

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20373
of H. C. Brown and Louis La Flamme,
Copartners, to Appropriate from
Porter Creek in Sonoma County

Decision D 1143

ADOPTED AUG 26 1963

DECISION APPROVING APPLICATION

H. C. Brown and Louis La Flamme, copartners, having filed Application 20373 for a permit 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 stipulation; the Board, having considered all available information and now being fully advised in the premises, find as follows:

1. Application 20373 is for a permit to appropriate 0.073 cubic foot per second (cfs) by direct diversion from May 1 to October 31 of each year for irrigation, recreational and stockwatering purposes from Porter Creek in Sonoma County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 10, T8N, R10W, MDB&M.

2. Porter Creek, a tributary of the Russian River in Sonoma County, rises on the eastern slope of Rocky Mountain at an elevation of approximately 1,400 feet and flows approximately

1.5 miles to an existing concrete and flashboard diversion dam where the applicants propose to install a pump and divert from the creek. Water from the creek is to be used for the irrigation of 5 acres of pasture, a swimming pool, and 50 campsites, supplementing a supply from springs.

3. Protestant Arques diverts from Porter Creek at a point about 0.75 mile below applicants' point of diversion. Protestant Cook's property lies from 1.5 to about 3.5 miles below applicants and about 1.5 miles above the Russian River. Protestant Arques flood irrigates from 1 to 7 acres of orchard, vineyard, and garden from about April 1 to about September 1, at a maximum rate of diversion of approximately 350 gallons per minute (gpm), under claim of riparian right. He pumps from the underflow of Porter Creek at a gravel-filled standpipe installed adjacent to the creek. Protestant Cook claims to water 100 head of cattle and 1,500 head of sheep, apparently directly from the creek, and claims to use water for domestic and recreational uses at campsites under claim of riparian and pre-1914 appropriative rights. He was not present or represented at the field investigation conducted by the Board's staff although he was duly notified thereof.

4. On July 27, 1962, the time of the field investigation, the flow of Porter Creek at the applicants' point of diversion was measured at 0.047 cfs and was percolating into the streambed to reappear approximately 100 feet further downstream. On the same date its flow was estimated to be 10 gpm passing the protestant Arques's point of diversion, an estimated 15 gpm at a point approximately 2.5 miles downstream from the applicants' point of

diversion, and an estimated 30 gpm at a point approximately 0.5 mile above the creek's confluence with the Russian River. The flow of the creek was at about its minimum on this date.

5. There are between one and three square miles of additional drainage area contributing water to Porter Creek between the applicants' point of diversion and the reach of the stream passing through protestant Cook's property. The stream is a gaining stream also due to the presence of supporting springs located within the watershed area. Available information indicates that the proposed diversion will not interfere with Cook's present uses of water.

6. There is unappropriated water available at times to supply the applicants, 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.

7. The intended use is beneficial.

8. As the applicants claim a riparian right to water from Porter Creek the permit should contain a term stating that water diverted under the permit shall not be in addition to such water, if any, as permittee may be entitled to use from the same source on the place of use authorized by the permit by virtue of riparian or other right.

From the foregoing findings, the Board concludes that Application 20373 should be approved and that a permit 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: Application 20373 and all relevant information on file therewith, particularly the report of the field investigation made July 27, 1962; USGS Water Supply Papers, Part 11, "Pacific Slope Basins," for the water years 1941-42 through 1959-60; USGS 7.5-minute quadrangle, "Guerneville," and California Division of Mines, Bulletin 161, "Geology of the Healdsburg Quadrangle, California," dated 1950.

ORDER

IT IS HEREBY ORDERED that Application 20373 be, and the same is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.073 cubic foot per second by direct diversion to be diverted from about May 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 license if investigation warrants.

3. Actual construction work shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

6. 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.

7. 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.

8. 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.

9. 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 Sacramento, California, on the day of , 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member