

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24729)
of NORTHERN CALIFORNIA CONFERENCE)
ASSOCIATION OF THE SEVENTH-DAY)
ADVENTISTS)
to appropriate from Clear Creek)
in El Dorado County)

DECISION 1478

DECISION APPROVING APPLICATION

BY THE BOARD:

The Northern California Conference Association of the Seventh Day Adventists, having filed Application 24729 for a permit to appropriate unappropriated water; protest having been received; the applicant 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:

1. Application 24729 is for a permit to appropriate 250 acre-feet per annum (afa) by storage to be collected from December 31 of each year to May 30 of the succeeding year for recreation and fire protection purposes from Clear Creek in El Dorado County. The point of diversion is to be located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26, T9N, R13E, MDB&M.

The Project and Initial Proceedings on Application

2. Applicant initially proposed construction of a 250-acre-foot (af) reservoir impounded by a 35-foot-high earthfill dam for irrigation, recreation, and fire protection uses at a church-sponsored retreat and youth camp. The proposed source is Clear Creek, tributary to Steely Fork, thence Cosumnes River. The 840-acre retreat is to be located at the 4,000-foot elevation about 18 airline miles southeast of Placerville, encompassing an area known as Leoni Meadow. The property is the site of an old homestead and is presently unused.

3. The church recreational facility to be served by the reservoir will include living units, camping area, lodge, chapel, nature center, dining facilities, maintenance buildings, amphitheaters, caretaker residence, stables, and a boathouse. The facility is proposed for year-round use. Recreational use of the reservoir will include fishing, swimming, and boating.

4. Applicant intends to serve the domestic water needs at the facility with wells.

5. The application was protested by Omer and Elinor McGee who own property along Steely Fork about five miles downstream from the site of the proposed project. The protest contained a dismissal term that was unacceptable to Applicant.

6. Applicant and Protestants stipulated to proceedings in lieu of hearing. A field investigation was conducted on December 14, 1975.

The Protest

7. Protestants hold a license to divert from an unnamed stream and unnamed spring tributary to Steely Fork at a point below Applicant's proposed diversion. Water is used for irrigation of 10 acres of commercial Christmas trees and for fire protection. Since Protestant's points of diversion are above the confluence of their source with Steely Fork, Applicant's proposed diversion can have no hydraulic impact on Protestants' diversion. Accordingly, the protest is not based upon interference with rights under the license.

8. Protestants own 720 acres, a portion of which has a 3/4-mile Steely Fork frontage. They operate this portion of their property as a private camp, mainly for patrons of their Christmas tree and firewood supply business. Patrons are issued free permits to fish and camp on Steely Fork. Boy Scouts and other youth groups are also allowed to use the property free of charge. Protestants have installed two or three primitive campsites. The uses described herein are clearly beneficial uses of the waters of Steely Fork.

9. The protest centers on the potential of Applicant's project for interference with the uses described in the paragraph next above. Applicant and Protestants have conducted negotiations over protest withdrawal terms. Some agreement in principle, looking to release of water from storage, was reached; however, negotiations broke down over questions of the amount of released flow. Ultimately, Division of Water Rights (Division) recommended

protest withdrawal terms which were consistent with earlier terms proposed by Applicant in its efforts to obtain withdrawal, which proposal Protestants had rejected.

10. Applicant rejected the Division's proposed terms and withdrew previous offers to Protestants. Applicant also amended its application to delete irrigation use; the application remains as initially described in all other respects. Applicant confirmed its intent to divert during the summer (outside the diversion season) to maintain a full reservoir and possibly to irrigate, all under claim of riparian right.

Water Supply

11. As in most cases of projects proposed in relatively remote areas, the hydrological data of record are minimal. However, based upon all available information, unappropriated water is available during the diversion season December 31 to May 30, in most years, for the appropriation proposed by the amended application, subject to prior vested rights.

12. Pursuant to Board policy, any permit issued in response to the amended application shall contain that standard permit term (5i) which specifically precludes storage under the permit to offset evaporation and seepage outside the specified season. Normally, the inclusion of Term 5i presents no particular problem to the Board in developing its decision. In this case, however, we find that the record discloses that Applicant has expressed the intention of maintaining a full reservoir year round, diverting water outside the specified season under claim of riparian right, if necessary, to accomplish this end.

13. While the Board does not have approval authority over exercises of riparian rights, the Board does have clear authority to condition appropriative permits upon terms and conditions which in its judgment are required in the public interest. The primary condition of any permit is that the appropriation as described is allowed subject to prior rights.

