

DHS

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the Matter of Application 16498 ) Source: Pilarcitos Creek and  
by Coastside County Water District ) an unnamed stream  
County: San Mateo

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Decision No. D 903

Decided: May 14, 1958

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Appearances at Hearing conducted at San Francisco on September 26, 1957, and Half Moon Bay on September 27, 1957, by Henry Holsinger, Chairman, and W. P. Rowe, Member, and on December 6, 1957, in San Francisco by W. P. Rowe, Member, State Water Rights Board.

For the Applicant:

Coastside County Water District

Roy W. Seagraves, attorney

For the Protestants:

Cleo A. and Norma Sare  
Chris A. and Anna Mickelson  
Antone P. and Margaret Dutra  
William and Viola Lawrenz  
Albert and Eda M. Adreveno  
Robert M. and Wylmarie Smith  
Guiseppe and Iolanda Berta  
Carlo Repetto Nursery, et al.  
Enrico L. Lagomarsino  
Marsh, Beffa and McCarthy  
Andrew, John A. and Marie Podesta  
Della Gardner

Franklin A. Dill, attorney

For Interested Party:

City and County of San Francisco

McMorris M. Dow  
Deputy City Attorney

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## DECISION

### Substance of the Application

Application 16498 is for a permit to appropriate a total of 1.5 cubic feet per second of unappropriated water from Pilarcitos Creek tributary to Pacific Ocean and from an unnamed tributary to Pilarcitos Creek in San Mateo County from November 1 of each year to May 31 next for municipal and domestic purposes. Diversion will be made from Pilarcitos Creek at a point within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  and from the unnamed stream within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 10, both in T5S, R5W, MDB&M. Water will be pumped from ponds created by small earth and concrete dams in the stream beds and will be conveyed to the place of use within the Coastside County Water District by means of a welded steel pipeline 12 inches in diameter and 30,000 feet in length.

The place of use, in general, includes bottom lands northerly and westerly of Pilarcitos Creek from a point within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 14, T5S, R5W, MDB&M, extending westerly to the town of Half Moon Bay, and the coastal plain from about 2 miles south to 4 miles north of the town of Half Moon Bay, and extending from the coast inward an average distance of about  $\frac{3}{4}$  of a mile. It is contemplated that the project will serve the City of Half Moon Bay and vicinity having a present population of 3,000.

### Protests

Fifteen protests were received against approval of the application. The protestants claim rights to the use of water from Pilarcitos Creek by virtue of riparian ownership and by use beginning prior to the effective date of the Water Commission Act, that they divert either direct from the creek or from wells adjacent thereto

and that the appropriation sought by the applicant will seriously reduce their surface water supply and lower the ground-water table beneath their lands. Use of water by the protestants is for irrigation, domestic and/or stockwatering purposes with the season of diversion extending year-round during years of subnormal rainfall.

#### Answers

In answer to the protests, the applicant denies that approval of the application will seriously reduce the protestants' water supply or that it will reduce the water table under the protestants' lands. The applicant denies that the protestants have been making use of the water from Pilarcitos Creek for irrigation purposes, or otherwise, as claimed in their respective protests for the period of years claimed or the quantities claimed.

The applicant also alleges that the taking of water by it at the points of diversion designated will utilize surface water of less than 15 per cent of the drainage basin within the watershed serving the protestants, "That prior to the filing of the application all of the protestants and/or their predecessors in title or interest to all lands abutting upon Pilarcitos Creek within the Pilarcitos Watershed, alienated, sold, granted, conveyed, or transferred all water or water diversion rights on Pilarcitos Creek to the Spring Valley Water Works, grantee, or grantor,..."

#### Hearing

Application 16498 having been completed in accordance with the provisions of the Water Code and applicable administrative rules and regulations of the State Water Rights Board (hereinafter referred to as the "Board"), was set for public hearing under the provisions

of the California Administrative Code, Title 23, Waters, before the Board commencing on Thursday, September 26, 1957, at 10:00 o'clock a.m. in San Francisco, California. Of the hearing the applicants and protestants were duly notified. The hearing extended through Friday, September 27, 1957, in Half Moon Bay, California, and was continued to and concluded on December 6, 1957, in San Francisco, California. The following discussion is based upon evidence received at said hearing.

