

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 20901  
of Joe Puccinelli to Appropriate  
from Two Unnamed Springs Tributary to  
McDonnell Creek in Sonoma County

Decision D 1175

ADOPTED MAR 18 1964

DECISION APPROVING APPLICATION

Joe Puccinelli having filed Application 20901 for a permit to appropriate unappropriated water; protests having been received; the applicant 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, finds as follows:

1. Application 20901 is for a permit to appropriate 300 gallons per day by direct diversion, year-round, for domestic purposes from two unnamed springs in Sonoma County. The points of diversion are to be located within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 3, T10N, R8W, MDB&M.

2. The applicant proposes to develop two springs, one of which (No. 1) rises at the head of McDonnell Creek and the other (No. 2) rises 1/4 mile further to the east. McDonnell Creek

flows from Spring No. 1 approximately 5 miles to join Maacama Creek. Water will be conveyed from the springs to a regulatory storage tank for use at a house and for the watering of horses.

3. On July 30, 1963, there was only a trickle of surface flow at Spring No. 1 and an estimated flow of approximately one gallon per minute at Spring No. 2. Surface flow from both of the springs disappeared within 100 feet. There were pools of water in the channel of McDonnell Creek but no surface flow, which condition is normal for the summer months.

4. Protestant James L. Modini, Jr., located approximately two miles downstream from the applicant, waters approximately 100 head of cattle directly from McDonnell Creek under claim of pre-1914 appropriative rights.

5. The springs from which the applicant proposes to divert do not make an appreciable contribution to McDonnell Creek and to the supply available to the protestant Modini.

6. Protestants George B. Snyder, Estelle M. Nervo, and Paul E. Warner (the latter party, while not a protestant of record, appeared at the field investigation in opposition to the approval of Application 20901) divert from springs for domestic, irrigation, and stockwatering purposes under claim of pre-1914 appropriative and riparian rights. None of these springs is along the same stream channel as the applicant's springs. There is no known geologic structural connection between the applicant's proposed diversion and the protestants' springs and the proposed diversion will not have an adverse effect on these protestants.

7. There is unappropriated water available to supply the applicant, and subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

8. The intended use is beneficial.

9. Protestant Snyder claims that the applicant's description of the point of diversion and place of use is in error and the project may be located on his property, and that he has not consented to entry upon his lands by the applicant. This contention presents a controversy over which the Board has no jurisdiction. The permit to be issued should contain a special term stating that the issuance of the permit shall in no way be construed as conferring upon permittee right of access to the point of diversion and place of use.

From the foregoing findings, the Board concludes that Application 20901 should be approved and that a permit should be issued to the applicant 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 20901 and all relevant information on file therewith; United States Geological Survey 7.5-minute quadrangle, "Mt. St. Helena"; California Division of Mines publication, "California Journal of Mines and Geology," Volume 42, No. 3, dated July 1946.

ORDER

IT IS HEREBY ORDERED that Application 20901 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated from two unnamed springs shall be limited to the amount which can be beneficially used and shall not exceed a total of 300 gallons per day by direct diversion to be diverted year-round.

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

3. Actual construction work shall begin on or before September 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. The issuance of this permit shall in no way be construed as conferring upon permittee right of access to the point of diversion or place of use.

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            , 1964.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member