

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 21153 and
21262 and Permit 10829 (Application 16829)
of Harry E. Blythe and Bruce W. Blythe
to Appropriate from San Marcos Creek and
Unnamed Streams in San Luis Obispo County

Decision D 1287

1287

DECISION APPROVING APPLICATIONS
AND ORDER PERMITTING CHANGES

Harry E. Blythe and Bruce W. Blythe having filed Applications 21153 and 21262 for permits to appropriate unappropriated water, petitions for permission to amend said applications by changing the points of diversion, places of use, and purposes of use, and petitions to change the points of diversion, places of use, and purposes of use under Permit 10829 (Application 16829); a protest having been received to Application 21153; 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 Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. The amendments to Applications 21153 and 21262 and the changes in points of diversion, places of use,

and purposes of use under Permit 18029 (Application 16829), for which petitions were filed on June 22, 1964, May 5, 1965, and April 22, 1966, will not operate to the injury of any other legal user of the water involved.

2. Application 21153, as amended, is for a permit to appropriate a total of 95 acre-feet per annum (afa) by storage from October 31 of each year to April 30 of the succeeding year for irrigation, stockwatering, wildlife propagation, and recreational uses. The water will be stored in five reservoirs, one on San Marcos Creek and one on each of four unnamed streams tributary to San Marcos Creek in San Luis Obispo County. Forty-one acre-feet under this application will be stored in San Marcos Reservoir, located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 17, T26S, R11E, MDB&M. Three acre-feet will be stored in Buena Vista Reservoir, located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 9, T26S, R11E. Forty-four acre-feet will be stored in Laguna del Sapo Pinto Reservoir, located in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 16, T26S, R11E. Three acre-feet will be stored in Loma Vista Reservoir, located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 6, T26S, R11E. Four acre-feet will be stored in Bootlegger Flat Reservoir, located in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 10, T26S, R11E. Water will be used at the reservoirs and on 301 acres within Sections 4, 5, 8, 9, 16, 17, and 18, T26S, R11E, as shown on the map filed with the Board on September 13, 1965.

3. Application 21262 is for a permit to appropriate 85 afa by storage in San Marcos Reservoir. The season of collection to storage and purposes of use are the same as under Application 21153. The place of use is at San Marcos Reservoir and on the same land as described in Application 21153.

4. The protestant, Philip R. Kelsey, uses water from San Marcos Creek to provide stockwater for up to 5 horses and 35 cows. Sufficient surface and subsurface flow in San Marcos Creek to maintain several pools, natural or excavated, will satisfy protestant's needs. Spill and seepage from the existing Chimney Rock Dam, the lowermost diversion on applicants' land, together with downstream tributary inflow, provides more water than necessary to satisfy this and other downstream rights during the season of diversion requested. According to the U. S. Geological Survey maps of the area in question, there are 9,800 acres in the watershed above protestant's easterly (downstream) property line, and the U. S. Department of Commerce Climatological Data for California lists 16 inches as the average annual rainfall in the area. A reasonable estimate of runoff of San Marcos Creek at the protestant's easterly property line is 1,300 afa for 10 percent index of runoff and 3,950 afa for 30 percent index of runoff. Bulletin No. 1, "Water Resources of California," California State Water Resources Board, estimates 80 percent of this runoff will occur during

the season October 31 to April 30. The total capacity of all of applicants' reservoirs, covered by Applications 21153 and 21262 and Permit 10829, is 430 acre-feet, and substantially less than this amount will be diverted annually because of carry-over storage and minimum pools for recreation in some of the reservoirs.

5. Unappropriated water is available to supply the applicants, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

6. The intended uses are beneficial.

From the foregoing findings, the Board concludes:

(1) Permission should be granted to amend Applications 21153 and 21262 and to change the points of diversion, places of use, and purposes of use specified in Permit 10829 (Application 16829), in accordance with petitions filed on June 22, 1964, May 5, 1965, and April 22, 1966, to the extent they pertain to each appropriation.

(2) Applications 21153 and 21262, as amended, should be approved and permits should be issued to the applicants subject to the limitations and conditions set forth in the following order.

The records, documents, and other data relied upon in determining the matter are: Applications 21153 and 21262 and all relevant information on file therewith, particularly the report of the field investigation made October 30, 1963;

U. S. Geological Survey maps of the area in question; U. S. Department of Commerce Climatological Data for California; Bulletin No. 1, "Water Resources of California," California State Water Resources Board.

ORDER

IT IS HEREBY ORDERED that permission be, and the same is, granted to amend Applications 21153 and 21262 and to change the points of diversion, places of use, and purposes of use specified in Permit 10829 (Application 16829), in accordance with petitions filed on June 22, 1964, May 5, 1965, and April 22, 1966, to the extent they pertain to each appropriation. The Executive Officer shall issue a separate order describing the changes allowed under Permit 10829.

IT IS FURTHER ORDERED that Applications 21153 and 21262, as amended, be, and the same are, approved, and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated under the permit issued pursuant to Application 21153 shall be limited to the quantity which can be beneficially used and shall not exceed 95 acre-feet per annum by storage at the following reservoirs: Buena Vista, Laguna del Sapo Pinto, San Marcos, Loma Vista, and Bootlegger Flat, between about October 31 of each year and

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purposes.

2. The water appropriated under the permit issued pursuant to Application 21262 shall be limited to the quantity which can be beneficially used and shall not exceed 85 acre-feet per annum by storage at San Marcos Reservoir between about October 31 of each year and about April 30 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purposes.

3. The maximum quantity stated may be reduced in the license if investigation warrants.

4. Construction work shall be completed on or before December 1, 1969.

5. Complete application of the water to the proposed uses shall be made on or before December 1, 1970.

6. 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.

7. 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 use, unreasonable method of use, or unreasonable method of diversion of said water.

8. Permittee shall allow representatives of the State Water Rights 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. Water entering the reservoirs or collected in the reservoirs during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittee shall, when required by the State Water Rights Board, install and maintain an outlet pipe of adequate capacity as near as practicable to the bottom of the natural stream channel in Laguna del Sapo Pinto Dam located within the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 16, T26S, R11E, MDB&M (under permit issued pursuant to Application 21153 only), and San Marcos Dam located within the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, Section 17, T26S, R11E, MDB&M (under both permits), or provide other means satisfactory to the State Water Rights Board to comply with this paragraph.

10. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the San Marcos Reservoir of all structures, trees, and other

vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California.

Dated: NOV 30 1967

/s/ George B. Maul
George B. Maul, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member