

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25417)
WAYNE K. AND ELIZABETH S. ROSS)
Applicants)
FRANK B. MOREHEAD, ET AL.)
Protestants)

Decision: 1514
Source: Unnamed Stream
County: Shasta

DECISION APPROVING APPLICATION

Wayne K. and Elizabeth S. Ross having filed Application 25417 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:

Substance of the Application

1. Application 25417 is for a permit to appropriate 15 acre-feet per annum (afa) by storage to be collected from November 1 of each year to April 1 of the succeeding year for irrigation, stockwatering and fire protection purposes from an unnamed stream tributary to Deep Hole Creek in Shasta County. The proposed points of diversion are to be located within the SE¼ of SW¼ of Section 22, T33N, R4W, MDB&M.

Applicants' Project

2. Applicants propose to reconstruct two dams in the channel of an unnamed stream tributary to Deep Hole Creek, which will form reservoirs with capacities of seven and eight acre-feet (af). The applicants propose to irrigate 10 acres of pasture and garden, in addition to use for stockwatering and fire protection.

Protests

3. Two protests were received; one from Simon and Helen Baimas, downstream riparians bordering the applicants' property, and the other from Frank Morehead with 39 accompanying signatures. Mr. Morehead is apparently riparian, and most of the others are presumed to be also. Protestants Baimas allege interference with stockwatering and subirrigation of pasture bordering the stream. They have filed Statement of Water Diversion and Use 9280. They also protested on the basis of environmental considerations, public interest, unlawful appropriation, and that the project was outside Board jurisdiction. The Morehead, et al., protest was based on issues of environmental consequences, public interest, the appropriation being contrary to law, and injury to riparian rights to water.

Availability of Unappropriated Water

4. The two reservoirs have a watershed of approximately 700 acres, all of which lies on the applicants' property. The unnamed stream was not gaged so rainfall data was used to estimate flows. During the collection season (November through March), 78 percent of the total annual rainfall occurs and

a corresponding runoff of about 1,100 af can be expected. That is an average continuous flow of about 3.7 cubic feet per second (cfs). The protestants say the stream normally flows about eight months each year from mid-October or the beginning of November to sometime in June. A flow of one cfs should satisfy rights of protestants and other downstream users, and applicant will be required to bypass this amount.

Environmental Considerations

5. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and the State Guidelines. The Board determines that there will be no significant effect on the environment as a result of the project.

Other Considerations

6. No evidence was presented showing that approval of the application is contrary to the public interest. The allegations that the application is an "unlawful appropriation" and is outside the jurisdiction of Board are contrary to the facts presented by the record. In order to legally store water an application is necessary. It is the Board's responsibility to decide whether such applications should be approved or denied. Protestants alleged that the real purpose of the reservoirs is to facilitate a large subdivision development on applicants' property which would be detrimental to protestants' use of their property. The uses of the water specified in the application are beneficial. There is no substantial evidence of any potential change in the project that may eventually develop.

Protestants also allege that the dams will not be safe and will fail during high water causing damage to downstream properties. The dam sites pose no special construction problems. Furthermore, applicants have retained a civil engineer to design the dams and supervise construction.

7. The records, documents, and other data relied upon in determining the matter are: Application 25417 and all relevant information on file therewith, particularly the Report of Field Investigation and Engineering Staff Analysis dated September 12, 1978 and the Initial Study dated January 3, 1979.

Conclusions

From the foregoing findings the Board concludes that 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. Therefore Application 25417 should be approved and a permit issued to the applicants subject to the limitations and conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 25417 be approved and that a permit be issued to the applicants subject to vested rights. The permit shall contain all applicable standard permit terms (5i, 6, 7, 10, 11, 12 and 13)* in addition 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 a total of 15 acre-feet per annum to be collected from November 1 of each year to April 1 of the succeeding

* The Board maintains a list of standard permit terms. Copies of these are available upon request.

year as follows: (1) 7 acre-feet per annum in Reservoir 1, and (2) 8 acre-feet per annum in Reservoir 2.

2. Construction of the project shall be completed on or before December 1, 1982, and complete application of the water to the proposed use shall be made on or before December 1, 1983.

3. Permittees shall install and maintain an outlet pipe of adequate capacity in the 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.

4. No water shall be diverted under this permit until permittees have installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow required by the conditions of this permit. Said measuring device shall be properly maintained.

5. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittees shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

6. For the protection of downstream prior vested right, permittees shall during the period from November 1 through April 1 bypass a minimum of 1.0 cfs. The total streamflow shall be bypassed whenever it is less than the designated amount for that period.

7. The design and construction of the dams and appurtenances shall be under the supervision of a registered civil engineer. Nothing in this condition shall be construed to limit or conflict with City or County ordinances or requirements of any other public agency or board providing for the regulation or supervision of dams and reservoirs.

Dated: JUL 19 1979

ABSENT

W. Don Maughan, Chairman

William J. Miller
William J. Miller, Vice Chairman

L. L. Mitchell
L. L. Mitchell, Member

Carla M. Bard
Carla M. Bard, Member