STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the matter of Application 26224 THE VINEYARD CLUB, INC. Applicant DEPARTMENT OF FISH AND GAME Protestant	)	Decision: 1608 Source: Two Unnamed Streams tributary to Gill Creek County: Sonoma

Decision Approving Application 26224 In Part

By the Board:

The Vineyard Club, Inc., having filed Application 26224 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; a field investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the Board having considered all available information, finds as follows:

1.0 SUBSTANCE OF THE APPLICATION

Application 26224 was filed February 20, 1980 for a permit to directly divert 0.25 cubic foot per second of water year-round and collect to

storage 245 acre-feet per annum from October 1 through May 31 for recreational use and fire protection. Point of diversion No. 1 is located on an unnamed stream (AKA Oak Flat Creek) tributary to Gill Creek in the SE1/4 of SE1/4, projected Section 36, T11N, R10W, MDB&M. Point of Diversion No. 2, the reservoir is located on an unnamed stream tributary to Gill Creek in the SE1/4 of NW1/4, projected Section 1, T10N, R10W, MDB&M.

2.0 APPLICANT'S PROJECT

The applicant has constructed a 245-acre-foot storage reservoir in a large depression which receives runoff from about 180 acres. The reservoir is used for recreation and fire protection in a residential subdivision known as The Vineyard in Sonoma County. Water is also diverted by gravity from an unnamed stream, locally known as Oak Flat Creek, to offstream storage in the reservoir to offset evaporation and seepage losses. A small diversion dam is constructed across Oak Flat Creek each spring, and a pipeline is connected to transport water from Oak Flat Creek to the reservoir.

3.0 PROTEST

The Department of Fish and Game (DFG) filed a protest against Application 26224 based on environmental and public interest concerns. The protest asserts the following:

1) Gill Creek and probably Oak Flat Creek serve as spawning areas for steelhead trout, and Gill Creek serves as a steelhead nursery area.

2) Surface and subsurface flows of Oak Flat Creek and Gill Creek support a well-developed stand of riparian vegetation and a wide variety of associated wildlife species.

3) Gill Creek drainage experiences very low water flows in the summer months. Continuous diversion of substantial portions of a critically low summer flow will have a serious detrimental impact on steelhead nursery areas in Gill Creek as well as on wildlife and riparian vegetation.

4) No excess water is available for appropriation.

DFG proposed as a condition of dismissal of their protest that the diversion season under Application 26224 be limited to November 15 through April 30. However, as a result of a subsequent field investigation, DFG amended their terms as follows:

> For the protection of fish and wildlife, permittee shall bypass a minimum flow of 0.4 cfs or the natural flow, whichever is less.
>
> The permittee shall install a device, satisfactory to the State Water Resources Control Board, which is capable of automatically releasing the required bypass flow.
>
> In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures

necessary to protect fishlife have been incorporated into the plans and construction of the diversion structure. The construction, operation or maintenance costs of any facility requried pursuant to this provision shall be borne by the permittee.

In addition, DFG will require the applicant to enter into a Streambed Alteration Agreement.

The applicant believes that the 0.4 cfs bypass amount would in practice prohibit diversion of any water to the lake during the months of May, June and July and therefore does not agree to the inclusion of these terms in any permit issued.

4.0 AVAILABILITY OF UNAPPROPRIATED WATER

Vineyard Lake is located in rolling terrain at approximately the 440-foot elevation level. The watershed contributing to the reservoir is about 180 acres in size. The Isohyetal Contour Map describes precipitation for the project area as about 30 inches per year. Assuming a 30-percent runoff rate, the watershed tributary to the reservoir would generate about 135 acre-feet per year. Although the application has been filed for the capacity of the reservoir which is 245 acre-feet, the water is to be used for nonconsumptive purposes. Thus, refilling of the reservoir during the collection season will only be needed for evaporation and seepage losses, and possibly in some years for fire protection. There appears to be enough water available to satisfy the storage portion of the application.

In regard to the year-round direct diversion, the flow in Oak Flat Creek is mainly derived from rainfall and the presence of springs in the area. As a result, the flow in the stream is sharply reduced in May when rainfall generally ceases. The stream was viewed in June 1985, and the flow estimated at 25 gallons per minute or 0.056 cfs at point of diversion No. 1. Correspondence from both the applicant and the protestant has indicated that Oak Flat Creek does not have sufficient flow to satisfy the bypass amount requested by DFG and meet the needs of the applicant throughout the summer months in most years.

5.0 ENVIRONMENTAL CONSIDERATION

The Board is the lead agency and is responsible under CEQA for preparation of an environmental document for this project. An Initial Study has been prepared. The primary environmental issue of concern is the impact of water diversion during the dry season on steelhead rainbow trout, riparian vegetation, and wildlife. The normal low-flow season occurs from about mid-May through mid-October. Thereafter evapotranspiration decreases, precipitation increases, and flows increase. It is during the low-flow period that an adverse impact could result from water diversion.

Field surveys on May 23, 1984 and June 14, 1985 have shown that both Oak Flat and Gill Creeks provide nursery habitat for immature steelhead. Adult fish migrate upstream during the early spring to spawn when high flows occur. They return to the ocean as flows decrease. After hatching, young steelhead develop in fresh water for two to three years before swimming downstream to saltwater to complete

their maturation. Summer water supplies in Oak Flat and Gill Creeks are therefore important for ensuring the survival of young steelhead and the preservation of future trout stocks in these streams.