14. It is found that in some years insufficient water is available in the stream system of which Steely Fork is a part to satisfy, throughout the period June 1 to October 31, all of the reasonable beneficial uses of riparian proprietors within said system. Approval of the instant application will in effect allow a project to go forward which will provide the occasion for diversion of water for both recreation and irrigation use under claim of riparian right. Such diversions would adversely affect other riparian diverters and, insofar as the diversion were for recreational purposes, would be of relatively low priority and would be an unreasonable interference with other riparian uses. Therefore, it is found that the public interest requires inclusion of special terms intended to prevent the project from causing unreasonable interferences with the rights of other water users and with instream beneficial uses.

15. Further, Applicant's attention should expressly be drawn to inclusion of the standard permit term (12) included in all permits and licenses which preserves the Board's continuing authority to modify the entitlement to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

16. 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.

17. The intended use is beneficial.

Environmental Considerations

18. Our consideration of environmental documents produced for this project leads us to find that Clear Creek will not support a fishery because of the minimal summer flows. The proposed reservoir, however, will support a fishery where none now exists. Further, seepage around and through the dam may be beneficial to the downstream fishery in Steely Fork.

From the foregoing findings, the Board concludes that Application 24729 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 24729 and Decisions 855, 1369, and 1451, and all relevant information on file therewith, particularly the report of field investigation made on December 14, 1975.

ORDER

IT IS HEREBY ORDERED that Application 24729 be approved and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1.a. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 250 acre-feet per annum by storage to be collected from December 31 of each year to May 30 of the succeeding year.

1.b. 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, nor shall water be diverted at any time to offset evaporation and seepage losses under any other claim of right.

1.c. During the months of January through May of each year releases from Leoni Meadow Dam shall be not less than $1\frac{1}{2}$ cfs, or the reservoir inflow, whichever is less.

1.d. During the months of June through December of all years in which the precipitation for the 12-month period prior to June 1 equals or exceeds the average precipitation, releases from Leoni Meadow Dam shall be equal to reservoir inflow.

1.e. During the months of June through December of all years in which the precipitation for the 12-month period prior to June 1 is less than the average precipitation, a minimum reservoir release of 0.4 cfs shall be maintained until the reservoir water level has been lowered 3 feet below spillway elevation. Thereafter

releases shall be equal to reservoir inflow as long as the inflow is less than 0.4 cfs, but in no event shall such releases be less than required by other conditions of this permit.

1.f. Precipitation amounts and the average precipitation shall be determined by records of the measuring station with not less than 10 years continuous record nearest to Leoni Meadow, subject to the approval of the State Water Resources Control Board.

1.g. Releases from Leoni Meadow Reservoir for the purpose of maintaining downstream flows are subject to the continuing jurisdiction of the State Water Resources Control Board and may be revised by further order of the Board, following hearing in accordance with Section 763.5, of Title 23 of California Administrative Code.

1.h. This permit does not authorize collection of water to storage for irrigation use. Any direct diversion by applicant under riparian claim of right for purposes other than to offset evaporation and seepage shall not exceed Applicant's correlative rights as against other riparians. To the extent that any such direct diversion is within Applicant's correlative right, such diversion shall not be included in computation of reservoir inflow for the purposes of paragraphs 1.c. through 1.e.

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

3. 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 water released in accordance with paragraph 1.e. of this order, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

4. Actual construction work shall begin on or before twelve months 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. 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.

9. 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.

10. 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.

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

12. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Resources Control Board, capable of measuring the flows required by clauses 1.c. through 1.e. of this permit. Said measuring devices shall be properly maintained.

13. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

14. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction shall not be commenced until the Department has approved plans and specifications.

15. No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Central Valley Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Board or State Board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a Regional Board or the State Board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

1. The Regional Board issues a waiver pursuant to Section 13269,
or
2. The Regional Board fails to act within 120 days of the filing
of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to the groundwater of water resulting from the irrigation of crops.

16. 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, Central Valley Region, or by the State Water Resources Control Board.

17. This permit is subject to the continuing authority of the State Water Resources Control Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized uses. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.

Dated: January 19, 1978

/s/ JOHN E. BRYSON
John E. Bryson, Chairman

/s/ W. DON MAUGHAN
W. Don Maughan, Vice Chairman

/s/ W. W. ADAMS
W. W. Adams, Member