

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 17602)	Source: Unnamed Stream
by Jack W. Dukes)	County: Napa

Decision No. D 920

Decided: December 4, 1958

In attendance at the investigation conducted by the Staff
of the State Water Rights Board on April 7, 1958:

Jack W. Dukes	Applicant
Mark Stanton	Attorney for Applicant
John B. Froland	Protestant
Alonzo T. Froland	Protestant
J. J. Heacock Senior Hydraulic Engineer	Representing State Water Rights Board
D. E. Kienlen Assistant Hydraulic Engineer	Representing State Water Rights Board

DECISION

Substance of the Application

The application, filed May 14, 1957, seeks a permit to appropriate 3.5 acre-feet per annum by storage to be collected between December 1 of each year and March 15 of the succeeding year from an unnamed creek in Napa County for irrigation and domestic purposes. Water is to be collected by an earth storage dam 10 feet high and 244 feet long, located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 29,

T5N, R4W, MDB&M*. The water impounded by the dam creates "Lake Victoria" with a surface area of 0.7 acre and a capacity of 3.5 acre-feet. The water is to be used for the irrigation of one acre of pasture, domestic use at one residence and four cottages for 5 to 15 persons, and stockwater for six head of cattle, all within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said projected Section 29.

Protests

John B. and Olive R. Froland filed a protest against the approval of Application 17602 based on prior Application 15435 (Permit 9789) filed July 27, 1953. The protestants allege that the construction of the reservoir by the applicant completely cuts off the flow of water into their reservoir (estimated capacity 5 acre-feet) until the applicant's reservoir fills and overflows, thereby depriving the protestants of sufficient water to satisfy their requirements under Permit 9789. The protestants agree that the protest may be disregarded and dismissed if the applicant will construct at least a 12-inch outlet pipe, with appropriate valve, to release water, and the valve is closed only after the protestants have received 5 acre-feet of water.

A protest against the approval of Application 17602 was also received from Alonzo T. and Doris J. Froland based on prior Application 17206 (Permit 10869) filed August 2, 1956, which contemplates an enlargement of the reservoirs of John B. and Olive R. Froland (Permit 9789) to a total capacity of 10 acre-feet. The claim of injury and basis for dismissal of this protest is identical to the

* Hereinafter all township and range designations are with reference to the Mount Diablo Base and Meridian (MDB&M).

protest discussed in the preceding paragraph.

Answer to Protests

In answer to the protests, the applicant alleges that the protestants did not have storage facilities capable of retaining 2 acre-feet of water at the time of installation of applicant's dam; that at the expiration of the rainy season in 1957 both applicant's and protestants' storage facilities were full; that the water impounded in applicant's storage facilities is surface water which has commenced to flow through his property since completion of the "Freeway" in 1956 and surface water originating from natural drainage on applicant's property; that such water is not subject to appropriation, and that there is ample runoff from protestants' own land to maintain their reservoir. The applicant further asserts that there is ample water for both protestants' and applicant's storage facilities in an ordinary year without occasion for apportionment or preferential treatment.

Field Investigation

Applicant and protestants, with the approval of the State Water Rights Board, have stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules. A field investigation was conducted on April 7, 1958, by J. J. Heacock and D. E. Kienlen, engineers of the Board, during which the applicant and protestants were present.

Records Relied Upon

The records relied upon in support of this decision are Application 17602 and all relevant information on file therewith, with particular reference to the Report of Field Investigation made on April 7, 1958, by the above-named engineers; Bulletin 1, State Water Resources Board, "Water Resources of California", dated 1951; United States Geological Survey "Cuttings Wharf" and "Napa", quadrangles, 7½ minute series.

Source

The unnamed stream rises in the south central part of Section 20, T5N, R4W, and flows southeasterly about one mile to its confluence with another unnamed stream flowing from the north and then easterly approximately two miles to a confluence with Napa River. The watershed above the applicant's point of diversion consists of about 30 acres of grass-covered, gently rolling hills. A new highway located about 1,000 feet above the applicant's diversion has concentrated the flow of water from this watershed into one channel, which condition reportedly did not exist prior to that time. The protestants' reservoir is located approximately 1,000 feet downstream from the applicant's dam.

