

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 26077)

FRED P. FINERTY, ET. AL.)

Applicant)

HELEN COUSER)

Protestant)

Decision: 1579

Source: Unnamed Stream

County: Shasta

DECISION APPROVING APPLICATION 26077

BY THE BOARD:

Fred P. and Dorothy E. Finerty, August P. and Cindy Odom, Nels Wilbur, Janice Pratt, Michael B. Frankel, and John and Janet Van Eperen, having filed Application 26077 for a permit to appropriate unappropriated water; a 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 stipulations; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 26077 is for a permit to collect 14 acre-feet per annum (afa) to storage from November 1 to April 1 from an unnamed stream tributary to Glendenning Creek thence Old Cow Creek, for recreation and fish and wildlife enhancement. Water will be collected at a point within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 8, T32N, R1E, MDB&M.

Applicant's Project

2. The project consists of an earthen dam 15 feet high and 150 feet long forming a 14 acre-foot reservoir with a surface area of two acres. The reservoir was constructed in 1970.

Protests

3. The application was protested by Helen Cousers. Mrs. Cousers holds adjudicated rights to 1.18 cubic feet per second under the Cow Creek Decree, entered in the Superior Court of Shasta County on August 25, 1969 as Decree 38577. Mrs. Couser claims that the applicant's reservoir will intercept the return flow from the Grindlay-Williams Ditch, thereby depriving her of water to which she is entitled under the Decree.

Availability of Unappropriated Water

4. The watershed above the applicant's reservoir is approximately 180 acres in area at an average elevation of 2400 feet. The average annual rainfall is 45 inches. Using a runoff factor of 50%, about 340 acre-feet would flow into the reservoir in an average year. Most of this rainfall occurs during the winter and early spring months when there is very little need for water by downstream users.

Discussion

5. Investigation indicates that irrigation return flows have been retained in the reservoir during the irrigation season designated in the Cow Creek Decree. This is water that Mrs. Couser uses under her decreed right and should be allowed to bypass the reservoir. The most positive way to do this would be to construct a ditch or pipeline around the north side of the reservoir to intercept the return flows and convey them to the stream channel below the reservoir.

6. The irrigation season defined in the Cow Creek Decree extends from March 1 to October 31. Applicant's season of storage overlaps this season during March. However, March is normally a month of ample stream flow and should be allowed as part of the storage season.

7. During the investigation it was observed that the reservoir spillway was badly eroded and could possibly cause the dam to fail. A term will be imposed requiring that the spillway be reconstructed to proper standards before storing any water under the permit to be issued.

Environmental Considerations

8. 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

9. The records, documents, and other data relied upon in determining this matter are: Application 26077 and all information on file therein, especially the Engineering Staff Analysis of Record dated July 19, 1981; the Cow Creek Adjudication, Superior Court of Shasta County, No. 38577; topographic maps published by the U. S. Geological Survey covering the watershed and project area; U. S. Department of Commerce, Climatological Data.

Conclusions and Recommendations

10. From the foregoing findings, the Board concludes that Application 26077 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 26077 be approved and that a permit be issued to the applicant subject to vested rights. The permit shall contain all applicable standard permit terms (6, 9, 10, 11, 12, 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 14 acre-feet per annum to be collected from November 1 of each year to April 1 of the succeeding year.

2. Construction work shall be completed by December 1, 1984. Complete application of the water to the authorized use shall be made by December 1, 1985.

3. Rights under this permit are and shall be subject to existing rights determined by the Cow Creek Adjudication, Superior Court, Shasta County, No. 38577 insofar as said adjudicated rights are maintained and such other rights as may presently exist.

4. In order to bypass irrigation return flows to satisfy downstream rights defined in the Cow Creek Decree, Permittee shall construct a ditch or pipeline, satisfactory to the State Water Resources Control Board, around the north side of the reservoir to intercept flows or install an outlet pipe through the dam to allow return flows entering the reservoir to flow downstream.

5. No water shall be stored in the reservoir until the spillway is reconstructed under the direction of a registered civil engineer or pursuant to the U. S. Soil Conservation Service specifications.

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

6. 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 to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the diversion season.

7. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to the results of a comprehensive analysis of the availability of unappropriated water in the Sacramento River Basin. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing.

8. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

9. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water. The Board shall advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Central Valley Project or the State Water Project operators. The Board shall notify the permittee of curtailment of diversion when it finds that no water is available for diversion under this permit.

For the purpose of initially determining supplemental Project water required for inbasin entitlements, the following definitions shall apply:

a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the Board for maintenance of water quality and fish and wildlife. Export diversion and Project carriage water are specifically excluded from the definition of inbasin entitlements.

b. Supplemental Project water is defined as water imported to the basin by the Projects, and water released from Project storage, which is in excess of water required for Project export and Project inbasin deliveries.

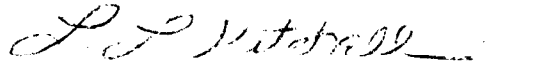
Notice of curtailment of diversion under this term shall not be issued by the Board until:

1. Project operators jointly develop and demonstrate to the Board a reasonably accurate method of calculating supplemental Project water.
2. The Board has approved the method of calculating supplemental Project water and has confirmed the definitions of inbasin entitlements and supplemental Project water after public hearing.
3. The Project operators have notified the Board that the release of supplemental Project water is imminent or has occurred. Such notice should include the times and amounts of releases or potential releases.


4. The Board finds that supplemental Project water has been released or will be released.

Dated: October 15, 1981


Carla M. Bard, Chairwoman


L. L. Mitchell, Vice-Chairman


Jill B. Dunlap, Member


F. K. Aljibury, Member

