

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 21854)
)
of Le Grand-Athlone Water District) Decision 1426
)
to appropriate from Deadman and)
)
Dutchman Creeks in Merced County.)
_____)

DECISION DENYING APPLICATION

BY BOARD VICE CHAIRMAN ROBIE AND MEMBER DODSON:

Le Grand-Athlone Water District having filed Application 21854 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on January 30, 1973; 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 21854 is for a permit to appropriate 125 cubic feet per second (cfs) by direct diversion, year-round, not to exceed 37,500 acre-feet per annum (afa), and 15,000 afa by storage to be collected year-round for irrigation, recreation, and incidental domestic purposes from Dutchman and Deadman Creeks in Merced County.

The points of diversion are to be located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 23, and within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 26, respectively, all in T8S, R16E, MDB&M.

1426

At the hearing the applicant withdrew its request to appropriate 125 cfs of water by direct diversion (RT 19). Under the terms of an agreement with the U. S. Bureau of Reclamation (hereinafter referred to as Bureau) the applicant agreed not to divert water during the period July 1 through September 30 if surface flow will reach the San Joaquin River (RT 18).

Applicant's Project

2. The applicant seeks to appropriate water which will be collected in proposed Marguerite Reservoir which is a unit of the U. S. Corps of Engineers' (hereinafter referred to as Corps) Merced County Streams Flood Control Project. The Corps' project has been authorized by Congress and money has been appropriated for advance planning and design work which is scheduled to commence in October of this year. Work on all of the seven reservoirs which constitute this flood control project is scheduled to commence by the spring of 1980 (RT 23).

Marguerite Reservoir will have a capacity of 13,000 acre-feet of which 7,000 acre-feet is allocated to flood control and 6,000 acre-feet is allocated to irrigation (RT 12). The entire cost allocated to irrigation will be subject to repayment by local interests. Repayment to the United States will be made under contracts to be negotiated with the Bureau (Applicant's Exh. 1).

Ability of the Applicant to Proceed With Its Project With Diligence

3. Marguerite Reservoir is to be constructed by the Corps and may be integrated operationally and financially with the



Bureau's Central Valley Project (Applicant's Exh. 1). Unlike most applicants, the District has no power to control the construction or progress of the project. Even though the project has been authorized by Congress, it is subject to further advance planning by the Corps which will involve going back and reevaluating "any questions or problems that have been brought up concerning the project" (RT 23). It is a possibility that of the seven reservoirs in the project, one might be exchanged for another that is not now on the approved list (RT 24). Another environmental impact statement will have to be prepared (RT 25).

The District's plans with regard to the project are indefinite. When Application 21854 was filed, almost ten years ago, the District planned to increase the storage capacity of Marguerite Reservoir by raising the dam (RT 14). At the present time the District has not made a final determination as to how large the reservoir should be (RT 14). Further, there is no definite time in the future when such a decision will be made (RT 16). The District at the present time is uncertain as to whether it or the Corps would enlarge the reservoir (RT 27). However, at the hearing a representative of the Corps called by the applicant stated that the first time he had heard of enlarging the reservoir was at that time (RT 26). The applicant's project may not be economic unless imported water is also stored in the enlarged reservoir. This would involve negotiations with the Bureau which apparently have not yet commenced (RT 29). Finally, the applicant has not made the necessary studies to determine whether the watershed will produce enough water to justify an enlarged reservoir or what quantities of water are needed to satisfy stream rights (RT 28, 30).



The applicant has no definite plans for its project and has neither the intent nor the ability to proceed with the construction of its project and place the water to beneficial use within a reasonable time. The applicant is not in compliance with Board Rule 776 which provides:

"776 Reasonable Promptness Required. An application will be denied when it appears after hearing that (a) the applicant does not intend to initiate construction of the works required for the contemplated use of water within a reasonable time and thereafter diligently prosecute the construction and use of water to completion, or (b) the applicant will not be able to proceed within a reasonable time, either because of absence of a feasible plan, lack of the required financial resources, or other cause."

From the foregoing findings the Board concludes that Application 21854 should be denied.

IT IS HEREBY ORDERED that Application 21854 be denied without prejudice to filing another application for the same or similar project at such time as the applicant is prepared to proceed with the proposed appropriation of water within a reasonable time.

Dated: June 7, 1973

We Concur:

RONALD B. ROBIE

Ronald B. Robie
Vice Chairman

W. W. ADAMS

W. W. Adams, Chairman

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN

W. Don Maughan, Member