

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 20766
and 21447 of Bodega Bay Public Utility
District to Appropriate from Finley
Creek in Sonoma County

Decision D 1265

DECISION APPROVING APPLICATIONS

Applications 20766 and 21447 of Bodega Bay Public Utility District having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on March 12, 1964, conducted by Board Chairman Kent Silverthorne; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 20766 is for a permit to appropriate 700 acre-feet per annum (afa) by storage from December 1 of each year to May 30 of the succeeding year for domestic, municipal, industrial, recreational and salinity control purposes from Finley Creek in Sonoma County. The point of diversion is to be located within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 13, T6N, R11W, MDB&M.

Application 21447 is identical to Application 20766 except as to the quantity of water. It is for an additional 330 afa by storage.

2. Finley Creek originates west of Sugarloaf Mountain and south of Coleman Valley Road at an approximate elevation of 1050 feet and flows in a general southerly direction approximately 3.5 miles to its confluence with Salmon Creek. Salmon Creek continues in a general westerly direction approximately 4 miles to the Pacific Ocean.

3. The applicant, Bodega Bay Public Utility District, hereinafter referred to as the District, plans to construct an earth dam approximately a quarter of a mile upstream from the mouth of Finley Creek. The dam will create a reservoir with a surface area of 28 acres and a capacity of 1030 acre-feet. It will have a concrete spillway and an 18-inch outlet pipe at the bottom of the dam. Water stored in the reservoir is to be released to augment flows in Salmon Creek where the District pumps from infiltration galleries in the streambed gravels at existing pumps approximately 1.5 miles downstream from the proposed reservoir. The water will be distributed to the District's customers through an existing system which is to be expanded. The water released from the reservoir will also prevent sea water intrusion into the infiltration galleries.

4. At the time of the hearing on Applications 20766 and 21447, the applicant indicated that the construction of an atomic energy plant at Bodega Head by the Pacific Gas and Electric Company (PG&E) was important to the financial feasibility of the District's project and that the District

had no immediate plans to proceed with its project (RT 12). The PG&E has since abandoned its plans to build an atomic energy plant at Bodega Head. The record of the hearing is lacking in a showing of both the necessity of an additional water supply for the District and the ability of the District to proceed with the construction of the project.

However, since the hearing, during the years 1964-65, the area of the District has increased from 217 acres to 1734 acres; 782 acres of the additional lands included are subject to development requiring water service. Service has been extended to Doran Park by the installation of 10,000 feet of water main, a 100,000-gallon storage tank has been added to the system, and service is being established to Bodega Marine Laboratory by construction of an 8-inch main 11,400 feet long. Also, this construction will enable the District to furnish water service to areas along the west shore of Bodega Bay which are not presently within the District. In addition, the District is receiving inquiries for additional water service for proposed developments.

An estimate of the population trend shows that the number of inhabitants within the District will double in the next ten years. Salmon Creek and Finley Creek are the only feasible sources available to the District to meet this increased demand for water.

5. There are no records of the flows of Finley Creek. Its average annual runoff has been estimated to be

4200 acre-feet by the Department of Water Resources and 1174 by the District. An operation study based upon the District's estimate of runoff shows that its proposed reservoir would have overflowed in four out of seven years during the period 1958 through 1964.

6. Protestants Pedrazzi and Finley own property bordering Finley Creek and claim pre-1914 rights to divert water from the Creek. Their protest is based on the apprehension that construction of the reservoir will interfere with their access to the creek for stockwatering, cause the flooding of roads, and will subject their property to slides. The District intends to relocate existing roads, prevent slides, and, as the water from the reservoir will be filtered and treated before being introduced into its system, stock may water from the reservoir. Any permits issued on Applications 20766 and 21447 should contain a term providing for access to the reservoir for stockwatering purposes.

Protestant Welling, claiming pre-1914 appropriate and riparian rights, uses water from Salmon Creek for the irrigation of approximately 16 acres of pasture, for domestic purposes and stockwatering. Any permits issued on Applications 20766 and 21447 should require the permittee to maintain a live stream in Salmon Creek at this protestant's property from June 1 through November 30.

