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SUPERIOR COURT OF STATE OF CALIFORNIA

COUNTY OF NAPA

PEOPLE OF THE STATE OF CALIFORNIA ex rel., STATE WATER RESOURCES CONTROL BOARD,

Plaintiffs,

v.

ALFRED F. FORNI; THEODORE J. LAURENT; VIRGIL A. GALLERON; PAUL L. GALLERON; DONALD M. CAMPBELL; ZINFANDEL ASSOCIATES; PAUL C. JAEGER; FRED BEROLDO; RENA BEROLDO; CHARLES A. CARPY; CROSSE AND BLACKWELL VINTAGE CELLARS, INC. DOES ONE through TWENTY,

Defendants.

) NO. 31785
)
) JUDGMENT GRANTING
) PERMANENT INJUNCTION

Defendants Alfred F. Forni, Theodore J. Laurent, Virgil A. Galleron, Paul L. Galleron, Donald M. Campbell, Zinfandel Associates, Paul C. Jaeger, Fred Beroldo, Rena Beroldo, Charles A. Carpy and Crosse and Blackwell Vintage Cellars, Inc., have executed a Stipulation for Entry of Judgment Granting Permanent Injunction. Additional stipulations have been executed by Frank S. Emmolo and Cody C. Kirkham wherein said individuals have stipulated to their joinder as defendants in the above entitled action. Said stipulations have been filed with the Clerk of the Court upon application of plaintiff.

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1 Good cause appearing therefore:

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
3 Frank S. Emmolo and Cody C. Kirkham shall be joined as
4 defendants herein and shall be entitled to the benefits and
5 responsibilities of this Judgment in accordance with its terms,
6 insofar as the land described in the attachments to their
7 stipulations is concerned;

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
9 that defendants, their agents, officers, employees, servants,
10 successors in interest, assignees, subsidiary or parent
11 corporations and all persons acting in concert or conspiracy
12 with them, shall not henceforth divert water from the Napa River
13 during the Napa Valley frost season -- March 15 to May 15 of each
14 year -- except in accordance with the following definitions,
15 findings and operational provisions which the Court adopts as
16 its own:

17 I. DEFINITIONS

18 A. Allotment is each defendant's proportionate share of
19 available water supply which a watermaster appointed by the
20 plaintiff State Water Resources Control Board determines in
21 accordance with paragraph III, Sub. 9 infra, that each
22 defendant has a right to divert for frost protection
23 purposes during any 24-hour period commencing at midnight.

24 B. Ample streamflow is a condition when the available
25 water supply is great enough to allow all direct diverters
26 to pump at the full capacity of their river pumps through-
27 out a frost and to allow storage replenishment diverters,
28 including nonriparians having appropriative rights to pump
29 at the full capacity of their pumps continuously. The
30 streamflow is considered to be ample when it exceeds 78

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1 cubic feet per second (cfs) measured at the USGS gaging
2 station near Napa, Oak Knoll Road, (hereinafter, USGS gage)
3 or when it would exceed that amount in the absence of any
4 diversions by upstream diverters. The figure 78 cfs shall,
5 if necessary, be adjusted yearly by the watermaster and
6 shall depend upon total riparian pumping capacity for frost
7 protection purposes.

8 C. Available water supply is that portion of the water
9 flowing in Napa River over and above the amount necessary
10 for the protection of fish in the Napa River. The
11 watermaster will be guided by the requirement of 10 cfs
12 for fish protection in the Napa River superior in priority
13 to appropriative rights and correlative with riparian
14 rights.

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1 D. Direct diverters are those defendants and other
2 diverters who pump directly from Napa River onto vineyards
3 for frost protection rather than pumping first into a
4 reservoir of reasonable size, and if only part of their
5 vineyard is so protected, they are direct diverters so far
6 as the part so protected is concerned.

7 E. Full natural flow is the sum of the measure flow of
8 the Napa River at the USGS gage and diversions being made
9 concurrently by diverters upstream from the gage.

10 F. Napa River is that portion of the main stem of the
11 Napa River between the uppermost and lower most diversion
12 points inclusive of all frost season diverters.

