

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 26103)	
DICK HANNAWELL, ET UX.)	Decision: 1584
Applicant)	Source: Unnamed Stream
ROY L. AND BETTY L. WILLIAMS, ET AL.)	County: Trinity
Protestants)	

DECISION APPROVING APPLICATION 26103 IN PART

BY BOARD VICE-CHAIRMAN MITCHELL:

Dick and Peggy Hannawell having filed Application 26103 for a permit to appropriate unappropriated water; protests having been received; a pre-hearing field investigation having been conducted; a public hearing having been held by Board Vice-Chairman Mitchell on December 2, 1980; applicant and protestants having appeared and presented evidence; the evidence received at the hearing and investigation having been duly considered; the Board finds as follows:

Substance of the Application

1. Application 26103 is for a permit to appropriate 5000 gallons per day (gpd) by direct diversion from March 1 to October 1 of each year for irrigation, 1200 gpd from January 1 to December 31 of each year for domestic and stockwatering use, and four acre-feet per annum by storage to be collected from November 1 of each year to April 30 of the succeeding year for irrigation. The source is an unnamed stream tributary to the Trinity River. The points of diversion are within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 35, T33N, R10W, MDB&M.

Applicant's Project

2. The applicant proposes to reconstruct, to a height of 15 feet, a breached dam on the unnamed stream to form a four acre-foot capacity reservoir having a surface area of 0.5 acre. The applicant also proposes to construct facilities for the direct diversion of 6,200 gpd by gravity flow from a point approximately 800 feet upstream from the reservoir site. Water will be conveyed by a one-inch buried pipeline to a storage tank on the applicant's property*. The point of diversion and the pipeline will be located on public land administered by the Bureau of Land Management. The Bureau has indicated that its approval is predicated upon the applicant receiving a water right permit first.

Protests

3. Protests against the approval of Application 26103 were filed by Roy and Betty Williams; Albert and Mary Jane Sigarroat (protestant Sigarroat is successor in interest to the protest filed by L. T. and Irene Thrasher); John and Leona Schamber; Travis and Virginia Brown; Homer and Margo Hoffman; Mary Quesenberry; Patricia Mills; and Gerald and Kaye Fetterolf. The protest of Patricia Mills was withdrawn because she has moved out of the area.

4. Protestant Williams alleges:

- (1) The proposed dam may fail and destroy downstream life and/or property.
- (2) If the breached dam is reconstructed, the resulting reservoir will hold a much greater quantity of water than applied for in the application.

* Applicant is in the process of purchasing the property described in this application.

(3) The requested appropriation will adversely affect his pasture for cattle grazing by causing the unnamed stream that crosses the pasture to dry up earlier in the spring.

(4) The applicant should rely on a well for water supply, as do other property owners in the area.

Protestant Williams relies on both the unnamed stream and a well to serve his needs. The well supplies domestic water to both Protestants Williams and Quesenberry. Williams diverts water from the unnamed stream under claim of riparian right. Water from the unnamed stream is diverted by an earth ditch into a small offstream regulation pond. Water from the pond is used for stockwatering several head of cattle and irrigation of a half acre of orchard and several acres of pasture.

5. Protestant Sigarroa alleges that failure of the proposed dam may damage downstream property and that the applicant's diversion will prevent water from reaching his property. Protestants Sigarroa and Williams property are adjacent to each other along the unnamed stream.

6. Protestant Schamber alleges that possible failure of the applicant's dam is a threat to life and property downstream and that the reservoir might adversely affect the water table and his well. Schamber lives on the flood plain of the Trinity River. He diverts water from the Trinity River to meet domestic needs and has used a shallow well in the past for irrigating a garden.

7. Protestants Hoffman and Brown both live upstream of the applicant's proposed project. Protestant Hoffman claims that failure of the proposed dam could endanger school children waiting for the bus below the dam, and that the reservoir would create a breeding ground for mosquitos. Protestant Brown claims that the proposed project would adversely affect riparian habitat along the unnamed stream.

