

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25029)

DONALD J. AND RITA J. GIOTTONINI)

Applicants)

JOHN AND LILY CAMPBELL, ET AL.)

Protestants)

Decision: 1540

Source: Unnamed Stream

County: Amador

DECISION APPROVING APPLICATION 25029

BY THE BOARD:

Donald J. and Rita J. Giottonini having filed Application 25029 for a permit to appropriate unappropriated water; protests having been received; a hearing having been held by Board member Adams on January 31, 1978; the applicants and protestants having appeared and presented evidence; the evidence received into the record having been duly considered; the Board finds as follows:

Substance of the Application:

1. Application 25029 is for a permit to appropriate 40 acre-feet per annum (afa) from December 1 to May 1 from an unnamed stream tributary to Sutter Creek in Amador County.^{1/} The point of diversion is located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 15, T7N, R12E, MDB&M. The water is to be used for domestic, irrigation, stockwatering, and fire protection purposes.

Applicants' Project

2. The applicants completed an earthfill onstream dam in 1976 under the supervision of the United States Soil Conservation Service. The

^{1/} Application 25029 was filed with a season of diversion from December 1 to June 1. The applicants reduced the season of diversion at the hearing.

dam is 21 feet high with a freeboard of three feet above spillway elevation. The reservoir has a capacity of 40 acre-feet and a surface area of three acres. A six-inch diameter outlet pipe is installed in the dam embankment which will allow drainage from the reservoir of all but three acre-feet.

3. The stored water would be used for stockwatering and recreation at the reservoir site, for incidental fire protection purposes within the project area, and for sprinkler irrigation of ten acres of pasture.

4. The applicants have installed a water well within the high water line of the reservoir. The well provides about 120 gallons per minute from a groundwater source about 165 feet below ground elevation. The applicants propose to maintain the reservoir with groundwater from this source during the months outside the diversion season and during periods of insufficient runoff.

5. The applicants' property is traversed by an unnamed, intermittent stream tributary to Sutter Creek. This intermittent stream is spring fed and flows most of the year. The applicants' dam is located on a tributary to this unnamed stream.

Protests

6. Twenty-three protests were filed against the approval of Application 25029. Twenty-one of the protestants claim to be riparian proprietors on Sutter Creek and one protestant claims a pre-1914 appropriative right. In addition, nine protests allege adverse environmental impacts from the approval of Application 25029; five protests allege that said approval

would be contrary to law; two protests alleged that said approval would constitute a waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion in violation of Section 2, Article X of the California Constitution. Four protests were withdrawn following the hearing on this matter.

7. Protestants Drake, Ruiz, Heath, Cazenave, and Harris made an appearance at the hearing held in this matter. The protestants all alleged injury to vested rights; protestants Ruiz and Heath alleged adverse environmental impacts from the approval of Application 25029; protestant Harris alleged that approval of Application 25029 would be contrary to law. Protestant Harris is one of the four protestants who withdrew his protest following the hearing. Generally, the Board interprets the failure of a protestant to appear at a hearing duly noticed as being an abandonment of that party's interest in the particular proceedings before the Board. Here, that approach eliminates the need to consider in detail whether the proposed appropriation is contrary to law, will not best conserve the public interest, or constitutes a violation of Section 2, Article X of the California Constitution. The Board merely notes that it is aware of no factual basis for these claims. The allegation of injury to vested rights concerns the availability of unappropriated water which will be discussed next. The allegation of adverse environmental impacts will be discussed under environmental considerations infra.

Availability of Unappropriated Water

8. The unnamed stream which is the source under Application 25029 drains a watershed containing 85 acres above the point of diversion. Since the protestants are located downstream on Sutter Creek, the watershed that contributes to their water supply is many times greater than the watershed that contributes to applicants' reservoir. Therefore, the impact of the

applicants' project on the protestants' water supply is negligible. ^{2/}

9. A United States Geological Survey station is located about seven miles downstream of the confluence of Sutter Creek and the unnamed, intermittent tributary. That data indicates that the watershed above the applicants' reservoir will supply sufficient runoff to fill the applicants' reservoir in most years. The Board concludes that unappropriated water is available to supply the applicants.

10. Past Board decisions concerning the availability of water from the Sacramento-San Joaquin Delta have concluded that unappropriated water is not available during the months of July, August, and September. Applicants' diversion season is from December 1 to the following May 1 and is not in conflict with these past decisions. An outlet pipe in the dam will allow passage of stream flow during the nonstorage season.

Environmental Considerations

12. The 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. Protestant Campbell commented on the Negative Declaration by a letter dated August 16, 1978. He contends that many of the findings in the Initial Study which is part of the Negative Declaration are erroneous. The Board has reviewed and considered his comments and the information in the Negative Declaration and determines that there will be no significant effect on the environment as a result of the project.

Other Considerations

13. The evidence at the hearing established that the protestants are concerned with the applicants' use of their well. The well evidently affects the source of water for the Town of Volcano. The complaints of persons about the applicants' use of their well are not the subject of these

^{2/} The evidence at the hearing indicated some confusion among the protestants concerning the proposed project. When several of the protestants understood that the dam was across the normally dry tributary and not the intermittent stream, they decided to withdraw their protests.

proceedings. The approval of Application 25029 will reduce the present problem about the use of the well because the applicants' reservoir will be filled with surface water instead of groundwater during the authorized diversion season.

Conclusion

14. From the foregoing findings, the Board concludes that Application 25029 should be approved and that a permit should be issued to the applicants for diversion to storage during the period December 1 to May 1, subject to the conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 25029 be approved and that a permit be issued to the applicants subject to vested rights. The permit shall contain all standard terms (5i, 6, 10, 11, 12, and 13)* in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 40 acre-feet per annum to be collected from December 1 of each year to May 1 of the succeeding year.

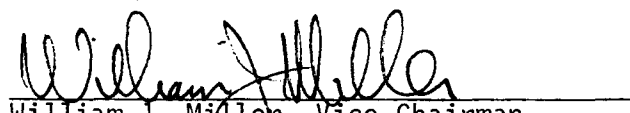
* The Board maintains a list of standard permit terms. Copies are available upon request.

2. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

3. Permittee shall maintain the outlet pipe in the dam so that water entering the reservoir which is not authorized for appropriation under this permit may be released.

Dated: OCT 18 1979


Carla M. Bard, Chairwoman


William J. Miller, Vice Chairman


L. L. Mitchell, Member


W. Don Maughan, Member