

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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| In the Matter of Applications) | Sources: 16927 - Hicks Creek |
| 16927 and 16928 by Guadalupe) | 16928 - Pheasant Creek |
| Development Company) | County: Santa Clara |

Decision No. D 918

Decided: December 4, 1958

Appearances at hearing conducted at San Jose on March 11, 1958, by Henry Holsinger, Chairman, W. P. Rowe, Member, and Ralph J. McGill, Member, State Water Rights Board:

For the Applicants:

Guadalupe Development Company

James Rolph, III

For the Protestants:

Leon M. Athenour and Estate
of Albert Athenour, Deceased

John N. Burnett,
Attorney

Sylvain Le Deit and
Marcella Le Deit

Russell V. Roessler
Attorney

Oran L. Slaght and
Ethel B. Slaght
John Hulvey and
Florence Hulvey

Henry Robidoux,
Attorney

Santa Clara Valley Water
Conservation District

Herbert C. Jones,
Attorney

Almaden Vineyards and the
Almaden Water Company

John H. Pascoe,
Attorney

DECISION

Substance of the Applications

Application 16927 by Guadalupe Development Company, filed March 12, 1956, and amended August 16, 1957, is for a permit to appropriate 0.10 cubic foot per second (cfs) from Hicks Creek by direct diversion to be diverted from June 1 to November 30 of each year and 100 acre-feet per annum (afa) by offstream storage to be collected between December 1 and May 31 of each season for domestic, irrigation, and recreational purposes. Statements in Application 16927 are to the effect that domestic and irrigation use contemplated is for a subdivision on a net area of 1,000 acres serving 5,000 people and that applicant may form a mutual water company.

Application 16928 by Guadalupe Development Company, filed March 12, 1956, and amended August 16, 1957, is for a permit to appropriate 0.025 cfs from Pheasant Creek by direct diversion to be diverted from June 1 to November 30 of each year and 50 afa by storage to be collected between December 1 and May 31 of each season for domestic, irrigation, and recreational purposes. Statements in Application 16928 are to the effect that Applications 16927 and 16928 are companion filings for identical place and character of use.

Protests

Numerous protests against the approval of one or both of the subject applications were received. Reasons advanced by the protestants against the applications are to the effect that approval thereof would result in the impairment of water supply used and/or claimed by protestants under prior rights. No conditions are stated whereby protests may be disregarded and dismissed.

Notice and Hearing

Applications 16927 and 16928 were set for hearing under the provisions of the California Administrative Code, Title 23, "Waters" before the State Water Rights Board (hereinafter called the Board) on Tuesday, March 11, 1958, in the Civic Center, San Jose, California. Applicant and protestants were duly notified of the hearing.

Testimony of Applicant

James Rolph, III, testified in substance (R.T. pp. 19-48) that he and his wife are operating under the fictitious name of the Guadalupe Development Company; that applicant's property comprises 2,128 acres, a portion of which lies within the watersheds of Hicks and Pheasant Creeks and is riparian thereto; that applicant plans to undertake a piecemeal development of the unappropriated waters of Hicks and Pheasant Creeks by rehabilitating an existing water system consisting of a reservoir having a capacity of approximately 75 acre-feet and a pipeline extending across Guadalupe Creek and serving the operators of the Guadalupe Quicksilver Mines with water for domestic and stockwatering purposes; that applicant contemplates the organization of a water company to supply water to the Guadalupe holdings for future development into home sites and for domestic purposes and if possible to then take care of the requirements of landowners in the Blossom Hill area; that applicant is looking into the best procedure of creating a water company but is not certain whether it will be done as an accommodation to a purchaser of Guadalupe properties or whether a mutual water company or a public utility under the jurisdiction of the California Public Utilities Commission will be organized; that to rehabilitate the existing system and construct the additional works proposed would cost about \$100,000 (R. T. p. 33); that means of

financing the proposed development have not been determined; that the property is for sale but its marketability is contingent upon the development of a water supply; that the time of commencement and completion of construction and application of water to beneficial use is indefinite by reason of the lack of financing and the need to develop the water system before the property can be marketed or used for subdivision purposes.

Mr. Rolph further testified that applicant had no written or definite plan as to how the works required would be constructed so as to put to beneficial use the waters sought for appropriation under the subject applications, nor did applicant present evidence to show by what means water sought for appropriation under Application 16928 would be diverted and transported to the place of storage.

Summary and Conclusions

Applicant has clearly failed to produce evidence of its intent and ability to proceed promptly and diligently with commencement and completion of construction and application of the water to beneficial use.

Section 778 of the Board's rules (23 Calif. Adm. Code 778) provides:

"Reasonable Promptness Required. A reservation of water may not be made by one who has no immediate plan or purpose to proceed promptly and diligently with construction of the necessary diversion works and beneficial use of the water. The Board will ordinarily be liberal in its allowances of time both for completing an application and for making full beneficial use of the water where progress is

being made, or where a serious effort is being made to overcome obstacles which prevent progress, but the Board will not countenance any attempt to reserve water for future use where there is no intent to proceed promptly with development."

The Board has consistently maintained that issuance of a permit requires not only a showing of the availability of unappropriated water and of intended beneficial use but that the applicant have a definite project in mind and display not only the ability but also the intent to proceed with reasonable diligence with the construction work and application of the water to the proposed uses (see Decisions D 884, D 893, and D 907).

Clearly, from the evidence produced, the applicant seeks to make a reservation of water through the expedient of an application without intent to proceed diligently and promptly with the project. To overlook the deficiencies such as are apparent in the subject applications would, therefore, be contrary to the Board's established policy as above outlined.

In view of the foregoing conclusions which require denial of the applications, the Board does not deem it necessary to determine the issues raised by the protests.

ORDER

Applications 16927 and 16928 by Guadalupe Development Company for permits to appropriate unappropriated water having been filed with the former Division of Water Resources, protests having been received, jurisdiction of the administration of water rights including the subject applications having been subsequently

transferred to the State Water Rights Board, said applications having been amended and a public hearing having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 16927 and 16928 be, and the same are, hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 4th day of December, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member