13 G. Reservoir of reasonable size is a reservoir with
14 capacity of approximately 50,000 gallons or more per acre
15 of vineyards under sprinklers. A reservoir of less capacity
16 may be considered reasonable at the discretion of the
17 watermaster, who shall take into consideration (1) the
18 extent of any supplemental water supply that may be
19 available and (2) whether the capacity of the river pump is
20 sufficiently low per acre of vineyard to have an
21 insignificant effect on the ability of other diverters to
22 pump their allotment.

23 H. Riparian land is the land of frost season diverters,
24 including defendants, determined on an interim basis to be
25 riparian to Napa River by the watermaster for the purpose
26 of allocating water in 1976. Any land considered to be
27 riparian during the 1976 frost season shall continue to be
28 so considered unless a title search indicates otherwise.
29 For other land, not included in the 1976 program or in a
30 decree or order of a Court in a water adjudication
31 proceeding, the watermaster will use county assessor's

1 parcel maps and conduct a field survey of each new
2 participating vineyard to determine riparian status.

3 I. Storage replenishment diverters are those defendants
4 and other diverters who pump water from Napa River, to
5 replenish water stored in reservoirs of reasonable size
6 prior to March 15, where both initially stored water and
7 replenishment water is for later use on vineyards for frost
8 protection.

9 II. FINDINGS

10 A. Many of the vineyardists in Napa Valley are dependent
11 on diversion of water from the Napa River for sprinkling to
12 prevent frost damage to their vineyards during the season
13 from about March 15 to May 15.

14 B. The streamflow available in the Napa River is at times
15 insufficient to fulfill all direct diversion requirements
16 and is occasionally insufficient to permit all frost
17 protection storage reservoirs to be replenished after a
18 frost by continuous pumping from Napa River.

19 C. Appropriative water rights administered by the State
20 Water Resources Control Board are conditioned so that
21 diversion of water after March 15 of each year is permitted
22 only so long as the diverter is participating in a water
23 distribution program to assure protection to prior rights.

24 D. Section 1051.5 of the Water Code authorizes the Board
25 to conduct trial distribution of water in accordance with
26 agreements.

27 E. The proper enforcement of this Judgment requires that
28 both the instantaneous rate of discharge and the cumulative
29 total volume of water pumped by each pump be measured.

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1 III. OPERATIONAL PROVISIONS

2 1. A watermaster appointed by the plaintiff State
3 Water Resources Control Board (hereinafter "the Board") will
4 determine allotments to the defendants and will control the
5 amount, the rate, and times of pumping of defendants.

6 2. The defendants shall abide by the instructions
7 given to them by the watermaster.

8 3. All reservoirs must be filled and ready for use
9 by March 15, unless additional time for filling is allowed by
10 the watermaster.

11 4. All defendants will inform the watermaster of the
12 name, address, and phone number of the person responsible for
13 operating the frost protection system.

14 5. Meters shall be installed on each discharge line
15 capable of measuring both the instantaneous pumping rate and the
16 cumulative total volume of water pumped. The meters shall be
17 installed and operable by March 15, 1977 unless additional time
18 is granted by the watermaster. All other diverters shall be
19 required by the watermaster to provide metering devices appropriate
20 to their diversion methods.

21 6. The defendants shall reimburse the Board for a
22 proportional share of the Board's actual expenses in providing
23 the watermaster for the period March 15 to May 15, of each year.
24 The expenses of the Board charged to each defendant shall be
25 apportioned according to the proportion each defendant's acreage
26 under sprinklers bears to the total acreage of all defendants
27 and all participants in any yearly trial distribution program
28 conducted by the Board.

29 7. Knowledge of the following facts is essential to
30 the success of the distribution program:

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- 1 a. Number of acres to be frost protected by
- 2 each defendant.
- 3 b. Capacity of reservoir.
- 4 c. Capacity of river pump.

5 Each defendant shall inform the watermaster of these
6 facts by February 15, 1977 and thereafter inform him of any
7 changes.

