

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23948)
of Contra Costa County Flood Control)
and Water Conservation District to)
Appropriate from Arroyo del Cerro)
and Little Pine Creek in Contra Costa)
County.)

Decision 1452

DECISION DENYING APPLICATION

BY BOARD MEMBER DODSON:

Contra Costa County Flood Control and Water Conservation District having filed Application 23948 for a permit to appropriate unappropriated water; protests having been received; public hearings having been held before the State Water Resources Control Board on February 5, November 12 and November 19, 1973; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Application

1. Application 23948 is for a permit to appropriate 160 acre-feet per annum (afa) and 375 afa by storage to be collected, year-round, from Arroyo del Cerro and Little Pine Creek, respectively, for irrigation, recreation, and flood control purposes in Contra Costa County.

The points of diversion are to be located within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 29, and the SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 32, TIN, RIW, MDB&M.

Applicant's Project

2. The applicant proposes to construct dams on Arroyo del Cerro and Little Pine Creek which flow in a northwesterly direction to enter Pine Creek in the vicinity of the City of Walnut Creek. The dams are designed primarily for flood control purposes (RT 3, Vol. I). Pine Creek has flooded on an average of three or four times every ten years. There will be a saddle between the reservoirs formed by the dams, and during high winter flows water from both sources will discharge through a common spillway to be constructed at the Little Pine Creek Dam (RT 7, Vol. I). In addition to flood control the applicant's project will have recreational benefits, principally swimming with some use for boating and fishing (RT 3, Vol. I).

Protestants

3. Protests to Application 23948 were filed by members of the Ginocchio family who use the waters of Arroyo del Cerro and Little Pine Creek for stockwatering on lands which they either own or lease. Their use of water is under claim of riparian and pre-1914 appropriative rights. The applicant's project is to be constructed on their land. They contend that the normal flows from the two sources covered by Application 23948 are barely sufficient to meet their needs and are inadequate for the contemplated project. They also contend that the project will have little value for flood control.

A protest was filed on behalf of the estate of Annie Ford containing similar allegations as those in the Ginochios' protests.

The lands of the estate are located just below the junction of Little Pine and Pine Creek. Water from Pine Creek is used for domestic and irrigation purposes on the lands of the estate under claim of pre-1914 and riparian rights.

Availability of Unappropriated Water

4. After the reservoirs are filled, 200 acre-feet of water will be required each year to take care of seepage and evaporation losses at the two reservoirs and for irrigation of ten acres of turf in the recreation area (RT 86, Vol. I). In 80 percent of the years covered by a study made by the applicant, the runoff from the watersheds of Arroyo del Cerro and Little Pine Creek will be sufficient both to satisfy vested rights and to equal or exceed the quantity lost (RT 87, Vol. I). When the runoff is not sufficient to satisfy vested rights and make 200 acre-feet available to the applicant, stored water will be released to satisfy downstream rights and water will be pumped from Little Pine Reservoir into Arroyo del Cerro Reservoir. The applicant's study, which covers 82 years, shows by use of a mathematical model that in all years there has been sufficient water in the sources to satisfy downstream rights and keep Arroyo del Cerro Reservoir at its project water surface elevation of 402 feet (RT 17, Vol. I).

5. Unappropriated water is 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.

6. The intended use is beneficial.

Ability of the Applicant to Proceed with its Project

7. At the hearing on Application 23948 held in September 1973, the total cost of the applicant's project was an estimated \$4,813,000.00 based on 1973 costs (RT 23, Vol. I). At the hearing in November of the same year, the applicant estimated the cost of the project to be approximately \$6,000,000.00 if based on 1975 costs (RT 70, Vol. II). The applicant's plans for financing its project are uncertain. The applicant is considering obtaining funds from the State of California under the Davis-Grunsky Act Program, from the East Bay Regional Park District, and from the U.S. Soil Conservation Service. The applicant is also pursuing the possibility of funds available under the State Park Bond Act of 1974, revenue sharing, and funds from open space bond issues (RT 73, Vol. II). As to a Davis-Grunsky grant, the applicant's project involves more money than the State Water Commission can approve without legislative action (RT 120, Vol. I). A bill was introduced in the Legislature on April 25, 1973 (AB 1639) to authorize a grant to the applicant in the amount not to exceed \$917,000.00 under the authority of the Davis-Grunsky Act. The bill was taken off active status at the applicant's request (RT 76, Vol. II). An identical bill (AB 3681) introduced in the Legislature on April 15, 1974, failed to pass. As to possible financing through the U.S. Soil Conservation Service, in May of 1973 the local soil conservation district advised the applicant that it was "questionable" whether federal funds or

personnel could be provided for the applicant's project and the project would have to be given an inactive or interim status (RT 59, Vol. II). In October of the same year the Soil Conservation Service informed the applicant it "could be in a position to request funds" for the project for the fiscal year 1974-75 (RT 60, Vol. II). No firm commitment for funding the project has been made by the federal government.

8. The applicant maintains that it will proceed with the construction of its project without assistance from the U.S. Soil Conservation Service and/or a Davis-Grunsky Act grant (RT 29, Vol. I). If assistance from these sources is not forthcoming the applicant will look to the East Bay Regional Park District for funding the project's recreational facilities, and the applicant will be responsible for funding the project facilities which relate to flood control (RT 31, Vol. I). However, the extent of their respective contributions have not been determined (RT 30, Vol. I). During the hearing on Application 23948 held on February 5, 1973, the Board, with the approval of the applicant, ordered its staff to write a letter to the Park District to determine what priority the Park District has assigned to the applicant's project and its present intentions with regard to the project in the event that the Davis-Grunsky Act money was not forthcoming (RT 34, Vol. I). Pursuant to the Board's order, the staff wrote a letter to the Park District, but no response has been received.

9. The applicant does not have the ability to proceed with construction of its project and place the water to beneficial

use within a reasonable time. Board Rule 776 (23 California Administrative Code 776) 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 23948 should be denied.

ORDER

IT IS HEREBY ORDERED that Application 23948 be denied without prejudice toward the applicant filing a new application at such time as the District is ready to proceed with the project.

Dated: October 16, 1975

We Concur:

ROY E. DODSON

Roy E. Dodson, Member

ABSENT

W. W. Adams, Chairman

W. DON MAUGHAN

W. Don Maughan, Vice Chairman

JEAN AUER

Jean Auer, Member