According to the data in Bulletin 1, "Water Resources of California", the mean seasonal runoff for the area contributory to Napa River below the gaging station near Napa, which consists of 198 square miles is 289 acre-feet per square mile. At the time of the investigation both reservoirs were full and about one cubic foot per second was flowing through each reservoir.

Applicant's Project

The report of field investigation referred to above indicates that the applicant's dam is completed although no water has been placed to beneficial use. Water is collected by means of an L-shaped earth storage dam. The dam consists of two dikes; one across the channel 125 feet long and 8 feet in height, and one along the left or east side of the reservoir. The spillway circles around the left dike and discharges into the main channel below the dam. The dam as presently constructed has no outlet pipe or other means to release water into the downstream channel.

Three wells, one located at the upper end of the reservoir, furnish the domestic supply for one residence, four cottages and a restaurant-bar on the property.

Protestants' Project

Permit 9789 (Application 15435) held by John B. and Olive R. Froland allows an appropriation of 5 acre-feet per annum from this unnamed stream to be collected between November 1 of each year and June 1 of the succeeding year. Permit 10869 (Application 17206) held by Alonzo T. and Doris J. Froland allows an additional 5 acre-feet to be appropriated from this stream to be collected during the same season. Storage under Permit 10869 is to be effected by enlarging the reservoir described under Permit 9789.

At present the protestants' project consists of an earth storage dam 160 feet long and 5 feet high located within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T5N, R4W. The reservoir is not complete and will be enlarged by dredging to provide storage space for the additional 5 acre-feet covered by Permit 10869. Water is diverted

from the reservoir to the place of use by means of a pump and sprinkler system. Use has been made by John B. Froland on $1\frac{1}{2}$ acres of garden. The only use made by Alonzo Froland was for $1/4$ acre of tomatoes during 1956, but it is his intention to irrigate permanent pasture, corn, and tomatoes when his portion of the project is completed. Each of the protestants own 2 acres and derive their domestic supplies from wells.

Discussion

As indicated in the preceding section, "Source", the mean seasonal runoff for this watershed is about 289 acre-feet per square mile. Therefore, the average seasonal runoff for the contributory drainage area under this application would be about 13.6 acre-feet.

This supply would be sufficient for both the applicant and protestants during most years, but adequate protection must be afforded the downstream prior rights during periods of below-normal runoff. This will necessitate by-passing a sufficient amount of water around or through the applicant's reservoir each year to the extent such rights may exist. Although the installation of an outlet through the applicant's dam may be extremely costly in relation to the actual benefits derived from the water impounded, there are, however, other reasonable methods available to the applicant for by-passing this water (i.e., siphon or a ditch around the reservoir).

Conclusions

The information indicates and the Board finds that unappropriated water exists at times in substantial quantity in the source from which the applicant seeks to appropriate, and that such water may be taken and used in the manner proposed by the applicant

during those times without injury to downstream parties. It is, therefore, the conclusion of the Board that Application 17602 should be approved, and that a permit should be issued to the applicant subject to the usual terms and conditions. In addition, the permit should be specifically conditioned subject to the protestants receiving the full amount of water to which they are entitled prior to any impoundment of water by the applicant.

ORDER

Application 17602 for a permit to appropriate unappropriated water having been filed, protests having been filed, applicant and protestants having submitted stipulations to the proceedings in lieu of hearing as provided for under Section 737 of the California Administrative Code, Title 23, Waters, an investigation having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17602 be, and the same is hereby approved, and it is ordered that a permit be issued to the applicant subject to vested rights and the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 3.5 acre-feet per annum by storage to be collected from about December 1 of each year to about March 15 of the succeeding year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

4. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

5. 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 Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable method of use or unreasonable method of diversion of said water.

6. Permittee shall by-pass such water as is required to completely fill the downstream reservoir described under Applications 15435 and 17206 being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T5N, R4W, MDB&M, before water is collected to storage under this permit; provided, however, that permittee shall not be required by this condition to by-pass in excess of 10 acre-feet per annum or such lesser amount as may be confirmed by the issuance of licenses under Applications 15435 and 17206.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 4th day of December, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member