

finds as follows:

Substance of Applications

1. (a) Application 24128 is for a permit to appropriate 2.3 acre-feet per annum (afa) by storage to be collected from April 1 to May 15 of each year for fire protection purposes from Palomares Creek in Alameda County. The point of diversion is to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 18, T3S, R1W, MDB&M.

(b) Application 24476, as amended at the hearing, is for a permit to appropriate 2.5 afa by storage to be collected from April 1 to May 15 of each year for domestic, stockwatering, recreational, wildlife enhancement and fire protection purposes (RT 7, 8). The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 18, T3S, R1W, MDB&M.

Applicants' Projects

2. (a) The Ripley project, covered by Application 24128, consists of an onstream flashboard dam approximately eight feet high constructed in 1959 (RT 35). The applicant seeks a permit to provide water for fire protection (RT 36).

(b) The Doolittle project, covered by Application 24476, is also an onstream flashboard dam approximately nine feet, six inches in height. It was constructed in 1963 (RT 5). The water is used for stockwatering, wildlife enhancement, and fire protection. Water is not, however, used for domestic or recreational purposes (RT 18-20).

The flashboards for both projects are installed about the first of April after the winter storms and are removed in late September or early October before the winter storms ordinarily occur. Both applicants use water from wells fed by the underflow of Palomares Creek for domestic and irrigation purposes. There was considerable testimony that the existence of the reservoirs increases the underflow and improves the applicants' ability to pump from their wells (RT 19-23, 35,36). However, the evidence does not justify inclusion of these uses in any permits issued (RT 19).

Protestants and Interested Parties

3. A. L. Bruner filed a formal protest to both applications on the grounds that the projects decrease the flow in the creek to the injury of his downstream vested rights. Mr. Bruner holds License 1900 (Application 6103) and also claims a riparian right to divert from Palomares Creek. Mr. Bruner appeared at the hearing.

4. Many other interested parties, living downstream from the applicants' projects, appeared in opposition to the applications on the grounds that the projects lessen the amount of water available to them during the summer. Most of these parties claim to be riparian to the creek and to have wells dependent on the underflow.

Water Supply and Availability of Unappropriated Water

5. Palomares Creek heads at about the 1,600 foot elevation in the Coast Range and flows northwesterly into San Lorenzo Creek, thence into Don Castro Reservoir. The drainage area above protestant Bruner is about nine square miles and above Dr. Doolittle's point of diversion is about seven and three-quarters square miles. The Palomares Creek watershed is steep and fairly heavily wooded.

There is no streamflow gaging station on Palomares Creek, but streamflow observations, testimony at the hearing, and other evidence indicates flow characteristics, from which it can be concluded that unappropriated water is available to supply the applicants during the requested season.

The controversy regarding these applications centers on the question of whether these projects have an adverse impact on the quantity of water available downstream during the summer months. However, the evidence indicates that the use of water as proposed in the applications, subject to suitable conditions, will not cause injury to the downstream users of water but rather will result in increased percolation, more Palomares Creek underflow, and thus more water available to satisfy downstream lawful users' needs.

Beneficial Uses

6. The record indicates that there exists a fire hazard in the Palomares Creek area (RT 41-47) and that the impoundment of water as proposed by Applications 24128 and 24476 will be of benefit should a fire occur (RT 25, 36). Evidence was presented at the hearing that water will be used under Application 24476 for stockwatering and wildlife enhancement (RT 5, 18). These are beneficial uses of water.

Environmental Effect

7. Although the potential environmental impacts of these two projects generated a great deal of controversy and discussion, extensive environmental analysis indicates that these projects individually and cumulatively will not have a significant effect on the environment. Negative Declarations to that effect for Applications 24128 and 24476 have been prepared and circulated in accordance with administrative regulations; all environmental review required by the California Environmental Quality Act of 1970 has been completed.

Other Considerations

8. Concern was expressed by residents of the area that the projects pose a hazard to streambed users in the case of a sudden release of water when the dams are dismantled in the fall (RT 103, 108-110). Testimony was presented at the hearing that the flashboards are removed one at a time, at two-hour intervals until the dams are dismantled (RT 32, 55-57) and that it generally takes two days to remove the dams. The maximum possible release flows from these dams are small compared to the winter flows and pose little hazard. However, to eliminate potential hazard, any permits issued to the applicants will be subject to the conditions that the applicants remove no more than one flashboard in a two-hour period, remove the flashboards only in the fall except in an emergency, and notify all downstream property owners requesting notification one week prior to the dismantling of the dams.

From the foregoing findings, the Board concludes that Application 24128 should be approved for collection of water to storage for the purpose of use, quantity and season requested, that Application 24476 should be approved for collection to storage of 2.5 afa during the season requested for stockwatering, fire protection and wildlife enhancement uses, and that permits 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 24128 be approved and Application 24476 be approved in part and that permits be issued to the applicants subject to vested rights and the following conditions:

1. (a) The water appropriated pursuant to Application 24128 shall be limited to the quantity which can be beneficially used and shall not exceed 2.3 acre-feet per annum by storage to be collected from April 1 to May 15 of each year.

(b) The water appropriated pursuant to Application 24476 shall be limited to the quantity which can be beneficially used and shall not exceed 2.5 acre-feet per annum by storage to be collected from April 1 to May 15 of each year.

2. These permits do not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

3. The amounts authorized for appropriation may be reduced in the license if investigation warrants.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1979.

5. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

6. Pursuant to California Water Code Section 100 all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority

of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

7. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

8. 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.

9. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

10. Once the flashboards have been installed on or after April 1, they shall not be removed until the fall of the year as provided in paragraph 11 below, except in the event of an emergency in which case the provisions of paragraph 11 do not apply.

11. Downstream owners who desire notification of the dismantling of the flashboard dams shall request in writing such notification once of the permittee, who shall thereafter notify these owners by mail or personally one week prior to the date each year the dismantling will take place.

12. The permittee shall remove only one flashboard in any two-hour period. Permittee may, however, after approval by the State Water Resources Control Board, implement another method of releasing water at a suitable rate.

Dated:

March 18, 1976

We Concur:

W. W. ADAMS
W. W. Adams, Chairman

W. DON MAUGHAN
W. Don Maughan, Vice Chairman

ROY E. DODSON
Roy E. Dodson, Member

JEAN AUER
Jean Auer, Member