

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23096
and 23243 of Della Mallory and City
of Trinidad, Respectively, to Appro-
priate from Luffenholtz Creek in
Humboldt County

Decision 1350

DECISION APPROVING APPLICATIONS IN PART

Della Mallory and City of Trinidad (hereinafter referred to as the City) having filed Applications 23096 and 23243, respectively, for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on September 24, 1969; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the board finds as follows:

Substance of the Applications

1. (a) Application 23096 is for a permit to appropriate 1.25 cubic feet per second (cfs) by direct diversion, year-round, for irrigation, domestic, stockwatering, and fire protection purposes from Luffenholtz Creek in Humboldt County. The points of diversion are to be located within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 30, T8N, R1E, HB&M.

(b) Application 23243 is for a permit to appropriate 1 cfs by direct diversion, year-round, for domestic and municipal purposes from the same source. The point of diversion is within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 30, T8N, R1E, HB&M.

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Applicants' Projects

2. Applicant Della Mallory proposes to divert from Luffenholtz Creek approximately 3,000 feet above its point of discharge into the Pacific Ocean. The water will be used on an 80-acre subdivision catering to horse owners. Each of the subdivision's $2\frac{1}{2}$ -to 10-acre parcels will have one or more acres of irrigated pasture. The applicant has reserved from the development approximately 13 acres, including 10 acres of pasture, for her own use. Her pasture is now irrigated from wells and will receive a supplemental supply from the proposed project.

3. Applicant City of Trinidad proposes to divert from the creek approximately 500 feet below applicant Mallory's point of diversion to augment the City's present water supply from Mill and McConnahas Mill Creeks. The City, which serves approximately 350 persons, has been forced to ration water during the summer months due to an inadequate supply. It expects to finance its project through a Davis-Grunsky loan.

Applicants' Water Requirements

4. Applicant Mallory intends to rely on claimed riparian rights to water from Luffenholtz Creek to cover use on all except 20 acres of her proposed subdivision, which could contain up to eight $2\frac{1}{2}$ -acre homesites (RT 21). As a result, the pasture land that will be irrigated under Application 23096, including her own 13-acre parcel, will be approximately 20 acres. Based on a general duty of 1 cfs per 80 acres for irrigation, and, as the domestic use will be minimal in relation to her irrigation use, a flow of 0.25 cfs should meet her requirements.

5. The City's projected population for the year 2020 is approximately 950 people (Feasibility Report for Construction of Water System, City's Exh. 8, p. 2). The per capita daily consumption of water in the year 2020 is estimated at 150 gallons (City's Exh. 8, p. 14). However, the population projections may prove conservative, so the quantity of 200 gallons per capita daily consumption will be used in calculating the City's future needs. This results in a demand by the City of 132 gallons per minute, or approximately 0.3 cfs. In this determination of the City's requirements, no consideration is given to availability of water from Mill and McConnahas Mill Creeks, which, it is assumed, will continue as sources of supply.

Water Supply

6. The mean annual runoff of Luffenholtz Creek is estimated to be 5,100 acre-feet, which represents an average annual flow of approximately 7 cfs (DWR Bull. No. 105-2, Staff Exh. 7, p. 10). The creek's flow is considerably less than 7 cfs during the summer months and in the summer of 1968 the minimum flow was approximately 1.2 cfs (City's Exh. 7). The year 1968 was a dry year and is representative of conditions that would be encountered during a drought that would occur once in 80 years (RT 54).

Existence of Unappropriated Water

7. Under conditions of a once-in-80-year drought, when the minimum flow in Luffenholtz Creek would be 1.2 cfs, there would be sufficient water in the creek for both the City's requirements of 0.3 cfs and applicant Mallory's requirements of 0.25 cfs. In addition, there would be sufficient water to satisfy other rights on

the creek, including uses by applicant Mallory under riparian claim, the Humboldt Department of Public Works under Application 21518 for 5,000 gallons per day, year-round, and William S. Heggy under Application 22605 for 1,034 gallons per day, year-round.

8. 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.

