

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In The Matter of Application 24260)

WILLIAM R. and SUZANNE C. BANKS)

Applicants)

KEN CORTNER, ET AL.,)

Protestants)

Decision: D1556

Source: South Fork Esperanza Creek

County: Calaveras

DECISION APPROVING APPLICATION 24260

BY THE BOARD:

William R. and Suzanne C. Banks having filed Application 24260 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on November 25, 1975; applicants and protestants having appeared and presented evidence; the evidence at said hearing having been duly considered; the Board finds as follows:

Substance of Application

1. Application 24260 is for storage of 10 acre-feet per annum (afa) from January 1 to March 30 for stockwatering purposes. Water is collected from South Fork Esperanza Creek tributary to Esperanza Creek thence North Fork Calaveras River. The point of diversion is above New Hogan Reservoir and is located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 15, T5N, R13E, MDB&M.

Applicants' Project

2. The applicants constructed an earthfill dam in 1973 which was 500 feet long and 24 feet high, with a freeboard of four feet, forming a reservoir with a surface area of one acre and a capacity of 10 acre-feet (af). It was constructed under specifications of the U. S. Soil Conservation Service.

3. Subsequent to the hearing a letter was received from Protestant Smith alleging that the reservoir had been altered to increase its capacity.

4. A field investigation was conducted on February 4, 1977. The investigation confirmed that the surface area and capacity of the reservoir had been increased. The significance of the alterations could not be determined at that time due to drought conditions and the lack of a previous survey of the reservoir. The investigating engineer recommended a complete survey of the reservoir.

5. A complete survey of the reservoir was made on March 1, 1977. It was obvious that further alterations had been made since the February 4, 1977 investigation. The March 1 survey revealed the following:

- a. The dam had 1.7 feet of freeboard and measured 32.5 feet from the spillway to the downstream toe.
- b. The maximum surface area of the reservoir at spillway elevation had been increased from about 1.5 acres to 2.9 acres.
- c. The reservoir capacity had been increased from about 10 af at the old high-water line to about 20 af at the new high-water line.
- d. An upstream reservoir was full and contained about one acre-foot of water
- e. The high water line resulting from the increased spillway height in the lower reservoir was 2.85 feet higher than the water surface of the existing upstream reservoir.

6. The California Division of Safety of Dams was advised of the details of the project. That agency contacted the applicants and advised them that they would have to obtain its approval for the dam or modify it so that it was no longer of jurisdictional size. An inspection by Safety of Dams on November 4, 1977 confirmed that the spillway had been lowered, the reservoir capacity decreased to less than 15 acre-feet, and that the project was no longer

of jurisdictional size. While the decrease satisfies the Division of Safety of Dams requirements, the reservoir capacity must not exceed 10 acre-feet to comply with any permit issued.

Protests

7. Protests against this application were filed by Ken Cortner, William F. Clayton, Catherine Masse' and Donald J. and Peggy T. Smith.

8. All protestants are downstream water users on South Fork Esperanza Creek and claim injury to riparian rights. Protestants Smith also hold water right Applications 5648C-3 and 24252. Most of the protestants indicated that they would not object to the dam if an outlet pipe were installed so that flow outside of the storage season could be bypassed. They claim that without an outlet pipe they are injured by: lower property values; increased insurance rates due to loss of water for fire protection; loss of esthetics; loss of irrigation water for existing orchards; polluted water that cannot be used for drinking and household uses; loss of water for stockwatering.

9. An outlet pipe and measuring devices are vital to protect prior downstream water rights. Under authority of Section 781 of Title 23 of the California Administrative Code, issuance of a permit will be withheld until an outlet pipe and measuring devices are installed.

Availability of Unappropriated Water

10. There are no streamflow records for South Fork Esperanza Creek. Therefore, availability of unappropriated water has been estimated from rainfall data obtained at the West Point recording station located eight miles north of the project area. According to those records, rainfall ranges from 20.6 to 52.8 inches per year, with an average annual rainfall of 37.7 inches. This was then applied to the drainage areas to determine annual runoff. The drainage area above the Banks' dam is about 220 acres, while the drainage area between the

Banks' dam and the Smith dam is about 225 acres. Using a very conservative approach, taking only the minimum year and assuming only 10% of the precipitation results in runoff, between 31 and 37 acre-feet would be developed above the Banks dam, and between 32 and 39 acre-feet would be developed below the Banks dam and above the Smith dam. About half of the rainfall occurs during the proposed season between January 1 and March 30. Those quantities represent near minimum conditions and are still sufficient for both storage projects. However, applicants' dam requires an outlet pipe so that summer flows can be bypassed to satisfy downstream riparian rights.

11. The proposed use is beneficial.

Environmental Considerations

12. The 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, and the Board determines that there will be no significant effect on the environment as a result of the project.

Conclusions

13. From the foregoing findings, the Board concludes that Application 24260 should be approved and, after compliance with requirements in the order below, a permit should be issued subject to the conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 24260 be approved and a permit issued to the applicants subject to vested rights. The permit shall contain all applicable standard terms (5i, 6, 10, 11, 12, and 13)* in addition to the following conditions:

*This Board maintains a list of standard permit terms. Copies may be obtained upon request.

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 acre-feet per annum to be collected from January 1 of each year to March 30 of the succeeding year.

2. Permittees shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

3. Permittees shall install and maintain devices satisfactory to the Board to measure (a) water flowing into the reservoir, and (b) water flowing below the downstream toe of the dam.

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

5. After the initial filling of the storage reservoir, permittees' rights under this permit extends only to water necessary to keep the reservoir full by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

IT IS FURTHER ORDERED that under authority of Section 781 of Title 23 of the California Administrative Code, issuance of the above permit be withheld until the applicants supply evidence that (1) an outlet pipe and measuring devices satisfactory to the Board have been installed, and (2) that the reservoir capacity does not exceed 10 acre-feet or file a second application for the storage in excess of 10 af. If such evidence is not received within six months from the date of this decision, or such further time as the Board, for good cause, may allow, Application 24260 will be cancelled without further Board action.

If the application is cancelled pursuant to this provision, the Board's

Executive Director is authorized to refer the matter to the Attorney General for appropriate legal action.

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