8. Protestant Quesenberry alleges that the proposed dam may fail, thus presenting a hazard to downstream life and property.

9. Protestant Fetterolf did not appear at the hearing or provide any evidence in support of his protest. Therefore, in accordance with Title 23, California Administrative Code, Section 731, we interpret such failure to appear without good cause, as an abandonment of interest in the subject matter of the application.

Availability of Unappropriated Water

10. The watershed of the unnamed stream above the applicant's dam site comprises approximately 290 acres. Based on an analysis of nearby precipitation records, unappropriated water is available from November through April for the storage portion of the application. Protestant Williams does not contest this point (RT 44).

11. Protestant Williams testified that in normal years, the entire flow in the unnamed stream percolates into the streambed on his property after about May 1. When this occurs, Protestant Williams moves his point of diversion upstream, and diverts the entire streamflow where the stream enters his property. Protestant Williams uses about 9,600 gpd, or whatever is available, from about April 1 to November 1. The requested direct diversion of 6,200 gpd by the applicant would, therefore, injure downstream prior right holders after May 1. Consequently, we find that unappropriated water is not available for appropriation by direct diversion from the unnamed stream from about May 1 until the following rainfall season, which usually begins after October 1.

12. Section 760, Title 23, California Administrative Code indicates that a portion of a season may be approved during which unappropriated water is available, provided the applicant first supplies the Board with reasonable

assurance that water can be obtained from an alternate source during the remainder of the season without impairing the prior rights of others. The record indicates that the applicant has failed twice in past attempts to develop a supply from groundwater.

13. The applicant claims a riparian right to the flow in the unnamed stream. Such a right accrues to land that is contiguous to a natural stream. In order to exercise a riparian right, the place of use must never have been severed from the stream.

The record for Application 26103 indicates that the subject property is comprised of two adjacent parcels of land. One parcel is contiguous with the unnamed stream (Assessors Parcel No. 53); the other (back parcel) is not (Assessors Parcel No. 15). With regard to the latter, the Board takes official notice of the fact that a deed recorded in Trinity County on October 25, 1967, conveyed the back parcel from Valentina Harger to Doreen McCauley (Book 126, Page 240) without any express reservation of a water right. In addition, there are no facts to show that there was any implied reservation of a water right to the severed parcel. This evidence indicates that the back parcel no longer has a riparian right to the waters of the unnamed stream.

14. The place of use for domestic purposes is located on the back parcel. Consequently, the applicant cannot divert water from the unnamed stream for domestic purposes under claim of riparian right. Therefore, the applicant does not have an alternate domestic water supply for the months when there is no unappropriated water available in the unnamed stream.

15. During the summer months, water for irrigation and stockwatering can be obtained from the applicant's reservoir, thus providing a supplemental supply to the requested direct diversion for those purposes.

16. Since the applicant's proposed domestic use of water is an integral part of the total project, we will withhold issuance of a permit under authority of Title 23, California Administrative Code, Section 781, until the applicant supplies evidence that an alternate water supply is developed to meet domestic needs on the back parcel from May 1 to September 30 of each year. We will also require that the applicant provide evidence of the capacity of the alternate source. If such evidence is not received within six months from the date of this decision, or such further time as we may allow, no permit will be issued and Application 26103 will be cancelled without further Board action.

17. Stockwatering was not requested as a purpose of use under storage; however, in accordance with Title 23, California Administrative Code, Section 744, the Board may make corrections in the application to authorize incidental uses at a reservoir. Since stockwatering is an authorized incidental use under that section, it will be added as a purpose of use for the requested storage.

18. To ensure that water not authorized for storage under this appropriation is bypassed for downstream prior rights, terms will be included in the permit requiring an outlet pipe in the applicant's dam and a staff gage in the reservoir.

Dam Safety

19. About 15 years ago, a dam was constructed for mining purposes at the same site now proposed. Two years later, the dam was raised, replacing the original spillway with a spillway consisting of a piece of mining culvert. The following winter, flood conditions occurred, topping the dam after exceeding

the capacity of the culvert spillway. The floodwaters eroded a channel through the center of the dam. The protestants fear that a similar failure could occur if the breached dam is reconstructed.