7. There is unappropriated water available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

8. The intended use is beneficial.

9. Protestant Department of Fish and Game opposes the applicant's project on the grounds that it will inundate spawning gravels used by steelhead and salmon and interfere with their migration. Finley Creek contains approximately 50 percent of the spawning gravels of the Salmon Creek watershed, most of which would be inundated by the proposed reservoir (RT 64 and 65).

The only portion of Salmon Creek that is now open to the public for fishing is a one-quarter mile stretch between Highway 1 and the Pacific Ocean. Due to this fact and the creek's proximity to the Russian River, it is not extensively used by fishermen (RT 67 and 68). Salmon Creek and its tributaries contribute to ocean commercial fishing by affording the necessary spawning grounds for salmon.

A proposal by the Department of Fish and Game which would protect the fishery resource in Finley Creek by trapping fish and planting their eggs in an existing hatchery at the expense of the applicant was rejected by the applicant as too expensive. The initial cost of such

a program would be approximately \$20,000, and it would have an annual cost of approximately \$5,000. A proposal by the District that the Department of Fish and Game construct additional spawning grounds that would serve as a substitute for the spawning gravels that will be inundated by the dam was likewise rejected by the Department of Fish and Game as too costly (RT 79).

10. It is the declared established policy of the State that water for domestic purposes is the highest use of water (Water Code Section 106) and in considering applications to appropriate water the Board is guided by that policy (Water Code Section 1254). Water Code Section 1257 requires the Board to consider the relative benefits to be derived from all beneficial use of water, including water necessary for the preservation of fishlife as well as the uses proposed in these applications. After weighing the need for domestic and municipal use of water in the area against the partial destruction of the Salmon Creek watershed as a fishery resource, it is concluded that, consonant with the above-cited code sections, the project proposed by the District should be constructed.

11. The Department of Fish and Game has requested that if the applicant is allowed to proceed with the project, the following conditions should be imposed in any permits:

- (a) A reservation of 250 acre-feet of the natural inflow stored at the proposed reservoir

every month during the period from December 1 through March 31, the water to be released in quantities absolutely necessary for the preservation of fishlife at the discretion of and upon the direction of the Department.

(b) A flow of one cubic foot per second or the natural flow, whichever is less, be maintained in Finley Creek during the months of April and May.

These conditions are reasonable and necessary to preserve fishlife existing in Finley and Salmon Creeks, are in the public interest, and should be included in the permits issued on Applications 20766 and 21447 except that the water subject to release should not exceed 250 acre-feet in any 30-day period.

From the foregoing findings, the Board concludes that Applications 20766 and 21447 should be approved and that permits should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

ORDER

IT IS HEREBY ORDERED that Applications 20766 and 21447 be, and the same are, approved, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. (a) The water appropriated pursuant to permit issued on Application 20766 shall be limited to the amount which can be beneficially used and shall not exceed 700 acre-feet per annum by storage to be collected from about December 1 of each year to about May 30 of the succeeding year.

(b) The water appropriated pursuant to permit issued on Application 21447 shall be limited to the amount which can be beneficially used and shall not exceed 330 acre-feet per annum by storage to be collected from about December 1 of each year to about May 30 of the succeeding year.

2. This permit does 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 maximum amount herein stated may be reduced in the license if investigation warrants.

4. Actual construction work shall begin on or before September 1, 1967, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

5. Construction work shall be completed on or before December 1, 1969.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1975.

7. 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.

8. 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.

9. Permittee shall allow representatives of the State Water Rights 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.

10. From December 1 through March 31, permittee shall release water from its reservoir at the request of the Department of Fish and Game. Such releases need not exceed the accumulated natural inflow to the reservoir during the same period or 250 acre-feet in any 30-day period, whichever is less.

Permittee shall also release, during the months of April and May, for the preservation of fish, one cubic foot per second or the natural flow of Finley Creek, whichever is less.

11. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the natural stream channel, or provide other means satisfactory to the State Water Rights Board to comply with this paragraph.

12. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

13. Permittee shall allow protestants Pedrazzi and Finley access to the reservoir for the purpose of obtaining water for stock.

14. Permittee shall release sufficient water to maintain a live stream in Salmon Creek at protestant Welling's property during the period from June 1 through November 30 of each year.

15. Permittee shall allow public access to the reservoir for recreational purposes consistent with public health and safety.

16. Construction of the dam shall not be commenced until the Department of Water Resources has approved plans and specifications.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California.

Dated: FEB 15 1967

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member