#### Description of the Watershed

According to Board Exhibit 5, Pilarcitos Creek rises near the southwest corner of T4S, R5W, MDB&M, in the easterly slopes of Montara Mountain and the westerly slopes of the Spring Valley and Cahill Ridges in San Mateo County and flows southeasterly about 7.5 miles thence in a southerly direction about 1.5 miles, thence it turns southwesterly breaking through the coastal mountains and courses about 3 miles to the town of Half Moon Bay, from where it turns northwesterly and flows about 1.5 miles to the Pacific Ocean. The watershed above the lowermost protestant has an area of about 26 square miles, ranging in elevation from about 40 feet at its lowest point to 1,944 feet at Scarper Peak.

Runoff from the upper 6.5 square miles of the watershed is controlled by Pilarcitos Dam near the northwest corner of Section 33, T4S, R5W, MDB&M, and Stone Dam near the center of Section 3, T5S, R5W, MDB&M, of the City of San Francisco Water Department. Most of this water is exported out of the watershed. Stone Dam, which is located about 2 miles downstream from Pilarcitos Dam, is about 7 stream miles from the ocean.

Applicant's Exhibit No. 4 indicates that there are approximately 360 acres of contributory watershed between Stone Dam and the applicant's point of diversion on Pilarcitos Creek.

Applicant's point of diversion just mentioned is about 0.5 mile downstream from Stone Dam at an elevation of about 430 feet. The points of diversion of the various protestants and other landmarks are approximately the following distances in stream miles downstream from the applicant's point of diversion: Sare, (existing dam at upper point of diversion) 1.3; Mickelson, 2.4; Davis, 2.4; Canadas, 2.8; Dutra, 3.1; Lawrenz, 3.5; Gardner, 3.5; Carlo Repetto Nursery, 4.0; Marsh, Beffa and McCarthy, 4.0; Berta, 4.5; Lagomarsino, 4.5; Smith, 4.75; Adreveno, 5.0; Arroyo Leon, 5.2; Podesta, 5.5; and Pacific Ocean, 6.7.

The main tributaries below the applicant's proposed points of diversion are (1) an unnamed stream from the southeast, entering Pilarcitos Creek within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 14; (2) an unnamed stream from the north, entering Pilarcitos Creek within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 22; (3) Corinda Los Trancos Creek, from the north (immediately below protestant Lawrenz); (4) Apanolio Creek, from the north (immediately below protestants Marsh, Beffa and McCarthy); and (5) Arroyo Leon from the south, at the town of Half Moon Bay.

#### Other Hearing Evidence and Testimony

Board's Exhibit No. 6 is a report of a field investigation made on April 4, 1957, by J. J. Heacock, an engineer on the Board's staff, and includes a description of the applicant's project as follows:

"The Coastside County Water District has a surface diversion from an unnamed stream and five wells in bottom

lands along the left side of Pilarcitos Creek, both installations begin within the  $N\frac{1}{2}$  of  $NE\frac{1}{4}$  of Section 10, T5S, R5W, MDB&M, on property owned by the District. The diversion from the unnamed stream is by means of a small rubble masonry dam which diverts the water into a 4-inch pipe that extends to the well field. The well field includes five 12-inch cased wells, one being 65 feet deep and the others 35 feet deep. Bedrock was evidenced at the bottom of all wells. The wells are connected by a manifold to a  $2\frac{1}{2}$ -inch centrifugal pump directly connected to a five-horsepower electric motor. At the time of the investigation, 115 gallons per minute were being pumped from the wells and 35 gallons per minute were being diverted from the unnamed stream (equivalent to 0.33 cfs). From the well field water is conveyed to the place of use through a 12-inch steel pipeline. The water is chlorinated at a point located on protestant Sare's property. Water purchased from the City of San Francisco is delivered from Stone Dam into the main at the well field.

"The place of use, in general, includes bottom lands northerly and westerly of Pilarcitos Creek from a point within  $SW\frac{1}{4}$  of  $NW\frac{1}{4}$  of Section 14, T5S, R5W, MDB&M, to the town of Half Moon Bay, and the coastal plain from about 2 miles south to 4 miles north of the town of Half Moon Bay. Protestants Sare, Mickelsen, Davis, Canadas, Dutra, Lawrenz, Carlo Repetto Nursery, Berta, Lagomarsino, and Podesta have property within the District."

At the time of the investigation, flow of Pilarcitos Creek and its principal tributaries at or near their junction with Pilarcitos Creek was as follows: Pilarcitos Creek one-quarter mile above applicant's point of diversion, 0.5 cubic foot per second; Pilarcitos Creek at protestant Sare's existing dam at his upper point of diversion in the  $NW\frac{1}{4}$  of  $NW\frac{1}{4}$  of Section 14, T5S, R5W, MDB&M, 0.56 cubic foot per second; unnamed stream (1) 0.31 cubic foot per second; Pilarcitos Creek immediately below the confluence with (1), 1.32 cubic feet per second; unnamed stream, (2), 0.32 cubic foot per second; Corinda Los Trancos Creek about 0.5 cubic foot per second; and Apanolio Creek, approximately 4.0 cubic feet per second; Pilarcitos Creek approximately one-quarter mile downstream from Apanolio Creek, approximately 6.6 cubic feet per second; Arroyo Leon, 1.4 cubic feet per second; and Pilarcitos Creek at State Highway No. 1 Bridge, about 8 cubic feet per second.