8 8. Each defendant shall grant the watermaster
9 reasonable right of access across the defendant's property and
10 the right to inspect and measure pump capacities, acreages,
11 reservoir storage levels, and diversion and sprinkler systems
12 for the purpose of enforcing this judgment.

13 9. The watermaster will allot the available water
14 supply when it is less than ample to the defendants, correla-
15 tively in proportion to total riparian acreage under sprinklers
16 limited by pump diversion capacities. The watermaster will
17 estimate the available water supply for allotments from gaging
18 station data. Other data, such as channel storage, may be
19 considered by the watermaster in estimating available water
20 supply for allotments. Appropriators having nonriparian vine-
21 yards will be allowed to pump for this land only when streamflow
22 is in excess of riparian direct diverters' and riparian storage
23 replenishment diverters' requirements including replenishment of
24 reservoirs serving riparian lands.

25 10. During less than ample streamflow conditions, the
26 watermaster will inform each storage replenishment diverter and
27 each direct diverter of the period of time during which the
28 allotment can be pumped. Without interfering with the needs of
29 storage replenishment diverters, the watermaster will prescribe
30 pumping hours for storage replenishment diverters within the
31 period of each day when these diversions will, insofar as
32 possible, conflict least with direct diverter requirements.

1 11. Each direct diverter agrees to divert only his
2 allotment when full natural flow is less than ample, and only
3 when his system is equipped with a main control valve near the
4 pump discharge and individual valves on each sprinkler line which
5 provide the capability of reducing the rate of diversion in
6 increments shown opposite the name of the direct diverter in
7 Appendix "A" attached to this Judgment.

8 12. Unused allotments shall be considered as an
9 increase in the available water supply for all other diverters in
10 accordance with the priorities of the various rights.

11 13. To conserve water and prevent waste, the water-
12 master may at times allow diversion of water outside the normal
13 pumping period established to carry out the terms of this
14 Judgment, provided that such diversion will not deprive other
15 diverters of their allotment.

16 14. Compliance by defendants with the instructions
17 from the watermaster will be determined by taking readings of the
18 meter on the discharge line of the pump or by any other
19 reasonable method of determining the amount or rate of pumping.

20 15. Minor deviations by defendants from the pumping
21 instructions given them by the watermaster shall be adjusted as
22 promptly as possible.

23 16. Willful diversion by defendants of water not
24 allotted them by the watermaster will be prima facie evidence of
25 violation of the terms of this Judgment and the terms of
26 any water right permit or license authorizing the diversion. A
27 violation of the terms of this Judgment shall be cause
28 for revocation of any permit or license issued for frost
29 protection and shall be considered to constitute an unreasonable
30 method of diversion within the meaning of Article X, Section 2

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1 of the California Constitution and Sections 100, 101 and 275 of
2 the Water Code.

3 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
4 that in the event of a violation of the terms of this Judgment,
5 the watermaster shall have the authority to apply to the Superior
6 Court of Napa County for appropriate relief including an order
7 prohibiting any further violation of the terms of this agreement.

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
9 that at the end of each frost season, the watermaster shall
10 prepare a report summarizing any trial distribution program
11 conducted by the Board and shall make available to all defendants
12 all factual data collected.

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
14 that defendants Charles A. Carpy and Crosse and Blackwell Vintage
15 Cellars shall forthwith make proper application to plaintiff for
16 permit to divert and store Napa River water in reservoirs for
17 frost protection purposes.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
19 that experience gained during each season shall be drawn on at
20 the end of each frost season to develop refinements leading
21 eventually to a comprehensive control program for all Napa Valley
22 vineyardists dependent on the Napa River and its tributaries for
23 frost protection. This Court shall retain jurisdiction in this
24 case to order modification of its Judgment so as to incorporate
25 refinements based upon experience gained during each frost
26 season.

27 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
28 that except as expressly provided herein nothing in this Judgment
29 shall be deemed to modify or preempt any term or condition of
30 any water right entitlement.

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IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
that each party herein, shall bear his own costs of suit.

DATED: 12-29-, 1976.

THOMAS KONGSGAARD
JUDGE OF THE SUPERIOR COURT

Napa Superior Court No. 31785.