

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application )  
22654 of Buddy M. Laxague to )  
Appropriate from Smalls Canyon )  
in Modoc County )

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Decision 1304

DECISION APPROVING APPLICATION

Buddy M. Laxague having filed Application 22654 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestants 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 (predecessor of the State Water Resources Control Board) pursuant to said stipulation; the Board, having considered all available information, finds as follows:

1. Application 22654 is for a permit to appropriate 20 acre-feet per annum by storage from November 15 of each year to March 15 of the succeeding year for

recreational and domestic purposes from Smalls Canyon in Modoc County. The point of diversion is to be located within Lot 13, Section 4, T42N, R15E, MDB&M.

2. Applicant proposes to construct a reservoir with a capacity of approximately 20 acre-feet in Smalls Canyon approximately one-half mile above Cedar Creek. Cedar Creek continues approximately 6.5 miles from the Smalls Canyon junction to Middle Alkali Lake, which is within a closed basin.

3. The applicant intends to stock the reservoir with fish and will allow water to flow freely in and out of the reservoir. The only loss of water will be by evaporation from the 3-acre surface. Applicant claims this loss will be covered by riparian right during the nonstorage season. Any permit issued on Application 22654 should be for recreational purposes only.

4. Protestants Frank G. and Jean D. Watson use approximately 5 cubic feet per second, year round, from Cedar Creek for irrigation and stockwatering purposes under a right confirmed by court decree (W. E. Hill, et al. v. Herman Acty, et al., Modoc County Superior Court No. 2343). They are located approximately 3 miles below the Smalls Canyon-Cedar Creek confluence.

5. Smalls Canyon is a live stream throughout the year. During the winter months of most years there is water surplus to the uses of the protestants and other holders of prior rights, which is available to the applicant.

6. Unappropriated water is available to supply the applicant, 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.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22654 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 22654 and all relevant information on file therewith, particularly the report of the field investigation made July 13, 1967; Judgment and Decree No. 2343, Superior Court, Modoc County; and topographic maps published by the United States Geological Survey covering the area under consideration.

ORDER

IT IS HEREBY ORDERED that Application 22654 be, and it is, approved, and that a permit be issued to the applicant 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 20 acre-feet per annum by storage to be collected from about November 15 of each year to about March 15 of the succeeding year for recreational purposes. This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. After the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair.

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

4. Actual construction work shall begin on or before December 1, 1968, 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, 1970.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

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

8. 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 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.

9. 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.

10. Water entering the reservoir or collected in the reservoir 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 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 to comply with the preceding paragraph.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Fresno, California.

Dated: JUN 20 1968

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

/s/ W. A. Alexander  
W. A. Alexander, Vice Chairman

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

/s/ Norman B. Hume **ABSENT**  
Norman B. Hume, Member

/s/ E. F. Dibble  
E. F. Dibble, Member