

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24428)

DAVID L. GAUTSCHI,

Applicant

EARL D. AND ALICE M. TAYLOR,
ET. AL.

Protestants

Decision: 1571

Source: Unnamed Stream tributary
to Kelsey Canyon

County: El Dorado

DECISION APPROVING APPLICATION 24428

BY THE BOARD:

David L. Gautschi having filed Application 24428 for a permit to appropriate unappropriated water; protests having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided for by Section 737 of Title 23, California Administrative Code; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the Board having considered the available information; the Board finds as follows:

Substance of Application:

1. Application 24428, as amended, is for a permit to collect 24 acre-feet per annum (afa) in an onstream reservoir, from November 1 to March 31 from an unnamed stream tributary to Kelsey Canyon thence the South Fork American River for irrigation, stock-watering and recreation uses. Water will be diverted from a point within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 13, T11N, R10E, MDB&M.

Applicant's Project:

2. The applicant presently holds permitted Application 24427 which authorizes collection to storage of 15 afa from November 1 through March 31. The reservoir covered by the existing permit is located on the more northerly of two unnamed forks of Kelsey Canyon. The applicant proposes under Application 24428 to construct a new reservoir on

the more southerly of the two forks of Kelsey Canyon. The proposed earthfill dam will be 20 feet in height and 60 feet in crest length. The reservoir will have a surface area of approximately 2½ acres. Water is to be used to irrigate five acres of orchard, pasture, lawn, and garden around the reservoir.

Protests

3. Application 24428 was protested by the Bureau of Reclamation, now the U.S. Water and Power Resources Service (Service) and by six local residents. All parties protested on grounds of injury to vested rights; three parties also protested on the basis that the appropriation is against the public interest and that it would cause adverse environmental impacts.

4. The Service agreed to dismiss its protest if three conditions were included in any permit issued on Application 24428. The first condition relates to diversion of water during the period from June 30 to November 1. Since the applicant has amended Application 24428 to eliminate this period of the year, the inclusion of the first proposed term is no longer necessary. The second proposed term is standard Permit Term 13 and is included in all permits. The third proposed term is essentially Permit Term 80. The inclusion of Permit Term 80 (Condition 9 on page 5 of this decision) satisfies the last condition of the Service and that protest is dismissed.

Availability of Unappropriated Water:

5. The source stream for Application 24428 has a watershed of about 35 acres above the applicant's proposed reservoir. No runoff records exist for this watercourse. However, a review of 18 years of rainfall records for the nearby Georgetown Ranger Station shows that the watershed above the applicant's proposed reservoir would produce on the average, about 80 af during the period from November 1 through March 31. In addition, some water is released from the nearby Georgetown Public Utility Ditch

into the source stream. During the winter these releases occur because the ditch collects a substantial amount of surface runoff. Some of the water collected has to be released at various points along the ditch to prevent a wash out. Such release essentially increases by several fold the effective watershed area of the source stream. Finally, all parties at the April 29, 1975 field investigation concur that water in excess of their needs exists in Kelsey Canyon during the months of November through March. Since prior Board decisions establish that water in excess of the needs of downstream uses exists during said period, the Board concludes that unappropriated water is available to supply the applicant. A term should be imposed on the permit requiring bypass of flow entering the reservoir during the months April through October. The Board should also retain authority to authorize the protestants or their heirs or assigns reasonable access to project works from time to time for the purpose of observing reservoir inflow and outflow during the non-storage season. To accomplish this, standard permit term 11 should be imposed on the permit. That term reads as follows:

"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."

The Board recognizes the need of the downstream protestants for flows during this bypass period. Therefore, the applicant should take notice that the season of diversion and the bypass requirements of the permit will be strictly enforced.

6. The intended use is beneficial.

Public Interest

7. Several protestants allege that approval of Application 24428 would be against the public interest. However, none of the protestants stated any facts and the Board knows of no facts to support the allegation.

Environmental Consideration:

8. The Board has prepared a Negative Declaration for Application 24428 in accordance with the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) and the State Guidelines and has determined that the project will not cause any significant adverse effect on the environment.

Record in this Matter:

9. The records, documents, and information used in deciding this matter are:

The files of Applications 24428 and 24427, and all information on file therewith, especially the Engineering Staff Analysis of Record dated November 10, 1975, Statements of Water Diversion and Use No. 8385 and 8395, Rainfall records and USGS topographic maps of the area.

Conclusion:

10. From the foregoing findings the Board concludes that Application 24428 should be approved, as amended, and that a permit should be issued to the applicant subject to the conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Application 24428 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (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 24 acre-feet per annum to be collected from November 1 of each year to March 31 of the succeeding year.

2. Actual construction work shall begin within two years of the date of permit and shall thereafter be prosecuted with reasonable diligence and if not so commenced and prosecuted, this permit may be revoked.

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

3. Construction work shall be completed by December 1, 1983.

4. Complete application of the water to the authorized use shall be made by December 1, 1984.

5. To the extent that water available for use under this permit is return flow, imported water, or waste water, this permit shall not be construed as giving any assurance that such supply will continue.

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 in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

7. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. All water entering the reservoir during the period April 1 through October 31 shall be released either through a spillway or through the outlet pipe required by the term next above.

8. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow required by the conditions of this permit. Said measuring device shall be properly maintained.

9. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to the results of a comprehensive analysis of the availability of unappropriated water in the Sacramento River Basin. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing.

10. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or

completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

11. No diversion is authorized by this permit when satisfaction of in-basin entitlements requires release of supplemental Project water. The Board shall advise permittee of the probability of imminent curtailment of diversions as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Central Valley Project or the State Water Project operators. The Board shall notify the permittee of curtailment of diversions when it finds that no water is available for diversion under this permit.

For the purpose of initially determining supplemental Project water required for in-basin entitlements, the following definitions shall apply:

a. In-basin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of in-basin entitlements.

b. Supplemental Project water is defined as water imported to the basin by the Projects, and water released from Project storage, which is in excess of water required for Project export and Project in-basin deliveries.

Notice of curtailment of diversion under this term shall not be issued by the Board until:

a. Project operators jointly develop and demonstrate to the Board a reasonably accurate method of calculating supplemental Project water.

b. The Board has approved the method of calculating supplemental Project water and has confirmed the definitions of in-basin entitlements and supplemental Project water after public hearing.

c. The Project operators have notified the Board that the release of supplemental Project water is imminent or has occurred. Such notice should include the times and amounts of releases or potential releases.

d. The Board finds that supplemental Project water has been released or will be released.

11. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permissæ shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

Dated: February 19, 1981

/s/ CARLA M. BARD
Carla M. Bard, Chairwoman

/s/ L. L. MITCHELL
L. L. Mitchell, Vice-Chairman

/s/ JILL B. DUNLAP
Jill B. Dunlap, Member

/s/ F. K. ALJIBURY
F. K. Aljibury, Member