Applicant's Exhibit No. 5 is a map entitled, "City and County of San Francisco - Public Utilities Commission - San Francisco Water Department - Lands in Fee Riparian Rights - Pilarcitos Creek - San Mateo County", dated May 9, 1957. From this exhibit, it appears that the City and County of San Francisco holds the riparian claim to the land within Ranchos Corral de Tierra adjacent to and northerly of Pilarcitos Creek and Rancho Miramontes adjacent to and southerly of the creek, and extending along the creek from the ocean easterly to fractional Section 22, T5S, R5W, MDB&M. In connection with the city's claimed water rights in that area Mr. George D. Burr, Assistant General Manager and Assistant Chief Engineer, San Francisco Water Department, testified (R.T. p. 167): "...San Francisco insofar as this area outlined in yellow is concerned regards...such title as it may have as an estoppel against objecting to our diversions at higher elevations." (The lands of protestants Lawrenz, Gardner, Marsh, Beffa and McCarthy, Carlo Repetto Nursery, Berta, Lagomarsino, Smith, Adreveno, and Podesta are within this area.)

Mr. Burr further testified (R.T. p. 162) that "The area of Pilarcitos Creek between the map segment outlined in blue and the map segment outlined in yellow, the City and County of San Francisco makes no claim to the riparian rights within that area." (This area includes portions of Sections 14, 15, and 22, T5S, R5W, MDB&M, and the lands of protestants Sare, Mickelsen, Davis, Canadas, and Dutra.)

It was stipulated (R.T. p. 21) by counsels for applicant and for the protestants that the protestants are the owners of the lands that they claim to own and that the lands are contiguous to Pilarcitos Creek.

Applicant's Exhibit No. 1 is a tabulation showing use of water by protestants as claimed in their protests, together with measurements of flow made by the engineer for the Board on April 4, 1957. Claimed use by the protestants is added progressively in downstream order and compared with accumulated downstream flow, showing that use of water is made by the protestants on a part-time basis and that, as conditions existed as of that date (April 4, 1957), there was considerable water over and above protestants' needs.

Applicant's Exhibit No. 2 is a tabulation of daily rainfall at "Diversion Site" and flow of Pilarcitos Creek at protestant Sare's dam for a 77-day period extending from January 20 through April 7, 1957, together with a summary of other related information. According to that exhibit, measured runoff during the period mentioned represented only 10% of the total rainfall in the watershed, and the applicant's average diversion (0.225 cfs) represented 19.7% of the average flow (1.183 cfs) at protestant Sare's dam.

Applicant's Exhibit No. 3 shows a record of diversion by Coastside County Water District for the years 1952 through August, 1957. The tabulation indicates that water was diverted in every month in 1952 and 1953; February, March, April, May, and December, 1954; January through June, both inclusive, with no record given for the period July through December, 1955; all months but October in 1956; and all months through August in 1957, the last month of record. According to the applicant, the amount of water sought under Application 16498 will include the amount heretofore diverted rather than an additional 1.5 cubic feet per second over and above prior use (R.T. p. 36).



Mr. L. Cedric Macabee, engineer for the applicant, testified (R.T. p. 48), "The sources of water in this are three: Rainfall, leakage through the Stone Dam, and magmatic water coming to the surface through faults in this area. The major source of water, however, is from rainfall..."

Applicant's Exhibit No. 12 is Pacific Gas and Electric Company's records of monthly kilowatt hours used by the various protestants having electric powered pumps that divert either direct from Pilarcitos Creek or wells adjacent thereto. The records are continuous from August, 1950, through September, 1957, giving records for 6 full seasons and include records for 10 of the protestants. There are also complete records for 7 users in the 1951-52 season, 9 users from October 1, 1952, through September, 1955, and 10 users from October, 1955, through September, 1957. The total kilowatt hours used include a small amount for uses other than pumping but, in general, are indicative of the pattern and magnitude of irrigation.

Protestant Antone P. Dutra testified (R.T. p. 305) that his place has been irrigated for over 50 years and that Pilarcitos Creek has always flowed to the ocean during the wintertime (R.T. p. 390).