These creeks also support a mature riparian woodland consisting of black, blue, and coast live oak, Oregon oak, big-leaf maple, white alder, California buckeye and bay laurel among others. During the summer dry season Oak Flat and Gill Creeks are also an important source of water for many species of terrestrial wildlife.

The diversion of most of the flow from Oak Flat Creek during the dry season has the potential to substantially reduce steelhead habitat. According to Section 15065 of the CEQA Guidelines, this constitutes a mandatory finding of significance, requiring preparation of an Environmental Impact Report (EIR). The DFG has recommended that the applicant bypass 0.4 cfs for the protection of fish, wildlife, and riparian vegetation. This would substantially limit summer diversion. The Board concurs with DFG's recommendation and believes that their proposed terms provide adequate mitigation for potentially significant impacts identified in the Initial Study. These terms should be part of any permit issued on Application 26224. A Negative Declaration and Initial Study setting forth these mitigation measures were circulated and no comments were received.

6.0 DISCUSSION

It is evident from the above facts that there is insufficent flow in Oak Flat Creek to satisfy the applicant's needs during the summer without adversely affecting the stream environment of the creek. In a

case such as this, it is necessary to consider the benefits to be derived by the applicant versus the impact on the stream.

One aspect to consider is the priority of uses for the water. The applicant uses the water for recreation and fire protection. Water collected in the reservoir from winter storage each year will assure sufficient fire protection during the fire season. The water diverted during the summer season will primarily be diverted to keep the lake at a level to assure water quality and esthetics for recreation. The Department of Fish and Game concedes that only a small number of fish would be affected by this specific diversion. Nevertheless, the Department's concern is valid since dewatering of numerous small streams such as Oak Flat Creek and Gill Creek has contributed to a significant reduction in the State's anadromous fishery resources. The Board finds that, during the summer months, the water serves a higher beneficial use in the stream than the primarily aesthetic purposes served at the reservoir.

Another consideration is the extent to which the water diverted from Oak Flat Creek in the summer will offset the evaporation from Vineyard Lake. Calculations based on the data contained in DWR Bulletin 73-79, Evaporation From Water Surfaces in California, indicate that Vineyard Lake would lose approximately 15 acre-feet per month during the time the diversion dam on Oak Flat Creek is in place. By contrast, using the estimated figure of 25 gpm as viewed in the creek in June 1985, inflow from the creek would contribute only 3.3 acre-feet or approximately one-fifth of the water needed to offset the evaporation loss.

The Board's final consideration is the options available to the applicant. In previous years, applicant has pumped groundwater into the lake to keep the water at an acceptable level and quality during the summer season. This continues to be an available option.

7.0 RECORD IN THIS MATTER

The record documents and other data relied upon in determining this matter are: the files of Applications 20956, 25633 and 26224 of the Vineyard Club and in particular the Engineering Staff Analysis of Record dated October 31, 1985; DWR Bulletin 73-79, Evaporation From Water Surfaces in California; and topographic maps published by the U. S. Geological Survey and the Isohyetal Contour Map covering the area under consideration.

8.0 CONCLUSION

Based on the above considerations, the Board concludes that water is available to satisfy applicant's requested collection of water to storage during the winter season; but in regard to summer direct diversion, the water in Oak Flat Creek serves a higher beneficial use if left in the stream. For this reason, the applicant's direct diversion season should be reduced by deleting the months of June through September; and Application 26224 should be approved and a permit issued subject to the conditions set forth in the order following:

9. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the reservoir of all structures, trees and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 19, 1985.

AYE: Darlene E. Ruiz
Edwin H. Finster
Eliseo M. Samaniego
Danny Walsh

NO: None

ABSENT: Raymond V. Stone

ABSTAIN: None

Raymond Walsh

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Interim Executive Director

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8.0 CONCLUSION

Based on the above considerations, the Board concludes that water is available to satisfy applicant's requested collection of water to storage during the winter season; but in regard to summer direct diversion, the water in Oak Flat Creek serves a higher beneficial use if left in the stream. For this reason, the applicant's direct diversion season should be reduced by deleting the months of June through September; and Application 26224 should be approved and a permit issued subject to the conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Application 26224 be approved subject to prior rights and the following conditions:

1. The water appropriated 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 January 1 through May 31 and October 1 through December 31; and 245 acre-feet per annum by storage to be collected from October 1 of each year through May 31 of the succeeding year. The total amount of water to be taken from the source shall not exceed 355 acre-feet per water year of October 1 to September 30.

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

3. Standard terms 6, and 9 through 13.[1]

4. For the protection of fish and wildlife, permittee shall bypass at the Oak Flat Creek diversion a minimum flow of 0.4 cfs or the natural flow, whichever is less.

5. The permittee shall install devices, satisfactory to the State Water Resouces Control Board, which are capable of automatically releasing the required bypass flow.

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[1] The Board keeps a list of standard permit terms; copies of these are available upon request.

6. Permittee shall install a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow(s) required by the conditions of this permit. Said measuring device shall be properly maintained.

7. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of the diversion structure. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

8. Permittee shall, when required by the State Water Resources Control Board, install and maintain an outlet pipe of adequate capacity in his 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, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. Permittee shall submit plans and specifications of the outlet pipe or other alternative to the Chief of the Division of Water Rights for approval within six months of the date upon which the Board issues notice that an outlet is required. Permittee shall furnish evidence which substantiates that an outlet or alternative has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

9. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the reservoir of all structures, trees and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 19, 1985.

AYE: Darlene E. Ruiz
Edwin H. Finster
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NO: None

ABSENT: Raymond V. Stone

ABSTAIN: None

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