

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25366)	Decision: 1562
GEORGE B.* AND RUTH V. HEIBEL)	Source: Unnamed Streams
Applicants)	County: Napa
FRANKLIN F. AND JANINE OFFNER, ET AL.)	
Protestants)	

DECISION APPROVING PETITION TO CHANGE THE PLACE
USE AND APPROVING APPLICATION 25366

BY THE BOARD:

George B. and Ruth V. Heibel having filed Application 25366 for a permit to appropriate unappropriated water; protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided by Section 737 of Title 23, California Administrative Code; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; a petition to change the place of use having been filed; the petition and the evidence received at the investigation having been duly considered; the Board finds as follows:

Substance of the Application and the Petition

1. Application 25366 is for 78 acre-feet per annum (afa) by storage to be collected from January 1 to April 1 of each year in four existing reservoirs on unnamed streams that merge into one unnamed stream on applicants' property. This stream is tributary to Pope Creek thence Putah Creek thence Lake Berryessa in Napa County. The points of diversion are located within the W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 12, T9N, R6W, MDB&M. The water is to be used for irrigation, stockwatering and recreation.

2. The reservoirs are formed by earthfill dams ranging in height from 18 feet to 24.5 feet. The dams were constructed between 1957 and 1971. The

*Subsequent to the investigation Mr. Heibel passed away. We have received no word yet as to disposition of the estate.

surface areas of the reservoirs range from one acre to 2½ acres and the volumes are 11 acre-feet (af), 12 af, 22 af, and 33 af. There are no outlet pipes in any of the dams. The water is to be used for stockwatering of 60 beef cattle, recreation and irrigation of 30 acres of Christmas trees.

3. A petition was received on April 16, 1979, requesting approval of an additional seven acres in the W½ of NW¼, Section 12, T9N, R6W, MDB&M, to be added to the place of use for irrigation. This additional acreage will be used for growing Christmas trees.

Protests

4. Franklin and Janine Offner protested Application 25366 on the basis of alleged injury to rights under licensed Application 9574 and permitted Application 19374. Both filings cover storage in reservoirs on the unnamed stream, downstream from the Heibel reservoirs. Licensed Application 9574 is for storage of 150 afa in Duvall Lake from November 1 to April 30 for irrigation, frost protection, stockwatering, and recreation. Permitted Application 19374 is for storage of a total of 70 afa from November 1 to May 1 in two smaller reservoirs (only one is existing) upstream from Duvall Lake. The purposes of use are irrigation, domestic, stockwatering, and recreation.

5. Topinvest Holdings, Ltd., (now Lakesprings Ranch N.V.) protested on the basis of alleged injury to rights under licensed Applications 15196 and 16488 and a reservoir on the unnamed stream about 2,000 feet upstream of its confluence with Pope Creek. Application 26313 for the latter reservoir was just recently filed, thus making it junior to the Heibel filing. Licensed Application 15196 is for storage on an adjacent unnamed stream tributary to Pope Creek; therefore, it cannot be affected by the applicants' project. Licensed Application 16488 includes diversion from Pope Creek to offshore storage. Water is used for irrigation of permanent pasture and stockwatering.

6. Both protestants indicated concern regarding the safety of the applicants' dams. Dam safety is not normally an issue within the jurisdiction of the Board, and the height of the dams places them outside of the jurisdiction of the Division of Safety of Dams. The spillway for Dam No. 1 was cut down following inspection by the Division of Safety of Dams to remove the dam from jurisdiction. There are no structures or habitation between applicants' dams and protestant Offner's dams. The Offner reservoirs could absorb or reduce the peak of any high flows caused by failure of applicants' dams.

Availability of Unappropriated Water

7. The unnamed streams in the project area are not gauged; however, evidence indicates that flow generally ceases by June. The watershed for the Heibel reservoirs consists of approximately 220 acres and is part of the 827-acre watershed that drains into Duvall Lake. The watershed tributary to the Heibel reservoirs will have an average winter runoff yield of about 215 af. The remaining portion of the watershed tributary to Duvall Lake should produce an average winter runoff yield of 590 af. Subtracting the appropriations of Heibel and Offner from the above yield leaves approximately 460 af available for Application 26313 below Duvall Lake. Licensed Application 16488 of Lakesprings Ranch can be easily satisfied by runoff from the much larger Pope Creek drainage area. Unappropriated water is normally available to supply Application 25366.

8. The proposed uses are beneficial.

9. There may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in Decision D869. During such years, unless replacement water is provided on an exchange basis, permittees will have to release water collected to storage during the preceding collection season into Lake Berryessa. There may also be dry years in which other downstream prior appropriations will not be satisfied. Therefore, release facilities will be necessary for the permittees' reservoirs.

Effect of the Proposed Change

10. The petition for change does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

Environmental Considerations

11. This decision authorizes a project which constitutes only a minor modification to land, water and/or vegetation, and such project is thereby exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with Section 15104, Chapter 3, Title 14, California Administrative Code.

Record in this Matter

12. The records, documents and other data relied upon to determine this matter are: the file of Application 25366 and all relevant information on file therewith including the Engineering Staff Analysis dated May 19, 1980; the files of permitted Application 19374 and licensed Applications 9574, 15196, 16488 and 18949; United States Department of Commerce, National Oceanic and Atmospheric Administration, Climatological Data for California; and, Topographic maps published by the U. S. Geological Survey covering the area under consideration.

Conclusions

13. From the foregoing findings, the Board concludes that the petition to change the place of use should be approved, Application 25366 should be approved, and a permit should be issued to the applicants subject to the conditions in the order following.

ORDER

IT IS HEREBY ORDERED that the petition to change the place of use under Application 25366 be approved.

IT IS FURTHER ORDERED that Application 25366, as amended, be approved and that a permit be issued to the applicant subject to vested rights. The permit shall

contain all applicable standard permit terms (5i, 6, 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 a total of 78 acre-feet per annum to be collected from January 1 of each year to April 1 of the succeeding year as follows: (1) 22 acre-feet per annum in #1 Reservoir; (2) 12 acre-feet per annum in #2 Reservoir; (3) 33 acre-feet per annum in #3 Reservoir, and (4) 11 acre-feet per annum in #4 Reservoir.

2. Permittee shall install and maintain outlet pipes of adequate capacity in his dams as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoirs which is not authorized for appropriation under this permit may be released.

3. Permittee shall install and maintain in the reservoirs staff gages meeting the approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoirs.

Permittee shall supply the staff gage readings on or about October 1 of each year to the State Water Resources Control Board.

4. To the extent the reservoirs covered under permitted Application 19374 and licensed Application 9574 do not fill by April 1 of each year, permittees shall release before May 15 water stored during the current storage season. This term does not require the release of water stored in prior years, nor does it require release of water to make up deficiencies caused by the use or release during the current storage season of water stored in the reservoirs covered under permitted Application 19374 and licensed Application 9574.

*The Board maintains a list of standard permit terms. Copies are available upon request.

5. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in Decision D869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa.

6. Complete application of the water to the authorized use shall be made by December 1, 1984.

Dated: July 17, 1980

/S/ CARLA M. BARD
Carla M. Bard, Chairwoman

/S/ WILLIAM J. MILLER
William J. Miller, Vice-Chairman

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

ABSENT
Jill B. Dunlap, Member

ABSENT
F. K. Aljibury, Member