

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21685)
of Charles E. Burton and Jane M.)
Burton to Appropriate from an)
Unnamed Spring in Santa Cruz County)

Decision D 1269

DECISION APPROVING APPLICATION IN PART

Charles E. Burton and Jane M. Burton having filed Application 21685 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant 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 21685 is for a permit to appropriate 4,550 gallons per day (gpd) by direct diversion from January 1 to December 31 of each year for domestic and irrigation purposes from an unnamed spring located in the watershed of an unnamed stream tributary to West Branch Soquel Creek, in Santa Cruz County. The point of diversion is located within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 15, T10S, R1W, MDB&M.

2. The application refers to irrigation use on two acres. However, it also explains that 550 gpd will be used for household purposes and 4,000 gpd for watering one-half acre of orchard and garden. The application is intended to cover only applicants' existing diversion and use at their house, which includes watering a few fruit trees and a small garden. The Board's regulations provide that domestic use includes irrigation of not to exceed one-half acre of lawn, shrubbery, and garden. Since a permit for the full amount applied for will provide only enough water for domestic use including incidental irrigation of one-half acre, the permit should authorize use for domestic purposes only.

3. The flow of the spring varies between 0.5 gallons per minute (720 gpd) and 2.0 gallons per minute (2,880 gpd), with low flows occurring during the summer months and high flows during the winter season. Although it is clear that the amount applied for exceeds the amount available during the season of maximum use, the evidence will not support a finding as to the exact quantity of water available for the proposed use. Therefore, a permit should be issued for the quantity requested, which quantity will be subject to reduction in the license in accordance with data on actual use during the permit period.

4. The application, protest, and answer to protest refer to applicants' deeded water right and pipeline easement, applicants' existing tank and pipeline on protestant's land, and protestant's riparian rights and rights as owner of the land on which the spring is located. The Board has no jurisdiction over such matters, and the issuance of a permit to applicants, subject to vested rights, will not affect any rights the parties may have with regard to these matters. The permit should contain a term that its issuance shall in no way be construed as conferring on the applicants the right to occupy or use land or other property.

5. The protestant claims a right to a portion of the flow of the spring as owner of the land upon which the spring is located and as a riparian owner. As the permit will contain the provision that it is issued subject to vested rights, approval of this application will not result in interference with whatever rights protestant may have.

6. Unappropriated water is available to supply the applicants, 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 21685 should be approved in part 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 21685 and all relevant information on file therewith, particularly the report of the field investigation made on July 8, 1966.

ORDER

IT IS HEREBY ORDERED that Application 21685 be, and it is, approved in part, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used for domestic purposes and shall not exceed 4,550 gallons per day by direct diversion to be diverted from January 1 to December 31 of each year.

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

4. 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.

5. 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.

6. 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.

7. The issuance of this permit shall in no way be construed as conferring on the permittee the right to occupy or use land or other property.

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

Dated: **MAY 11 1967**

/s/ George B. Maul
George B. Maul, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member