

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22405 of)
American Forest Products Corporation)
to Appropriate from San Antonio Creek)
in Calaveras County)

Decision 1293

DECISION APPROVING APPLICATION

Application 22405 of American Forest Products Corporation having been filed; protests having been received; a public hearing having been held before the State Water Rights Board (predecessor of the State Water Resources Control Board) on March 30, 1967, conducted by Board Member Ralph J. McGill; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 22405, as amended at the hearing, is for a permit to appropriate 44 acre-feet per annum (afa) by storage from November 1 of each year to April 1 of the succeeding year for recreational purposes from San Antonio Creek in Calaveras County. The point of diversion is to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 20, T5N, R15E, MDB&M.

2. San Antonio Creek heads at an elevation of approximately 5,800 feet and courses in a general southwesterly direction approximately 6.5 miles to the applicant's reservoir. It continues from the reservoir in the same general direction approximately 22 miles to enter the South Fork Calaveras River. The U. S. Bureau of Reclamation's New Hogan Project is located on the Calaveras River approximately 6 miles below the mouth of the creek. The records of a U.S.G.S. gaging station located approximately 2 miles upstream from the mouth of the creek show that for the period of record (January 1950 through September 1959) there was water in the creek during the applicant's proposed diversion season approximately 90 percent of the time.

3. The applicant's predecessor, Blagen Lumber Company, constructed a dam in the year 1939 which is 150 feet in length and 15 feet in height and impounds 44 acre-feet. It was used as a log pond in conjunction with a lumber mill. The applicant terminated the milling operation approximately four years ago and since that time the reservoir has been used by the public for recreational purposes, primarily for fishing for trout stocked by the Department of Fish and Game.

4. The Calaveras Development Company, one-half owned by the applicant, plans to develop a residential subdivision, and the reservoir, which will have a sandy beach, will be used by subdivision residents and the general public

for swimming, boating, and fishing (RT 15). A supply of water for domestic use at the subdivision will be provided by the Ebbetts Pass Water District. Except for evaporation, no consumptive use of water is involved in the project (RT 22).

5. The State Water Rights Board Decision D 1179, approved April 21, 1964, covering the Bureau's New Hogan Project, found that with both the proposed project of the Calaveras County Water District and the Bureau's New Hogan Project in operation there would be unappropriated water available in the Calaveras stream system in 17 years of a 36-year period of study. As there is no consumptive use of water by the applicant's project, except evaporation, the only possible interference with the prior rights of the protestants would be during the infrequent times when the reservoir is refilled after being drained for cleaning or repair. The applicant intends to do any necessary draining and refilling of the reservoir only during periods of surplus water and, during such times, will bypass water through existing facilities to insure a continuous flow of water to lower users (RT 34). The approval of Application 22405 should not result in interference with the use of water from San Antonio Creek and the Calaveras River by the protestants.

6. Unappropriated water is available to supply the applicant, 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.

7. The intended use is beneficial.

8. In order for the reservoir to be a recreational and aesthetic asset to the proposed subdivision, water must continue to flow through the reservoir during the entire year to maintain the reservoir level and quality of the water (RT 50). This would result in use of water outside the applicant's diversion season in the form of evaporation, estimated at 19 afa. The permit should contain a term requiring the permittee to install and maintain suitable devices for measuring the stream flow above and below the reservoir and to divert sufficient water between April 1 and November of each year into San Antonio Creek from a nontributary source to maintain a flow below the reservoir of not less than the natural flow of the creek above the reservoir.

9. Protestant Department of the Youth Authority is apprehensive that the above permit term will not be respected, as after completion of development and sale of the subdivided properties there would be no person or legal entity with an interest in the matter that would be responsive to the Board. Suffice to say, if the terms and conditions of the permit or license are not observed by the holder, it would be subject to

revocation and the applicant's reservoir would have the status of an illegal diversion subject to being enjoined by any user adversely affected.

Moreover, the Division of Real Estate, State of California, provides certain protections to purchasers of property in developments similar to the applicant's, which may resolve any problems of responsibility under the permit or license. The exact nature of the applicant's development is not at this time determined and it is not now certain what regulations of the Division of Real Estate will apply to the applicant's project (RT 12). However, the Division, in order to protect home owners in so-called "planned developments" which provide common recreational facilities, has required as a condition to approval of the developer's plans that a nonprofit corporation be formed to provide continuity in the maintenance of inducements to purchase the property. The applicant considers the reservoir a "drawing card" for its development (RT 15). If the formation of a nonprofit corporation is required, it would be the logical holder of a permit or license upon completion of the development.

Further, the applicant is a large corporation owning 67,000 acres in Calaveras County which is managed for the perpetual production of timber, its principal business. The applicant intends to be in the area a long time and to keep any permit or license issued to it in good standing (RT 39, 40).

From the foregoing findings, the Board concludes that Application 22405 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 22405 be, and it is, approved, and that a permit be issued to the applicant 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 44 acre-feet per annum by storage to be collected from about November 1 of each year to about April 1 of the succeeding year; provided, that after the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water lost by evaporation or seepage, and to refill if emptied for necessary maintenance or repair.

This permit does not authorize collection of water to storage outside the specified 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. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.

4. 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 Resources Control 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.

5. Permittee shall allow representatives of the State Water Resources Control 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.

6. 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. Permittee shall, when required by the State Water Resources Control Board, 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 to comply with this paragraph.

7. Permittee shall install and maintain suitable measuring devices (a) upstream from the high water elevation of its reservoir and (b) below its storage dam in order that accurate measurement can be made of the quantity of water flowing into and below said reservoir. Between April 1 and November 1 of each year, permittee shall release from storage in said reservoir, or divert sufficient water into San Antonio Creek from a nontributary source, to maintain a flow below the reservoir of not less than the surface flow of the creek above the reservoir.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: FEB 1 1968

/s/ George B. Maul
George B. Maul, Chairman

/s/ W. A. Alexander
W. A. Alexander, Vice Chairman

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

/s/ Norman B. Hume
Norman B. Hume, Member

/s/ E. F. Dibble
E. F. Dibble, Member