

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25031)
of T. Don and Sharon A. Sager to) Decision 1489
Appropriate from an Unnamed Stream)
in Nevada County)

DECISION APPROVING APPLICATION

BY THE BOARD:

T. Don and Sharon A. Sager having filed Application 25031 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 25031 is for a permit to appropriate .5 acre-foot of water per annum by storage from December 1 to April 1 of each year for irrigation, stockwatering, recreation, and fire protection purposes from an unnamed stream tributary to Wolf Creek in Nevada County. The point of diversion is to be located within the SW 1/4 of SW 1/4, Section 1, T15N, R8E, MDB&M.

Applicants' Project

2. Applicants propose to construct an earth and rock diversion dam in the channel of an unnamed stream tributary to Wolf Creek which will form a reservoir with a capacity of .5 acre-foot (af). The estimated height of the dam is 10 feet and the width of the dam at the crest is estimated to be sufficient to allow a vehicle to cross it. A spillway is not included in the design. However, an 18-inch corrugated metal pipe will be installed just below the crest of the dam. Water stored in the reservoir will be used to irrigate a small truck garden, an acre of fruit trees, and for stockwatering, fire protection, and recreation.

Protests

3. Application 25031 was protested by Ernest L. and Marylyn E. Thompson. The protestants own and reside on property adjacent to and approximately 200 yards below the proposed point of diversion. The protestants claim that the proposed dam would be unsafe, would jeopardize life and property, and that approval of the application would not serve the public interest. The protestants also claim that the proposed diversion and storage will interfere with the exercise of their claim of riparian right during the summer. The protestants presently use water for irrigation and stockwatering from a spring which originates on their property, and they also purchase water from the Nevada Irrigation District. The unnamed stream drains through their property and empties into a two-foot culvert under an adjacent road.

Availability of Water

4. There are no records of flow of the unnamed stream. The stream drains a narrow watershed consisting of approximately 110 acres. Approximately 1,600 feet below applicants' point of diversion, the stream commingles with another unnamed stream and approximately 3,500 feet below that point, the combined flows empty into Wolf Creek. Wolf Creek is tributary to the Bear River.

Mr. Thompson, the protestant, has lived in the watershed for 20 years. He has indicated that, during an above-normal rainy season, the stream flows year round, with heavy flows occurring during the winter. During dry years, Mr. Thompson has indicated that the stream is normally reduced to a trickle during the summer months but has, for the past five summers, ceased flowing altogether.

Existence of Unappropriated Water

5. Protestants claim that the applicants' dam will interfere with the exercise of their claim of riparian right during the summer. The applicants have agreed to bypass flows outside the diversion season by constructing channels around the dam and by installing V-notch weirs above and below the reservoir. Thus, no harm should result to the protestants' claim of right.

6. Applicants' intended use of water is beneficial and unappropriated water is available for diversion and storage for the period sought, subject to appropriate conditions, without causing harm to other lawful users of water.

Environmental Considerations

7. All environmental reviews necessary to comply with the California Environmental Quality Act have been completed.

Other Considerations

8. The issue of dam safety raised by the protestants, cannot be the basis for denial of the permit unless it is clear to the Board that there would be a foreseeable risk of dam failure and that there would be a resulting loss or injury to life or property. The dam's small size precludes specific approval by the Division of Safety of Dams. Evidence before the Board does not establish that there is a foreseeable risk of dam failure and resulting loss or injury.

ORDER

IT IS HEREBY ORDERED that Application 25031 be approved 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 .5 acre-foot per annum to be collected from December 1 of each year to April 1 of the succeeding year.

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. The amount authorized for appropriation may be reduced in the license if investigation warrants.

4. Actual construction work shall begin on or before two years from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1980.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1981.

7. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

8. 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.

9. Pursuant to California Water Code Section 100, all rights and privileges under this permit and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

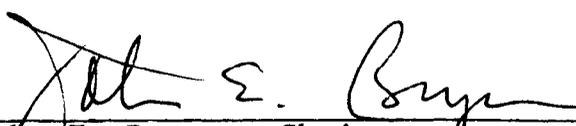
10. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or

hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

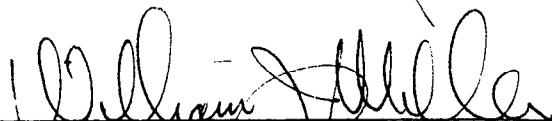
11. Permittee shall provide means satisfactory to the State Water Resources Control Board, in order that water flowing in the stream which is not authorized for appropriation under this permit may be bypassed.

12. The permittee shall install and maintain devices satisfactory to the State Water Resources Control Board to measure (a) flow in the source above the reservoir and (b) flow bypassed around the reservoir.

Dated: December 21, 1978


John E. Bryson, Chairman


W. Don Maughan, Vice Chairman


William J. Miller, Member


L. L. Mitchell, Member

