

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 20770
of Kim E. Hornsby and
Pinka Loveta Hornsby to Appropriate
from Tributaries of Deer Creek
in Yuba County

Decision D 1216

ADOPTED MAR 24 1965

DECISION APPROVING APPLICATION IN PART

Kim E. Hornsby and Pinka Loveta Hornsby having filed Application 20770 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Rights Board in Nevada City, California, on June 10, 1964, conducted by Board Member W. A. Alexander; applicants and protestants having appeared and presented evidence; the evidence received at said hearing having been duly considered, the Board finds as follows:

1. Application 20770 is for a permit to appropriate 0.25 cubic foot per second (cfs) by direct diversion, year-round, and 10 acre-feet per annum (afa) by storage from November 1 of each year to May 1 of the succeeding year for irrigation, domestic use, and fish culture from two unnamed springs and an unnamed stream tributary to Deer Creek, thence Yuba River, in Nevada County. The points of diversion are to be located within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 22, T16N, R7E, MDB&M.

2. Applicants own 40 acres, of which about 19 are irrigable and about 10 now irrigated by water from Nevada Irrigation District. Applicants' project involves three points of diversion. Spring No. 1 rises near the southerly boundary of applicants' property and flows northwesterly about 1/4 mile to Deer Creek. Spring No. 2 rises near applicants' easterly boundary and flows in a general northerly direction about 1/4 mile to Deer Creek. The storage reservoir is to be located on the easterly channel downstream from Spring No. 2.

3. Applicants testified they intended to develop Spring No. 1 only to the extent required for irrigation of 1 acre and domestic needs for one house with four people. On this basis the applicants would need about six gallons per minute (gpm) from Spring No. 1. From Spring No. 2 and the reservoir, the applicants would need domestic water for two houses with about eight people and water for irrigation of four acres, or about 23 gpm. The reservoir would be used primarily for fish culture and recreational use but would be available for irrigation if required. Direct diversion requirements from Springs Nos. 1 and 2 would not exceed about 29 gpm, or 0.065 cfs.

4. The property of protestants Steele is located just north of applicants' northerly boundary and just downstream from the proposed reservoir site. Their protest is now directed solely to appropriation from Spring No. 2. Water has been diverted from Spring No. 2 for use on the protestants' property since prior to the time that Mrs. Steele's grandmother acquired the property in

1912. Diversion is now by a plastic pipe which varies in diameter from 2 inches at the intake to $1\frac{1}{4}$ inches about 200 feet below the intake (RT 45, 46). There is no terminal storage tank. Water is used directly from the spring for domestic purposes at one fully plumbed house with four people, at a barn and chicken house, and for irrigation of about one acre (RT 32, 33). These requirements total about six gpm and use by the protestants has apparently approximated this amount.

5. By stipulation of the parties, certain water measurements were made subsequent to the hearing. On August 14, 1964, the flow of Spring No. 2 was 11 gpm. On the same day, the flow through a hose outlet at protestant Steele's house was 3.6 gpm. With some adjustments or maintenance work, this pipeline would probably carry about six gpm. Spring No. 2 could be developed to produce water substantially in excess of six gpm most of the time.

6. Protestants irrigate part of their property with water from Nevada Irrigation District. They also irrigate three acres located downstream from applicants' proposed storage site with water from the unnamed stream which originates at Spring No. 2. The stream which rises at Spring No. 2 is a gaining stream which picks up seepage in sufficient quantities to supply the water required to irrigate these three acres.

7. Applicants claim and appear to have riparian rights to the water for which they seek a permit to appropriate by direct diversion.

8. There is unappropriated water 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.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 20770 should be approved in part and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following Order.

ORDER

IT IS HEREBY ORDERED that Application 20770 be, and it is, approved in part, and that a permit be issued to the applicants, subject to vested rights and 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 0.065 cubic foot per second (29 gallons per minute) by direct diversion to be diverted throughout the year and 10 acre-feet per annum by storage to be collected from about November 1 of each year to about April 30 of the succeeding year. Direct diversion shall not exceed six gallons per minute from Spring No. 1.

This permit does not authorize collection of water to storage during the period from about May 1 to about October 31 of each season to offset evaporation and seepage losses or for any other purpose.

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

3. Actual construction work shall begin on or before September 1, 1965, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1967.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1968.

6. 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.

7. 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.

8. 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.

9. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be

released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittees shall install and maintain an outlet pipe of adequate capacity in the storage dam at point of diversion No. 3 as near as practicable to the bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board to comply with this paragraph.

10. Permittees shall, at their sole expense, install and maintain at Spring No. 2 a division box, satisfactory to the State Water Rights Board, in order that at least 6.0 gallons per minute or the entire flow of the spring, whichever is less, may, at all times, be diverted into the conduit serving the property of C. D. and Helen G. Steele.

11. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit for direct diversion shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

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 , 1965.

~~/s/ Kent Silverthorne~~
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member