STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 96-028

DISMISSING COMPLAINTS ON
CRAWFORD DITCH (EL DORADO COUNTY)

WHEREAS:

1. In 1990, the State Water Resources Control Board (SWRCB) received complaints from the Department of Fish and Game (DFG) and two private property owners concerning El Dorado Irrigation District's (EID) diversion of water from the North Fork Cosumnes River into Crawford Ditch. Crawford Ditch was constructed during the gold rush era and was originally used for mining purposes. Over the years, there has been substantial change in the purpose of use, place of use, and amount of water diverted into the ditch. EID expended approximately $5 million in 1990 and 1991 to repair breaks in portions of the ditch and reduce substantial seepage losses. EID claims pre-1914 rights to divert approximately 15 cfs or the full capacity of the ditch for irrigation and domestic use from April 1 to November 30.

   The complaints raise the following principal issues:

   a. Does EID's diversion of water into Crawford Ditch adversely affect the fishery resources in the North Fork Cosumnes River?

   b. Does EID's diversion adversely affect downstream persons with paramount riparian rights to the water?

   c. Has a substantial portion of EID's claimed pre-1914 right been lost due to nonuse?

   d. Has a substantial portion of EID's claimed pre-1914 right been lost due to waste and unreasonable use?[1]

2. EID provided the following response to the complaints.

   a. EID made a good faith effort to resolve DFG's complaint regarding fishery resources. EID voluntarily constructed a fish screen and fish ladder at the diversion point; however, it did not undertake fishery studies requested by DFG.

   b. The SWRCB has limited jurisdiction over disputes regarding riparian and pre-1914 water rights. The relative priority and authorized diversion quantities

---

[1] Prior to the recent reconstruction, sections of Crawford Ditch had losses ranging from 80 percent to 95 percent.

of riparian and pre-1914 water rights are under the jurisdiction of the courts.[2]

c. Seepage losses from Crawford Ditch are not unreasonable; the losses are typical of gold mining era water systems throughout the foothill counties.

d. The repairs to Crawford Ditch are consistent with a prior SWRCB decision and with State law and policy. In Decision 1587, the SWRCB directed EID to undertake conservation projects and to put the conserved water to beneficial use.[3] Also, Water Code section 1011 ensures that no forfeiture of a valid appropriative right will occur because of water conservation measures.

3. The SWRCB is of the opinion that EID has mischaracterized the water conservation issue throughout the review of these complaints. EID claims that the SWRCB is considering forfeiture of conserved water diverted under a valid pre-1914 right. However, the issue before the SWRCB is the magnitude of the valid right prior to reconstruction of the project. EID claims a pre-1914 right based on the capacity of the ditch, but actual diversion over many years may have been only a fraction of that amount. The SWRCB is firmly committed to water conservation, fully intends to implement Water Code section 1011, and strongly encourages continued use of conserved water to which an agency is entitled. The SWRCB is also of the opinion, however, that credit for conservation should be based on actual savings due to improvements in operations under existing water rights.

4. The SWRCB has considered the arguments of the complainants

---

[2]Water Code section 1051 provides:

> The Board for the purposes of this division may:
> (a) Investigate all streams....
> (b) Take testimony in regard to the rights of water or the use of water thereon or therein.
> (c) Ascertain whether or not water heretofore filed upon or attempted to be appropriated is appropriated under the laws of this State.

Section 1052 provides that the diversion and use of water subject to this division, other than as authorized, is a trespass. Both administrative and civil sanctions may be applied to persons unlawfully diverting water. Thus, the SWRCB is authorized to inquire into the basis and extent of EID's alleged pre-1914 right and to take action appropriate to the findings of its investigation.

[3]The EID contentions as summarized herein are accurate. However, nothing in Decision 1587 authorizes EID to divert and use water for which it does not have an adequate legal right.

and the respondent and makes the following conclusions.

a. The complaint filed by Jay Schneider is based, in part, upon alleged interference with a riparian right that is senior to EID's claimed pre-1914 appropriative rights. It is not necessary to determine the extent of EID's pre-1914 rights for Mr. Schneider to protect a water right that is entitled to priority over EID's pre-1914 rights.

b. The court, not the SWRCB, is the better forum for the adjudication of the allegation that EID's diversion interferes with a riparian right.

c. The DFG has not provided fishery studies to support its complaint.

THEREFORE, BE IT IS RESOLVED THAT:

The complaints regarding Crawford Ditch are dismissed.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 18, 1996.

Maureen Marché
Administrative Assistant to the Board