

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25173	}	Decision:	D1555
RICHARD B. AND GINGER L. WELLS,		Source:	Marsh Creek
Applicants,		County:	Mendocino
DEPARTMENT OF FISH AND GAME, ET AL.,			
Protestants			

DECISION APPROVING APPLICATION IN PART

BY BOARD MEMBER MITCHELL:

Richard B. and Ginger L. Wells having filed Application 25173 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on May 25, 1978, and continued on August 15, 1978; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Application

1. Application 25173 was filed for appropriation of 44 acre-feet per annum (afa) by storage to be collected from December 1 of each year to June 1 of the succeeding year for irrigation and recreation purposes from Marsh Creek tributary to Albion River in Mendocino County. The point of diversion is to be located within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 18, T16N, R15W, MDB&M. During the hearing the application was amended by adding fire protection and by reducing the quantity to 19 afa, the approximate capacity of the reservoir.

Applicants' Project

2. The applicants seek to store water in an existing reservoir formed by a 22-foot high earthfill dam with a surface area of about 4.8 acres.

The water is to be used for irrigation of 18 acres of pasture in addition to other uses stated above.

Protests

3. Protests were filed by the Department of Fish and Game (Fish and Game); Evelyn Lewis and Lary Graber; Susan Negrin, et al.; Elizabeth Gruwell and Maurice W. Wilson, and; Joan D. Rosen.

4. The protests of Susan Negrin, et al., Evelyn Lewis and Lary Graber have been withdrawn.

5. Fish and Game entered into an agreement with the applicants regarding protection of fishlife which satisfies the protest. The terms of the agreement are set forth in the Order.

6. Elizabeth Gruwell and Maurice Wilson protested on the basis of environmental and public interest considerations. They also allege that the appropriation would be contrary to law. They did not appear at the hearing. Under Water Code Section 1351 and Board Regulation 731, the failure of any party in interest to appear at a hearing or show good cause within five days thereafter for such failure, may at the discretion of the Board, be interpreted as an abandonment of interest by such party. The application is not contrary to law. In addition, any adverse environmental effects have been mitigated. (See finding II). Therefore, the Gruwell and Wilson protest will not be discussed further.

7. The Rosen protest is based on a claimed riparian right described in Statement of Water Diversion and Use S8665. Protestant Rosen's point of diversion is located approximately one mile downstream on the Albion River. Protestant Rosen claims use of up to 1,500 gallons per day from May to October. The season of storage set forth in Application 25173 and the season of use of Protestant Rosen overlap during the month of May. However, under

the agreement with Fish and Game the applicants must bypass the natural stream-flow from April 1 through May 31. Because of that agreement the season of storage will be reduced to the period from December 1 to March 31, eliminating any storage during Protestant Rosen's diversion season.

Availability of Unappropriated Water

8. The portion of the Marsh Creek watershed above the applicants' dam contains approximately 1050 acres and that portion below the applicants' dam contains approximately 490 acres. Marsh Creek is not gaged so rainfall data has been used to estimate flows. Flows have been estimated using 40 inches as the average annual precipitation and a runoff factor of 50 percent. During the months of December and January the average yield for the watershed above the dam is expected to exceed Fish and Game's bypass requirements by 131 acre-feet. The average yield of the upper watershed for the months of February and March is less than Fish and Game's required bypass flow; however, for short periods during storms the flow will be greater than 5 cfs. thus allowing the applicants to divert the excess flow to storage. Therefore, based upon the information available, sufficient unappropriated water is available in the average year to fill the reservoir.

9. The proposed use is beneficial.

Environmental Considerations

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

11. To avoid the possibility of thermal pollution, the applicants will be required to release bypass flows through the outlet pipe whenever possible.

Conclusions

From the foregoing findings, the Board concludes that Application 25173 should be approved in part and a permit issued to the applicants subject to the conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 25173 be approved and a permit issued to the applicants subject to vested rights. The permit shall contain all applicable 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 19 acre-feet per annum to be collected from December 1 of each year to March 31 of the succeeding year.

2. For the protection of fishlife and as compensation for habitat eliminated upstream from the point of diversion, the permittees shall:

- a. From December 1 through March 31, bypass a minimum of five cubic feet per second or the natural streamflow, whichever is less.
- b. Pay to the Department of Fish and Game each year for the rearing and planting of 1,200 yearling steelhead, at a size of approximately six to ten fish per pound, in Marsh Creek or in the Albion River near the confluence of Marsh Creek; the cost of said fish to be based on the Department's state-wide average for hatchery rearing and planting of steelhead smolts as determined for the fiscal year immediately proceeding.

3. 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 flows required by these terms. Said measuring device shall be properly maintained.

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

4. In order to minimize any rise in temperature of the water flowing downstream from the dam, the permittees shall make any required bypass under this permit through the outlet pipe up to the capacity of said pipe and by any additional means necessary to satisfy any bypass requirements under this permit.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1984.

Dated: March 20, 1980

WE CONCUR:

ABSENT
L. L. Mitchell, Member

ABSENT
Carla M. Bard, Chairwoman

/S/ William J. Miller
William J. Miller, Vice-Chairman

/S/ Jill B. Dunlap
Jill B. Dunlap, Member

/S/ F. K. Aljibury
F. K. Aljibury, Member