#### Discussion

The available evidence does not sustain the contention of the applicant, as set forth in the answers to protests, that the protestants or their predecessors in interest have relinquished their rights to the use of water from Pilarcitos Creek. The evidence indicates that any depreciation of such rights are only as against future claims of right of the City and County of San Francisco, and that any third party seeking to appropriate by virtue of a permit from the Board must do so subject to all prior vested rights,

including riparian rights, of the downstream users.

The information available in the record is not readily adaptable to a definite determination of the requirements or prior usage of water from Pilarcitos Creek by the protestants. The most informative data are the power consumption records contained in applicant's Exhibit 12. There are no records of pump tests available nor sufficient data as to pump sizes, pumping heads, pump efficiencies, etc., necessary to convert kilowatt hours consumption to pumping time or magnitude of diversion. However, these records do give an indication of the probable pumping during the season under consideration (November 1 - May 31) as against other periods of the year. The following tabulation compares the average monthly percentage of KWH consumption for irrigation pumping for the five-season period (October 1, 1952, through September 30, 1957) with the average monthly distribution of runoff in per cent of average seasonal, as shown in Bulletin No. 1, State Water Resources Board, "Water Resources of California", dated 1951, page 115 (Board Exh. 2).

<u>Month</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sept</u>
% of Use	14.8	8.6	3.3	1.7	1.0	1.7	4.1	6.1	10.6	16.1	16.4	15.6
%Runoff	1.3	1.1	5.4	17.4	26.9	27.7	10.4	3.2	2.3	1.6	1.4	1.3

This tabulation indicates that on the average only 26.5% of the annual irrigation use by the protestants occurs during the applicant's requested season of diversion, November 1 through May 31, whereas 92.1% of the runoff occurs during this same period.

The only continuous record of flow of Pilarcitos Creek available is a daily measurement at protestant Sare's point of diversion for a 77-day period between January 21 and April 7, 1957. The average flow for the sole two full months of record was 0.48 and 2.32 cubic feet per second during February and March. Rainfall in the

area, which is credited by the applicant's witness as being the primary source of water in the creek, was 4.42 and 5.98 inches, respectively, at Half Moon Bay during February and March, which was 101% of the long-term mean during the former month and 174% during the latter.

On April 4, 1957, an engineer for the Board determined that with 0.50 cubic foot per second flow about one-quarter mile upstream from the applicant's point of diversion and water being extracted by the applicant at a rate of about 0.3 cubic foot per second, there was a flow of 0.56 cubic foot per second available to the uppermost protestant, and side stream tributaries added to the flow progressively downstream until some 8 cubic feet per second were flowing into the ocean.

Any water flowing into the ocean from Pilarcitos Creek is clearly in excess of the needs of the downstream users and to the extent such excess exists, it is available for appropriation by proper application to the Board, such as the one now under consideration. The applicant's point of diversion on Pilarcitos Creek receives runoff from the area below Stone Dam which amounts to about one-half square mile. The lowermost protestant has a catchment area of some 19 square miles tributary to his point of diversion.

In view of the amount of precipitation which occurs on the average in the area during the requested diversion season (21.62 inches at Half Moon Bay - 92.1% of average annual), the relatively small area of watershed subject to control by the applicant, and the indication of wastage to the ocean, it is apparent that the applicant can divert during the major portion of the requested season without adversely affecting downstream use under prior rights. It is

recognized, however, that during the beginning and end of the proposed season or during years of subnormal rainfall flow may not be available to meet all downstream prior rights and accordingly, permit issued to the applicant should be conditioned so as to eliminate those times when water is clearly not available for appropriation.

#### Conclusions

The evidence indicates and the Board finds that at times there is unappropriated water in the sources designated in Application 16498, that the intended uses are beneficial, and that, properly conditioned, the application may be approved and permit issued without injury to any lawful user of water.

#### ORDER

Application 16498 having been filed, protests having been received, a hearing having been held by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16498 be, and the same is hereby approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 1.5 cubic feet per second, which amount may be diverted from about November 1 of each year to about May 31 of the succeeding year. The total amount diverted under this permit and under existing rights of permittee in the sources named herein shall not exceed 1.5 cubic feet per second.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before September 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights 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.

8. Diversion under this permit shall be limited to such times and to the extent that there is surface flow of water in Pilarcitos Creek immediately above its confluence with Arroyo Leon at Half Moon Bay and at the existing dam (protestant Sare's upper diversion) near the northerly boundary of the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 14, T5S, R5W, MDB&M.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 14th day of May, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member