

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 22362  
of Milan R. and Barbara R. Markert  
to Appropriate from Beaver Creek  
in Siskiyou County

Decision D 1280

DECISION APPROVING APPLICATION

Milan R. and Barbara R. Markert having filed Application 22362 for a permit to appropriate unappropriated water; a protest 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, finds as follows:

1. Application 22362 is for a permit to appropriate two cubic feet per second (cfs) by direct diversion from March 1 to November 1 of each year for irrigation and stockwatering purposes from Beaver Creek in Siskiyou County. The point of diversion is to be located within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 24, T47N, R9W, MDB&M.

2. The applicants divert from Beaver Creek approximately three miles above its junction with the Klamath River. The water is conveyed from the creek through a ditch seven miles in length that roughly parallels Beaver Creek and Klamath River to the place of use. The applicants use the water for the sprinkler irrigation of approximately 50 acres of alfalfa and the watering of stock. The ditch passes through land owned by the Southern Pacific Railroad and the Klamath National Forest. Right of access to the point of diversion has been obtained.

3. Protestants C. B. Wayne Wire and Dorothy L. Wire divert from Beaver Creek approximately two and three-quarters miles below the applicants' point of diversion by offset wells for domestic use under claim of riparian right. Also, they plan to use water from the creek at two additional homes to be constructed and for the irrigation of ten acres of permanent pasture.

4. The protestants contend that the applicants' project will have a detrimental effect on Beaver Creek as a spawning ground for salmon; seepage from the applicants' ditch will cause landslides, resulting in damage to their property; and the proposed diversion will interfere with their use of water from the creek.

There has been no showing that the approval of Application 22362 will result in harm to Beaver Creek as a fishery resource. The Department of Fish and Game has installed a fish screen at the head of the applicants' ditch. The Department was given notice of Application 22362 and has not seen fit to protest.

The possibility that injury may result to the property of others from failure of an applicant to properly maintain his diversion works is not a sufficient reason for denying an application to appropriate water. If the applicants fail to maintain their ditch and as a consequence the protestants' property is damaged, the protestants have their remedy in a court of law.

On June 6, 1967, the time of the field investigation on Application 22362, the flow of Beaver Creek was in excess of 100 cfs at the site of a U.S.G.S. gaging station that was washed out by flood in December of 1964. The gaging station was located approximately one and one-quarter miles upstream from the protestants' point of diversion. Its record of the minimum daily flows of the creek for each month, covering the years 1958 through 1964, shows that water surplus to the quantities necessary to satisfy the prior rights of the protestants and other downstream users occurs in the creek during every month of the applicants' diversion season.

5. 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.

6. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22362 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 22362 and all relevant information on file therewith, particularly the report of the field investigation made June 6, 1967; United States Geological Survey, Water Supply Papers, Part 11, "Pacific Slope Basins in California", for the period of published record; United States Department of the Interior, Geological Survey--Water Resources Division, "Surface Water Records of California--Volume 1: Colorado River Basin, Southern Great Basin and Pacific Slope Basins Excluding Central Valley", 1961 through 1964; United States Department of the Interior, Geological Survey--Water Resources Division, "Water Resources Data for California, Part 1. Surface Water Records--Volume 1: Colorado River Basin, Southern Great Basin, and Pacific Slope Basins Excluding Central Valley," for the period of published record

(1965- ); topographic maps published by the United States Geological Survey covering the area under consideration.

ORDER

IT IS HEREBY ORDERED that Application 22362 be, and it is, approved, 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 and shall not exceed two cubic feet per second by direct diversion to be diverted from about March 1 of each year to about November 1 of each year. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

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, 1971.

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.

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

Dated: AUG 31 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