

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24914	)	
CORNELIUS M. AND LUCILLE L. DEASY	)	Decision: D1552
Applicants	)	Source : Davenport Creek
JAMES MAINO, ET AL.	)	County : San Luis Obispo
Protestants	)	

DECISION APPROVING APPLICATION 24914

BY THE BOARD:

Cornelius M. and Lucille L. Deasy having filed Application 24914 for a permit to appropriate unappropriated water; protests having been received; one protest having been dismissed upon acceptance of dismissal terms; the applicant and remaining 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 Resources Control Board pursuant to said stipulations; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 24914 is for a permit to divert 16 acre-feet per annum (afa) from December 1 to March 31 to offstream storage for irrigation, domestic, recreation, stockwatering, and fire protection uses. Water will be diverted from Davenport Creek tributary to San Luis Obispo Creek at a point within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 14, T31S, R12E, MDB&M.

Applicants' Project

2. The applicants propose to store water in a 16 acre-foot offstream reservoir covering about one acre. They will pump from Davenport Creek with a

250 gallons per minute (gpm) capacity pump via a 300-foot long, six-inch diameter plastic pipe. Water will be used primarily to sprinkler irrigate 16 acres.

Protests

3. Department of Fish and Game (DFG) withdrew its protest when the protestants agreed to standard Permit Term No. 63 which requires screening for fishlife protection.

4. Protestant James F. Maino, whose land is about two miles downstream from applicants' point of diversion, alleges that the proposed appropriation would reduce the already low flow in the creek, resulting in injury to his stockwatering use and would lower groundwater levels. He claims riparian rights and reported water use of 1,215 afa in his Statement of Water Diversion and Use No. 9027.

5. Protestants Forrest W. and Beatrice P. Davis, who are about 1.5 miles downstream, assert that any reduction of the water supply in the creek would result in injury to livestock and affect groundwater recharge. They claim riparian as well as pre-1914 water use. Their Statement of Water Diversion and Use No. 9475 reports that in recent years a maximum and minimum of 183,000 and 50,000 gallons, respectively, have been used annually for stockwatering.

6. Protestants Joseph Guidetti, et al., are about 0.5 mile downstream and protest that injury would arise from depletion of the limited water supply in the creek. They claim a riparian right and report in their Statement of Water Diversion and Use No. 9049 that about 100 to 200 livestock are watered.

7. Protestants Mary V. Chaves, et al., who are downstream of the proposed project, allege that the appropriation would reduce or sever their stockwatering supply in the creek and the replenishment of groundwater. They have not filed a Statement of Water Diversion and Use.

8. Protestants Don E. and Joan A. Englert are within a mile downstream of the applicants' project. They claim a riparian right and report using the creek for stockwatering. They protest that injury would result from reduced or interrupted flow in the creek and from lowering of the groundwater table. A Statement of Water Diversion and Use has not been filed.

#### Availability of Unappropriated Water

9. Flow measurements in Davenport Creek were made by applicants at their property during the winter of 1978-79 which was a near normal stream flow year. The method of measurement has been reviewed by the staff of the Board and found to be satisfactory. Observation by the applicants and by Mr. Maino of flow conditions in the creek at Maino's property and of the rainfall data indicate that water can be appropriated without causing substantial injury to any lawful users of water from the creek. Mr. Deasy proposes to divert water from Davenport Creek to his reservoir by pumping at a rate not to exceed 0.55 cubic feet per second or about 250 gpm. Adding the acceptable bypass flow of 60 gpm, we find that Mr. Deasy could divert at any time the creek exceeds about 312 gpm. From Mr. Deasy's flow records, this flow occurred during about 29 days during the collection season of December 1 to March 31. To divert 16 acre-feet at a rate of 250 gallons per minute requires 14.4 days.

10. When 60 gpm is flowing past the diversion point, downstream flow conditions are such that all requirements are being satisfied.

11. The proposed uses are beneficial.

#### Environmental Considerations

12. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) and the State Guidelines. The Board determines that the project will not cause any significant adverse effect on the environment.

Record in this Matter

13. The records, documents, and information used in deciding this matter are: The files of Application 24914 and all information on file therewith, especially the Engineering Staff Analysis of Record dated August 9, 1979; Statements of Water Diversion and Use S9027, S9049, and S9475; DWR Bulletin No. 18, "San Luis Obispo County Investigation", May 1958; DWR Groundwater Level Data files; and U. S. Department of Commerce "Climatological Data".

Conclusion

14. From the foregoing findings, the Board concludes that Application 24914 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Application 24914 be approved and that a permit be issued to the applicants subject to vested rights. The permit shall contain all applicable standard permit terms (5i, 10, 11, 12, and 13\*) in addition to the following conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 16 acre-feet per annum to be collected from December 1 of each year to March 31 of the succeeding year.

The maximum rate of diversion to offstream storage shall not exceed 0.55 cubic foot per second.

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.

\*The Board keeps a list of standard permit terms.  
Copies of these are obtainable upon request.

2. Construction work shall begin within two years of the date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

3. Construction work shall be completed before December 1, 1983.

4. Complete application of the water to the proposed use shall be made before December 1, 1984.

5. 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.

6. Permittee shall install and maintain devices satisfactory to the Board to measure (a) water diverted into the reservoir from Davenport Creek, and (b) water flowing in Davenport Creek past the point of diversion.

7. Permittee shall during the period from December 1 through March 31 bypass a minimum of 60 gallons per minute. The total streamflow shall be bypassed whenever it is less than 60 gallons per minute.

8. In accordance with Section 1603 and/or Section 6100 of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of such diversion. The construction, operation, or maintenance costs of any facility required pursuant to this provision shall be borne by the permittee.

9. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the flow(s) required by the conditions of this permit. Said measuring device shall be properly maintained.

Dated: March 20, 1980

ABSENT  
Carla M. Bard, Chairwoman

ABSENT  
William J. Miller, Vice-Chairman

/S/ L. L. MITCHELL  
L. L. Mitchell, Member

/S/ JILL B. DUNLAP  
Jill B. Dunlap, Member

/S/ F. K. ALJIBURY  
F. K. Aljibury, Member