

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22552  
of Gateway, Inc., and Santa Cruz County  
Flood Control and Water Conservation  
District to Appropriate from West Branch  
Soquel Creek in Santa Cruz County

Decision 1294

DECISION APPROVING APPLICATION

Application 22552 having been filed by Gateway, Inc.; protests having been received; a public hearing having been held before the State Water Rights Board (predecessor of the State Water Resources Control Board) on June 27, 1967, conducted by Board Members Ralph J. McGill and W. A. Alexander; applicant and protestants having appeared and presented evidence; Gateway, Inc., and Santa Cruz County Flood Control and Water Conservation District having agreed that said company and district shall join as co-applicants; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 22552, as amended, is for a permit to appropriate 0.089 cubic foot per second (cfs) by direct diversion, year-round, and 5 acre-feet per annum by storage from November 1 of each year to April 30 of the succeeding

year for domestic use from West Branch Soquel Creek in Santa Cruz County. The point of diversion is to be located within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 27, T9S, R1W, MDB&M.

2. Applicants propose construction of a reservoir with a capacity of about 5 acre-feet on the West Branch Soquel Creek about 4-1/2 miles above the confluence of that stream with Soquel Creek. Soquel Creek continues from that point about 6 miles to enter the Pacific Ocean at the City of Capitola. The watershed area above the reservoir site is about 5 square miles. Water from the reservoir will be used to furnish a domestic supply to an adjacent subdivision of 48 lots owned by Gateway, Inc., and to 4 other lots in exchange for a pipeline right-of-way.

3. Based upon streamflow records of the West Branch Soquel Creek for the period of October 1958 to September 1965, adjusted for the difference in location between the U.S.G.S. recorder and applicants' reservoir site, the minimum mean daily expected flow at the reservoir site is 0.24 cfs. Ample runoff is available during the storage season to fill the reservoir without adverse effect upon other water users.

4. Soquel Creek County Water District did not appear at the hearing and did not show cause for failure to appear within five days thereafter. Accordingly, its protest is dismissed.

5. Prior to the hearing, Hugo M. Rhoden withdrew his protest on condition that any permit would contain the

term set forth in a stipulation between Gateway, Inc., and Mr. Rhoden subjecting the permit to his prior rights. Such a term will be included in the permit.

6. The City of Capitola filed a protest based upon its licensed right to appropriate not to exceed 3 cfs from Soquel Creek for recreation and fire protection. Each year the city constructs a sand dam across the creek near the ocean to form a freshwater lake about 3-1/2 acres in area which is used by the public for swimming and boating. The capacity of the lake is about 14 acre-feet. The lake is also used as a supplemental source for fire protection in the city. The city's protest is only against the proposed diversion during the period from May to October of each year.

7. The pumping capability of the City of Capitola from the lake to supplement the fire system within the city is 1,000 gallons per minute. In order to meet the Pacific Fire Rating Bureau's rating, only about 800 gallons per minute are required from this source for a 10-hour period. Assuming, however, that the full 1,000 gallons per minute are required, it would be possible to pump from the reservoir for 24 hours with a resulting drawdown of only 4.44 acre-feet.

8. Sufficient water has always been available in Soquel Creek to keep the lake full and to provide a constant flow past the sand dam into the ocean (RT 63). Although on one occasion the flow was down to an estimated 0.1 cfs, there has been no problem with contamination. The city engineer

expressed his opinion that less than 0.5 cfs for a period of seven to ten days might cause serious contamination and that 1 cfs is a reasonable volume as a minimum to maintain (RT 74, 80). However, the city has not employed an expert to advise how much inflow to the lake is necessary to protect public health (RT 81).

9. During the period of record, from May 1951 to September 1965, there were no months when the daily minimum flow at Soquel was less than 0.5 cfs. Known diversions between the U.S.G.S. recorder at Soquel and Capitola are less than 0.1 cfs. Inflow of approximately 0.1 cfs will fully compensate for evaporation from the surface of the lake.

10. Although the city's license authorizes diversion of up to 3 cfs, the city is entitled to receive only sufficient water to supply and protect its reasonable beneficial uses. Judged by this standard, diversion of not to exceed 0.089 cfs by the applicants during the summer months will not impair the licensed right of the city.

11. Protestant Harold J. Miller owns property on West Branch Soquel Creek about one-third of a mile below applicants' proposed reservoir. He uses water from the creek for domestic and recreational purposes under claim of riparian right. Although the stream has never gone completely dry on his land, there have been times when the flow has been very small. His only concern is to maintain some flow

in the stream through his property at all times (RT 97). The applicants should be permitted to divert water only when a live stream is reaching the lower boundary of the Miller land.

12. 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.

13. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22552 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.

#### ORDER

IT IS HEREBY ORDERED that Application 22552 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 0.089 cubic foot per second by direct diversion to be diverted from January 1 to December 31 of each year and 5 acre-feet per annum by storage to be collected from about November 1 of each year to about April 30 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

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

3. Actual construction work shall begin on or before September 1, 1968, 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, 1970.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control 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 Resources Control 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 Resources Control 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. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board to comply with this paragraph.

10. Appropriation of water hereunder is and shall be subject to all vested rights of others, including Hugo M. Rhoden, his successors and assigns, and shall be so limited as to permit the free and unrestricted exercise of the full vested riparian rights to waters of Soquel Creek upon riparian lands, specifically including lands of Hugo M. Rhoden, his successors and assigns. Said riparian rights shall not be deemed limited to present use but shall include prospective use as defined by the laws of California.

11. Water shall be diverted only at times when surface flow of West Branch Soquel Creek extends past the lower boundary of the land owned by Harold J. Miller.

12. Water shall be diverted only at times when surface flow of Soquel Creek reaches the freshwater lagoon of the City of Capitola.

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

Dated: FEB 1 1968

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

/s/ W. A. Alexander  
W. A. Alexander, Vice Chairman

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

/s/ Norman B. Hume  
Norman B. Hume, Member

/s/ E. F. Dibble  
E. F. Dibble, Member