9. The intended use is beneficial.

Priority of Rights Under the Permits

10. Applicant Mallory's Application 23096 was filed prior to the City's Application 23243. However, as the City is entitled to a municipal preference, the priorities of the permits to be issued pursuant to the applications should be reversed. Water Code Section 1460 reads as follows:

"The application for a permit by a municipality for the use of water for the municipality or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether it is first in time."

The permit issued pursuant to Application 23096 should contain the following term:

Rights acquired under this permit shall be junior to rights acquired under permit issued pursuant to Application 23243 of the City of Trinidad.

Fish Protection

11. The Department of Fish and Game has protested both applications to protect Luffenholtz Creek as a fishery resource. It recommends that a minimum flow of 0.25 cfs be maintained in the creek for the protection of fish life.

The fishery is limited to small trout, existing in less than a mile of channel, since the steep outfall of the creek prevents upward migration of anadromous fish. With the development planned under Applications 23096 and 23243, added to the very minor diversions already existing, there would be no shortage of water for fish. However, it is conceivable that long-term future development by upstream riparian users could cause a shortage in the very driest of years. Under such conditions, a mandatory fish release would act to the detriment of the Mallory application first and City's municipal right next. The prior riparian rights would not be affected.

The board is cognizant of the desirability of protecting fish and the related recreational advantages, but this fishery is quite small, and the stream could be restocked by the Department of Fish and Game at an estimated cost of a few hundred dollars, in the event an unusual shortage of water should occur in the future (RT 81-82).

Under these conditions, it is considered preferable to restock the stream, if required, rather than subjecting domestic and municipal uses to maintenance of flow for fish life.

Conclusion

From the foregoing findings, the board concludes that Applications 23096 and 23243 should be approved in part and that permits should be issued to the applicants, subject to the limitations and conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Applications 23096 and 23243 be, and they are, approved in part, and that permits be issued to the

applicants, subject to vested rights and to the following limitations and conditions:

1. (a) The water appropriated pursuant to Application 23096 shall be limited to the quantity which can be beneficially used and shall not exceed 0.25 cubic foot per second by direct diversion to be diverted from about April 1 to about October 1 of each year for irrigation and year-round as required for domestic, stockwatering, and fire protection purposes. The equivalent of such continuous flow allowance for irrigation purposes for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

(b) The water appropriated pursuant to Application 23243 shall be limited to the quantity which can be beneficially used and shall not exceed 0.3 cubic foot per second by direct diversion to be diverted year-round.

2. The total amount of water appropriated under the permit issued pursuant to Application 23096 shall not exceed 75 acre-feet annually, and the total amount of water appropriated under the permit issued pursuant to Application 23243 shall not exceed 160 acre-feet annually.

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

4. Actual construction work shall begin on or before June 1, 1970, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1972.

applicants, subject to vested rights and to the following limitations and conditions:

1. (a) The water appropriated pursuant to Application 23096 shall be limited to the quantity which can be beneficially used and shall not exceed 0.25 cubic foot per second by direct diversion to be diverted from about April 1 to about October 1 of each year for irrigation and year-round as required for domestic, stockwatering, and fire protection purposes. The equivalent of such continuous flow allowance for irrigation purposes for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

(b) The water appropriated pursuant to Application 23243 shall be limited to the quantity which can be beneficially used and shall not exceed 0.3 cubic foot per second by direct diversion to be diverted year-round.

2. The total amount of water appropriated under the permit issued pursuant to Application 23096 shall not exceed 75 acre-feet annually, and the total amount of water appropriated under the permit issued pursuant to Application 23243 shall not exceed 160 acre-feet annually.

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

4. Actual construction work shall begin on or before June 1, 1970, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1972.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1973, for Application 23096 and December 1, 1990, for Application 23243.

7. 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.

8. 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.

9. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the board finds that such modification is necessary to meet water quality objectives which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

10. 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.

The permit issued on Application 23096 shall contain the following additional limitations and conditions:

11. 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.

12. Rights acquired under this permit shall be junior to rights acquired under permit issued pursuant to Application 23243.

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

Dated: December 4, 1969

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member

RONALD B. ROBIE
Ronald B. Robie, Member