indicated that they are seldom short of water.

#### Information from Other Sources

License 3800 (Application 13322) authorized S. A. and Alberta Smoot (protestants against Application 17417) to divert 13,000 gallons per day, year-round, from Olema Creek at a point

within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 28, T2N, R8W, MDB&M. A report covering an inspection made on June 24, 1952, in connection with Application 13322 contains statements to the effect that the capacity of the Smoots' diversion works is 25 gallons per minute, that the Smoots have beneficially used 13,000 gallons daily, 11 acre-feet seasonally, that the watershed above the Smoot property varies from moderately to heavily wooded sloping hill country, that rainfall averages 30 inches, that flow is believed (by Mr. Smoot) to diminish to about 0.1 cubic foot per second in August, that the water which he diverts serves a dairy accommodating 130 cows and calves and irrigates a half acre of garden and orchard, that irrigation extends from May 1 to October 1, and dairy uses year-round.

According to Table 131, Bulletin No. 5, Department of Public Works, - "Flow in California Streams", runoff over a 50-year period from the watersheds of the group of streams termed in that publication "the Bolinas Creek Group" (which includes Olema Creek) is estimated to have ranged from 48 to 677 acre-feet per square mile and to have averaged 232 acre-feet per square mile. The distribution, percentage-wise, of seasonal runoff from the same watersheds, by months, is estimated in the same reference. That distribution, both as published and as converted to terms of acre-feet per month per square mile of watershed and the equivalent thereof in cubic feet per second of sustained flow, is set forth in Table I.

TABLE I

Estimated Average Flow - Bolinas Creek Group  
Per Square Mile

<u>Month</u>	<u>Percentage</u>	<u>Acre-feet during month</u>	<u>Equivalent sustained flow (cfs)</u>
January	27.5	63.8	1.04
February	22.0	51.1	.92
March	18.5	42.9	.70
April	10.1	23.4	.40
May	9.8	22.7	.37
June	3.0	7.0	.12
July	0.4	0.92	.016
August	0.1	0.23	.004
September	0.6	1.39	.023
October	0.1	0.23	.004
November	4.0	9.27	.156
December	<u>3.9</u>	<u>9.06</u>	.148
Total	100.0	232.00	

Discussion

The estimate of flows that occur in each month of an average year indicates that the applicants can fill their reservoir each such year in the manner and during the period (November 1 - May 31) that they propose, without injury to any downstream user. During that period runoff is greatest, evaporation is least, the protestants' requirements (unless for some

irrigation in May) are also least. The same circumstances indicate that the applicants' requirements for offsetting reservoir losses up to May 31, may well be satisfied also.

The estimated average flows occurring during June, July, August, September, and October are substantially less than the 0.4 cubic foot per second that the applicants seek for the purpose of maintaining the water surface level in, and flushing, their reservoir during those months. However, in view of Engineer Oglesby's statement as to the imperceptible recession of the reservoir surface in 1957 when, presumably, there was no surface inflow at all, a much smaller inflow than 0.4 cubic foot per second may suffice for maintenance of surface level. The estimated flows occurring in those five months of an average season are in any event too scanty to have any material effect upon conditions along Olema Creek, whether for fish conservation or for diversion by water users thereon, and all protests except that by protestant Santori may therefore be disregarded. In some respects the applicants' proposed development might slightly improve low water conditions along Olema Creek; seepage and overflow from the reservoir would tend to drain into that stream and the conveyance of water from projected points of diversion to reservoir by pipeline would tend to reduce evapo-transpiration losses otherwise occurring en route.

Protestant Santori, being dependent upon the northerly of the applicants' sources (and below their proposed diversion therefrom) for his supply for domestic purposes and fish pond maintenance, should be protected by such conditioning of any permit issued as to ensure the continuance of his supply.

### Conclusion

The information indicates and the Board finds that unappropriated water exists at times in the sources designated in Application 17417, that the purpose for which the applicants seek to appropriate is beneficial, that no downstream water user can be materially injured by the proposed appropriation except protestant Santori and that he can be adequately protected against injury by appropriate permit conditioning. It is concluded therefore that Application 17417 should be approved and permit issued subject both to the usual terms and conditions and to a special term and condition limiting diversions by permittees from their northerly source to such amounts as shall not interfere with the exercise of such rights as protestant Santori may now possess to divert from that stream.

The Board recognizes that the quantity of water specified in the application for diversion during the low flow period is clearly in excess of that normally existing in the source and is apparently in excess of that reasonably required for applicants' purposes. However, the available information is inadequate to determine at this time, in fairness to all concerned, the quantity actually needed. Such determination may be deferred until such time as the project is inspected by the Board with a view to issuance of license. In the meantime the same result may be obtained by restricting use of water during the June 1 - October 31 period to that actually required to offset evaporation and seepage from the log pond, with the effect that flushing of the pond will be authorized only during the remaining months.

ORDER

Application 17417 for a permit to appropriate unappropriated water having been filed, protests having been submitted, an investigation having been made by the State Water Rights Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17417 be, and the same is hereby approved, and it is ordered that a permit be issued to the applicants 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 0.3 cubic foot per second by direct diversion to be diverted from about November 1 to about May 31, and 0.4 cubic foot per second by direct diversion to be diverted from about June 1 to about October 31 of each season; and 35 acre-feet per annum by offstream storage to be collected from about November 1 of each year to about May 31 of the succeeding year; provided however that no water shall be diverted under this permit from about June 1 to about October 31 of each year except the amount reasonably required to offset evaporation and seepage losses from permittee's log pond.

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

3. Construction work shall be completed on or before December 1, 1960.

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



5. 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.

6. 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.

7. Permittees shall at all times so limit their diversions from their northerly unnamed source as to permit the satisfaction of such prior rights as protestant Frank Santori may possess to divert from that stream.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 9th day of July, 1958.

/s/ Henry Holsinger  

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Henry Holsinger, Chairman

/s/ W. P. Rowe  

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W. P. Rowe, Member

/s/ Ralph J. McGill  

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Ralph J. McGill, Member