

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 18246)
of Keith Reid to Appropriate from)
Esperanza Creek in Calaveras County)

Decision D 1084

ADOPTED JUN 26 '62

DECISION APPROVING APPLICATION IN PART

Keith Reid having filed Application 18246 to appropriate unappropriated water; protests having been received; a hearing having been held before the State Water Rights Board in San Andreas, California, on January 23, 1962, Ralph J. McGill, Member, presiding; the applicant and John A. and Walter R. Huberty of the protestants having appeared and presented evidence; all evidence received at said hearing having been duly considered, the Board finds as follows:

1. Application 18246 is for a permit to appropriate 1.0 cubic foot per second (cfs) by direct diversion, year-round, and 49.0 acre-feet per annum by storage to be collected in an existing reservoir from about December 1 of each year to about May 1 of the succeeding year from Esperanza Creek tributary to North Fork Calaveras River in Calaveras County for irrigation, recreation, and stockwatering purposes. The applicant's irrigation season is from about March 1 to about November 1. The point of diversion is located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 8, T5N, R14E, MDB&M.

2. Esperanza Creek rises approximately 1.5 miles above the applicant's reservoir. Esperanza Creek joins North Fork

Calaveras River at a point approximately 9.5 miles below the applicant's reservoir. Approximately 15 miles below this junction, the North Fork Calaveras River and the South Fork Calaveras River join and flow from that point approximately 7 miles to Hogan Dam.

3. January 5, 1961, the applicant's reservoir was full, with an inflow of approximately 10 gallons per minute and a spill of approximately 5 gallons per minute.

4. Following are the theoretical average mean monthly flows expressed in cubic feet per second passing the applicant's point of diversion for the years 1950 through 1959. These flows are derived from the records of the USGS gaging station "near Mokelumne Hill" located on Esperanza Creek approximately 9 miles below the applicant's point of diversion and are based on the assumption that the area of watershed above the applicant's point of diversion makes a contribution to the stream proportional to the total watershed area measured by said gaging station.

Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec.

5.75 3.83 4.06 2.65 1.34 0.5 0.23 0.13 0.13 0.14 0.33 4.88

5. Protestants John A. and Walter R. Huberty, located approximately 12 miles below the junction of Esperanza Creek with the North Fork of Calaveras River, hold Permit 6718 to appropriate 0.75 cfs from April 1 to November 1 and 20 acre-feet per annum by storage from November 1 of each year to May 1 of the succeeding year for the irrigation of orchard and pasture.

Protestant Charles W. Nielson, located approximately 22 miles downstream from the applicant's point of diversion on the North Fork Calaveras River, claims riparian and pre-1914 rights

to the use of approximately 200 acre-feet per annum for stock-watering and irrigation of 40 acres.

Other protestants, located below Hogan Dam approximately 50 miles below the applicant's point of diversion, claim riparian rights and hold licenses for a total maximum diversion of 4.0 cfs.

6. Because of the failure of all the protestants except one to appear at the hearing and present evidence of their uses under their claimed rights, the record is not complete in this respect. However, it can be determined from the records of flows of USGS gaging stations on the North Fork Calaveras River "near San Andreas" for the years 1950 through 1959 and on the Calaveras River "at Jenny Lind" for the period 1907 through 1929 (prior to the construction of Hogan Dam) that there are substantial flows available to satisfy the needs of downstream users during the months of November through the following June in normal water years.

7. Although the theoretical supply available to the applicant during the months of June and November of a normal year is less than the amount he has applied for, the taking of the available water during June and November during normal years would not have an adverse effect upon the protestants.

8. There is unappropriated water available at times to supply the applicant from about November 1 of each year to about June 30 of the succeeding year for direct diversion and from about December 1 of each year to May 1 of the succeeding year for storage, 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. There is no

unappropriated water available to supply the applicant during the months of July, August, September or October.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 18246 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order:

IT IS HEREBY ORDERED that Application 18246 be, and the same is, approved in part, and that a permit be issued to the applicant 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 (A) 1.0 cubic foot per second by direct diversion to be diverted (a) from about March 1 to about June 30 of each year for irrigation purposes, and (b) from about November 1 to about June 30 as required for recreation and stockwatering purposes; and (B) 49.0 acre-feet per annum by storage to be collected from about December 1 of each year to about May 1 of the succeeding year.

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

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 permittee 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. Permittee shall 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 Rights Board in order that water entering the reservoir or collected in the reservoir 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 water is not authorized under this permit.

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

8. Permittee 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.

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.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member