The record indicates that the dam failure was due primarily to poor design and not to poor geologic conditions. In order to assure that the proposed dam is properly designed and that appropriate materials and construction techniques are used, a term will be included in the permit requiring that the design and construction of the dam and appurtenances be under the supervision of a registered civil engineer.

Other Issues

20. Protestant Williams claims that a dam at the height proposed may hold more than the four acre-feet requested in the application. The spillway for the reservoir should be at an elevation that would correspond to the storage quantity requested. The dam embankment will be constructed higher to provide freeboard when the spillway is overflowing. The Board will not condone permanent storage in excess of that authorized.

21. The applicant and the Department of Fish and Game entered into a stream alteration agreement which has since expired. In recognition of that agreement, a term will be included in the permit requiring approval from the Department before work is started on the proposed diversion works.

22. In order to prevent degradation of the quality of water in the stream system, a term will be included in the permit requiring the applicant to file a report with the North Coast Regional Water Quality Control Board prior to commencement of construction activities.

23. A term will be included in the permit requiring that the applicant take appropriate action to control any nuisance from mosquitos that might breed in the applicant's reservoir.

Environmental Considerations

24. 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.

Conclusions

25. From the foregoing findings, the Board concludes that Application 26103 should be approved in part and a permit issued to the applicant subject to the order following.

ORDER

IT IS HEREBY ORDERED, subject to applicant's compliance with the provision requiring an alternate water supply as further ordered below, that Application 26103 be approved in part 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:

(A) by direct diversion:

- (1) 1,200 gallons per day from October 1 of each year to April 30 of the succeeding year for domestic and stockwatering purposes, and
- (2) 5,000 gallons per day from March 1 to April 30 of each year for irrigation purposes;

(B) by storage:

4 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year for irrigation and stockwatering purposes.

* The Board maintains a list of standard permit terms. Copies of these may be obtained upon request.

The total amount of water to be taken from the source for all uses shall not exceed 5.7 acre-feet per water year of October 1 to September 30.

2. 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.

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

4. Said construction work shall be completed by December 1, 1985.

5. Complete application of the water to the authorized use shall be made by December 1, 1986.

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

7. Permittee shall install and maintain in his reservoir a staff gage meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoir.

Permittee shall supply the staff gage reading on or about October 1 of each year to the State Water Resources Control Board.

Permittee shall allow protestants or their designated representative reasonable access to the reservoir for the purpose of determining whether water is being stored in accordance with this permit.

8. In accordance with Section 1601, 1603 and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or

lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of permittee.

9. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee 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, North Coast Region, or by the State Water Resources Control Board.

10. The design and construction of the storage dam and appurtenances shall be under the supervision of a registered civil engineer at all times. Nothing in this condition shall be construed to limit or conflict with City or County ordinances or requirements of any other public agency providing for the regulation or supervision of dams and reservoirs.

11. Mosquito populations resulting from storage of water in the reservoir shall be kept below nuisance levels by appropriate means, such as by maintenance of a sufficient density of mosquito fish Gambusia affinis within the reservoir.

IT IS FURTHER ORDERED that the requested direct diversion from May 1 through September 30 of each year is denied.

IT IS FURTHER ORDERED that under authority of Section 781 of Title 23 of the California Administrative Code, issuance of the above permit be withheld until the applicant supplies evidence to the State Water Resources Control Board that an alternate water supply of sufficient quantity to meet

the domestic needs on Trinity County Assessors Parcel No. 15 from May 1 to September 30 of each year has been developed. The applicant shall also provide evidence, satisfactory to the Board, showing the capacity of said supply. If such evidence is not received within six months from the date of this decision, or such further time as the Board, for good cause, may allow, Application 26103 will be cancelled without further Board action.

Dated: August 19, 1982


WE CONCUR:



L. L. Mitchell, Vice-Chairman

ABSENT

Carla M. Bard, Chairwoman



Jill D. Golis, Member



F. K. Aljibury, Member

