

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23085)
of Ernest George Tiegel and Gertrude Tiegel) Decision 1363
to Appropriate from a Mine Tunnel in)
Napa County)

DECISION APPROVING APPLICATION

Ernest George Tiegel and Gertrude Tiegel having filed Application 23085 for a permit to appropriate unappropriated water; protests 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 Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

1. Application 23085 is for a permit to appropriate 5,000 gallons per day by direct diversion from January 1 to December 31 of each year for domestic, stockwatering, fire protection and recreation purposes from a mine tunnel tributary to St. Helena Creek in Napa County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 2, T9N, R7W, MDB&M.

2. Application 23085 was protested by the United States Bureau of Reclamation and Gilbert F. and Dorothy B. Foote.

3. The United States Bureau of Reclamation protested Application 23085 upon the belief that the proposed appropriation would reduce the streamflow into Lake Berryessa in excess of the 33,000 acre-foot upper basin reservation allowed for in Board Decision D 869.

4. A field investigation by a Board engineer on June 13, 1969, indicated that the flow from the mine tunnel would not reach Lake Berryessa during the summer months. However, it is possible that continuity would exist during the winter months. In the event of a dry year, winter flow from the mine tunnel may not be available for appropriation and therefore a condition will be inserted into the permit, as requested by the Bureau, protecting the downstream prior rights of other water users (see Condition 10).

5. The protest of Gilbert F. and Dorothy B. Foote was based upon prior use of water from the mine tunnel by a predecessor. These protestants have not themselves used any water from this source. They have no permit or license from the Board to appropriate water from the mine tunnel and the June 13 field investigation by the Board engineer indicates that protestants' land is not riparian to any stream fed by the water from the mine tunnel.

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 23085 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 23085 and all relevant information on file therewith, particularly the report of field investigation made June 13, 1969.

ORDER

IT IS HEREBY ORDERED that Application 23085 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 5,000 gallons per day by direct diversion to be diverted from January 1 to December 31 of each year. The total amount of water appropriated under this permit shall not exceed 5.6 acre-feet annually.

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

3. Actual construction work shall begin on or before June 1, 1971 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1973.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

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. 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 in water quality control plans 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.

9. 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.

10. Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the watershed upstream from Monticello Reservoir in Decision D 869. During the portion of such years that, in

the absence of permittee's diversion, hydraulic continuity would exist between permittee's diversion point and Monticello Reservoir, permittee shall not make any direct diversion and shall allow all streamflow at his diversion works to pass undiminished to the downstream channel, unless replacement water is provided on an exchange basis. Nothing in this condition however, shall preclude permittee from diverting water under any prior rights.

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

Dated: September 3, 1970

KERRY W. MULLIGAN ABSTAINED
Kerry W. Mulligan, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

RONALD B. ROBIE
Ronald B. Robie, Member

W. W. ADAMS
W. W. Adams, Member