

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25238)  
JOHN C. HERSHEY, ET AL  
Applicant  
TERRA BELLA IRRIGATION DISTRICT  
Protestant

Decision: 81-1573  
Source: Unnamed Stream  
County: Tulare

DECISION APPROVING APPLICATION 25238

BY THE BOARD:

John C. and Juanita I. Hershey, dba Rivermere A-A Ranches, having filed Application 25238 for a permit to appropriate unappropriated water; protests 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 stipulations; the Board, having considered all available information, finds as follows:

Substance of the Application:

1. Application 25238 is for a permit to divert 40 acre-feet per annum (afa) to storage from December 1 to May 1 from an unnamed stream tributary to Deer Creek thence Tulare Lake Basin, for stockwatering, fire protection and recreation. Water will be diverted from a point in the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 19, T23S, R30E, MDB&M.

Applicant's Project

2. The project has been completed with the assistance of the U. S. Soil Conservation Service. The applicant originally proposed to collect water in a 40 acre-foot onstream reservoir, covering five surface acres behind a 20-foot high dam. Investigation indicates that the actual area and capacity of the reservoir are about 2.2 acres and 21

acre-feet, respectively. An outlet pipe has been installed through the base of the dam. Applicant owns about 15,000 acres along Deer Creek.

Protest:

3. Terra Bella Irrigation District (Terra Bella) protested the application on the basis of a pre-1914 appropriative right. Terra Bella diverts about 700 acre-feet per year from Deer Creek for irrigation at diversion facilities located about 15 miles downstream from the applicant's dam. Surplus water during the winter is diverted by Terra Bella for spreading to recharge groundwater underlying District lands. Terra Bella also purchases water from the U. S. Water and Power Resources Service through the Friant-Kern Canal. Protestant Terra Bella and the applicant have signed an agreement under which Terra Bella withdraws its protest and the applicant agrees not to exercise its riparian right on Deer Creek for irrigation of its extensive lands bordering the creek as long as the reservoir under Application 25238 is in use.

Prior Board Decisions:

4. Previous Board decisions indicate that no unappropriated water normally exists in the Tulare Lake Basin watershed. However, permits have been issued in cases where protests have been resolved and where hydrologic facts are such that the project could cause no measurable diminution of flow to holders of prior downstream rights. (Application 25153 of Costa and Application 25117 of Semi Tropic Water Storage District.)

Availability of Unappropriated Water:

5. Past Board decisions have determined that in nearly all years all stream flow tributary to the Tulare Lake Basin is either diverted directly to use or is effective in recharging the groundwater basin. Thus, absent special circumstances, no unappropriated water is available in Deer Creek and in other streams tributary to Tulare Lake Basin.

Discussion:

6. The agreement between Terra Bella and applicant has the potential to maintain Deer Creek stream flow at higher levels than would normally be expected. Irrigation of only about two acres would deplete stream flow by an amount equal to depletion caused by applicants' reservoir. The agreement may be viewed as a trade-off that is beneficial to both parties and all other users downstream.

7. The U. S. Forest Service, the State Division of Forestry and Tulare County agree that the reservoir provides a permanent source of water for wildlife and fire protection. Tulare County states that the reservoir prevents flood damage to a county road crossing downstream.

8. Applicant's reservoir is used for non-consumptive purposes. The only depletion to stream flow caused by the reservoir is evaporation from the reservoir surface and the minor loss from stockwatering.

9. Applicant states that they have developed and increased the flow from several springs downstream from the dam which tend to replace any water stored under Application 25238. Also the water from several springs feeding the reservoir would probably dry up before reaching protestant's point of diversion if the dam were not there, thus reducing the depletion of downstream flows resulting from the project.

10. Storage of water as proposed under Application 25238 will have little if any effect on prior downstream rights. The beneficial uses for both private and public purposes are in the public interest. A term should be imposed limiting the reservoir to its present capacity which may be less than the 40 acre-feet applied for.

11. Unappropriated water for the limited purposes proposed in this application is available to the extent any increase in flow from the springs results from applicant's development together with the effect of applicant's agreement with Terra Bella.

12. The last sentence of item Paragraph (2) on page 2 of the agreement reads as follows:

*"In the event the applicants or their successors in interest undertake to develop lands for irrigated agriculture using riparian water rights on Deer Creek, this permit shall be revoked on application by any interested party."* (emphasis added)

If this sentence were used verbatim as a condition it would unnecessarily limit the Board's authority to reassess the matter in the event applicant commences to exercise his riparian rights. The intent of the condition can be accomplished by using the following language as a permit term:

*"In the event the permittee or successors in interest undertake to develop lands for irrigated agriculture in exercise of riparian rights on Deer Creek, the Board may revoke the permit or license on petition by any interested party."*

#### Environmental Considerations:

13. This Board decision authorizes a project which constitutes only a minor modification to land, water and 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

14. The records, documents and information used in deciding this matter are: The files of Applications 25238, 25117, and all information on file therein, especially the Engineering Staff Analysis of Record dated September 25, 1980, and past Board Decisions relating to the Tulare Lake Basin.

#### Conclusion:

15. From the foregoing findings, the Board concludes that Application 25238 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.

ORDER

IT IS HEREBY ORDERED that Application 25238 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, 9, 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 40 acre-feet per annum to be collected from December 1 of each year to May 1 of the succeeding year provided, however, that the storage reservoir shall not be enlarged beyond its existing capacity.

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 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.


3. 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 (or license) 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.

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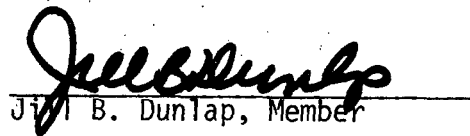
\*The Board keeps a list of standard permit terms. Copies of these are obtainable upon request.

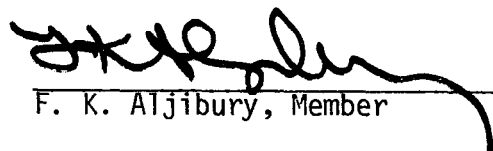
4. In the event the permittee or successors in interest undertake to develop lands for irrigated agriculture in exercise of riparian rights on Deer Creek, the Board may revoke the permit or license on petition by any interested party.

Dated: June 18, 1981

  
Carla M. Bard, Chairwoman

  
L. L. Mitchell, Vice-Chairman

  
J. B. Dunlap, Member

  
F. K. Atjibury, Member