

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 19448 )  
of Arthur C. and Katharine Spiers )  
to Appropriate from an Unnamed Stream )  
Tributary to Dry Creek in Yuba County )

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Decision D 1094

**ADOPTED JUL 27 '62**

DECISION APPROVING APPLICATION

Arthur C. and Katharine Spiers having filed Application 19448 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 19448 is for a permit to appropriate 42 acre-feet per annum (afa) by storage to be collected from October 1 of each year to May 1 of the succeeding year for irrigation, stockwatering and recreational purposes from an unnamed stream tributary to Dry Creek in Yuba County. The points of diversion are to be located within (a) SW $\frac{1}{4}$  of SE $\frac{1}{4}$  and (b) NW $\frac{1}{4}$  of SE $\frac{1}{4}$ , both within Section 12, T17N, R6E, MDB&M.

2. The applicants have constructed two reservoirs on the unnamed stream in cooperation with the U. S. Soil Conservation

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Service. The upper reservoir has a storage capacity of 36 acre-feet, and the lower reservoir has a storage capacity of 6 acre-feet, for a combined total storage of 42 acre-feet. The reservoirs are located approximately 2.5 miles above the point where the unnamed stream joins Dry Creek.

3. Protestant Browns Valley Irrigation District holds Permits 8649 (Application 13130) and 9703 (Application 13873) to appropriate 20,000 afa and 40,000 afa, respectively, for a total of 60,000 afa. The season of collection to storage is between October 1 of each year and May 1 of the succeeding year under Permit 8649 and between October 1 of each year and June 1 of the succeeding year under Permit 9703. Water is to be stored in the District's Virginia Ranch Reservoir which is now under construction on Dry Creek at a point approximately 5 miles below the confluence of the unnamed stream with Dry Creek.

4. Based upon records of a USGS gaging station located immediately below the site of the protestant's Virginia Ranch Reservoir for the period of record (1948-1960), an average of 78,284 afa is available to the protestant for its project during the storage season specified by its permits.

5. There is unappropriated water available at times to supply the applicants, and, subject to suitable conditions, such water may be diverted and used in the manner proposed during those times without causing substantial injury to any lawful user of water.

6. The intended use is beneficial.

7. To protect the prior rights of the protestant pursuant to Permits 8649 and 9703 during years when there is insufficient water to supply both the applicants and protestant, the permit to be issued on Application 19448 should contain a term requiring the permittees to release impounded water for the benefit of the protestant should the available water during the period from October 1 to June 1 be less than the quantity that the protestant is authorized to store pursuant to said permits.

From the foregoing findings, the Board concludes that Application 19448 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

The records, documents and other data relied upon in determining the matter are: Application 19448 and all relevant information on file therewith, particularly the report of the field investigation made August 30, 1961, United States Geological Survey (USGS) Water Supply Papers, Part 11, "Pacific Slope Basins in California," with particular reference to stream flow records of "Dry Creek at Virginia Ranch" and USGS topographical quadrangles "French Corral, California," and "Oregon House, California," both 7 $\frac{1}{2}$ -minute series, dated 1948.

IT IS HEREBY ORDERED that Application 19448 be, and the same is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 36 acre-feet per annum by storage to be collected at the permittees' upper reservoir from about October 1 of each year to about May 1 of the succeeding year and 6 acre-feet per annum by storage to be collected at the permittees' lower reservoir during the same period for a total of 42 acre-feet per annum.

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

4. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights Board until license is issued.

5. 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 Rights 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.

6. Permittees shall allow representatives of the State Water Rights 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.

7. This permit does not authorize collection of water to storage during the period from about May 1 to about October 1 of each season to offset evaporation and seepage losses or for any other purpose.

8. Permittees shall install and maintain outlet pipes of adequate capacity in their dams as near as practicable to the bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoirs or collected in the reservoirs during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

9. This permit is subject to the prior rights of the Browns Valley Irrigation District to store water under Permits 8649 and 9703 (Applications 13130 and 13873, respectively). Should stream flow available to the district for storage pursuant to said permits during any season extending from about October 1 of each year to about June 1 of the succeeding year be less than the amount which the district is authorized to store in Virginia Ranch Reservoir pursuant to said permits, permittees shall upon demand of the district on or after June 1 release from their reservoirs, except for dead storage, into the natural stream channel the water impounded the same season.

Provided, however, that any water released from Virginia Ranch Reservoir during the period from about October 1

of each year to about June 1 of the succeeding year, except for irrigation and domestic uses by the district as authorized by the district's above-numbered permits or for downstream prior rights, shall be considered surplus regardless of the level of Virginia Ranch Reservoir at the time of said release, and permittees shall be entitled to retain an equivalent amount of water for storage in accordance with the priority of permits subject to the same condition, even though Virginia Ranch Reservoir does not fill to the capacity authorized by the district's above-numbered permits.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 1962.

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Kent Silverthorne, Chairman

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Ralph J. McGill, Member

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W. A. Alexander, Member