

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 18364
and 18386 of Arthur and Marie Azevedo
and Albert A. and Antoinette S. Wagner,
Respectively, to Appropriate from
Lone Tree Creek and Gawne Stream
(Temple Drain) in San Joaquin County

ADOPTED APR 4 1963

Decision D 1122

DECISION APPROVING APPLICATIONS IN PART

Arthur and Marie Azevedo and Albert A. and Antoinette S. Wagner having filed Applications 18364 and 18386, respectively, for permits to appropriate unappropriated water; 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 Rights Board pursuant to said stipulations; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1(a). Application 18364 is for a permit to appropriate 2.25 cubic feet per second (cfs) by direct diversion from April 1 to October 31 of each year for irrigation purposes from Lone Tree Creek in San Joaquin County. The point of diversion is to be located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 25, T1S, R8E, MDB&M.

1(b). Application 18386 is for a permit to appropriate 0.75 cubic foot per second (cfs) by direct diversion from May 1

to November 1 of each year for irrigation purposes from Gawne Stream (Temple Drain) in San Joaquin County. The point of diversion is to be located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 1, T1S, R8E, MDB&M.

2. Applicants Wagner propose to divert from the unobstructed channel of Gawne Stream for the irrigation of approximately 60 acres of general crops at a point located approximately 7 miles above the point where the stream joins Lone Tree Creek. Applicants Azevedo propose to divert from the unobstructed channel of Lone Tree Creek for the irrigation of approximately 174 acres of pasture at a point approximately the same distance above the Gawne Stream-Lone Tree Creek junction. Lone Tree Creek continues approximately 5 miles below the junction to enter French Camp Slough which flows into the Sacramento-San Joaquin Delta, hereinafter referred to as "the Delta."

3. Protests to the applications have been filed by users holding licenses to appropriate from Lone Tree Creek and claiming riparian rights to that source. They are located downstream from applicants Azevedos' proposed point of diversion, some above and some below the Gawne Stream-Lone Tree Creek junction.

4. The source of water of both streams is direct runoff from precipitation and return water from the lands within the boundaries of the nearby Oakdale and South San Joaquin Irrigation Districts.

5. Records of water stage recorders maintained by the Department of Water Resources on French Camp Slough along

with the records of water stage recorders installed by the Board on Gawne Stream and Lone Tree Creek immediately above their confluence show that water in excess of the requirements of the protestants and other downstream users on Lone Tree Creek occurs during most years at the point where the creek flows into French Camp Slough and that water is physically available at the applicants' proposed points of diversion to satisfy their applications.

6. As there is a direct hydraulic connection between Gawne Stream and Lone Tree Creek and the Delta, these applications must be considered in relation to existing rights to use water from the Delta. A study of water conditions in the Delta was received in evidence at the hearing on Applications 5625 and others of the U. S. Bureau of Reclamation to appropriate from the Sacramento River and the Delta, following which hearing Board's Decision D 990 was issued. These studies, based on hydrologic conditions for the years 1921 through 1954, show that there is no unappropriated water in the Delta during July, August, and September.

7. There is unappropriated water available to supply the applicants pursuant to Application 18364 during the months of April, May, June, and October and pursuant to Application 18386 during the months of May, June, and October, and, subject to suitable conditions, such water may be diverted and used in the manner proposed during those times without causing substantial injury to any lawful user of water.

8. The intended use is beneficial.

9. Applicants Wagner claim a riparian right covering the same use of water as described in their application. The permit to be issued pursuant to Application 18386 should contain a term stating that water diverted under the permit shall not be in addition to such water, if any, as permittees may be entitled to use from the same source on the place of use authorized by the permit by virtue of a riparian or other right.

From the foregoing findings, the Board concludes that Applications 18364 and 18386 should be approved in part and that permits should be issued to the applicants 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: Applications 18364 and 18386 and all relevant information on file therewith, particularly the report of the field investigation made August 12, 1959; records of stream-flow collected by the State Water Rights Board on Gawne Stream and Lone Tree Creek for the periods April 1 to October 21, 1960, and April 1 to October 9, 1961; State Water Rights Board Decision D 990 and Exhibit USBR 164 entitled, "Central Valley Project Study, Shasta Reservoir Operation"; California Department of Water Resources, "Report of Sacramento-San Joaquin Water Supervision," for the years 1951 to 1960; and United States Geological Survey topographic quadrangle "Manteca, California," 15-minute series, dated 1952.

ORDER

IT IS HEREBY ORDERED that Applications 18364 and 18386 be, and the same are, approved in part, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions:

1(a). The amount of water appropriated pursuant to Application 18364 shall be limited to the amount which can be beneficially used and shall not exceed 2.25 cubic feet per second by direct diversion to be diverted from about April 1 to about July 1 and from about October 1 to about November 1 of each year.

1(b). The amount of water appropriated pursuant to Application 18386 shall be limited to the amount which can be beneficially used and shall not exceed 0.75 cubic foot per second by direct diversion to be diverted from about May 1 to about July 1 and from about October 1 to about November 1 of each year.

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

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

3. Actual construction work pursuant to both permits shall begin on or before September 1, 1963, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, the permits may be revoked.

4. Construction work shall be completed on or before December 1, 1965.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1966.

6. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights Board until licenses are issued.

7. All rights and privileges under these permits, including methods of diversion, methods of use, and quantities 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. Permittees 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 these permits.

9. Water diverted under the permit issued pursuant to Application 18386 shall not be in addition to such water, if any, as the permittees may be entitled to use from the same source on the place of use authorized by said permit by virtue of a riparian or other right.

Adopted as the decision and order of the State Water
Rights Board at a meeting duly called and held at
California, on the day of , 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member