

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23184  
of JOHN V. ALBONICO to Appropriate  
from Mill Creek in Mendocino  
County.

Decision 1395

DECISION APPROVING APPLICATION

John V. Albonico having filed Application 23184 for a permit to appropriate unappropriated water; protests having been received; the applicant 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Water Resources Control Board pursuant to said stipulation; the protest of the Department of Fish and Game having been withdrawn pursuant to an agreement with the applicant; protestant Marian Fantozzi having based her protest on License 6529 which is now revoked; no other protests having been filed; the Board, having considered all available information, finds as follows:

1. Unappropriated water is available to supply the applicant, 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.
2. The intended use is beneficial.

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3. The permit issued pursuant to Application 23184 should contain a term requiring the permittee to bypass one cubic foot per second or the natural flow of Mill Creek whichever is less, for the protection of fish life pursuant to the agreement between the applicant and the Department of Fish and Game.

From the foregoing findings, the Board concludes that Application 23184 should be approved and that a permit should be issued to the applicant 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: Applications 23184 and 11908 and all relevant information on file therewith, particularly the reports of field investigations made October 16, 1969, June 23, 1970 and May 7, 1971.

#### ORDER

IT IS HEREBY ORDERED that Application 23184 be, and it is, approved, and that a permit be issued to the applicant 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 one cubic foot per second by direct diversion to be diverted from May 15 to August 31 of each year. The maximum amount diverted under this permit shall not exceed 210 acre-feet per year.

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

3. Actual construction work shall begin on or before nine months from date of permit 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, 1974.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1975.

6. Progress reports shall be submitted promptly by permittee when requested 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. 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 and/or prior appropriative right, the rights 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 largest of the rights.

11. To protect fish, no diversion shall be made from May 15 to June 15 which depletes the flow of the stream to less than one cubic foot per second. No water shall be diverted until the permittee has installed in the stream immediately below his point of diversion a staff gage, or other device satisfactory to the State Water Resources Control Board, showing the water level which corresponds to a flow of one cubic foot per second.

Said measuring device shall be properly maintained. The provisions of this paragraph are based upon a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of fish life.

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

Dated: March 2, 1972

E. F. DIBBLE  
E. F. Dibble, Acting Chairman

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

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