

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23491 )  
of MACE MEADOW ESTATES, INC. to )  
Appropriate From Pioneer Creek in )  
Amador County. )

Decision 1397

DECISION APPROVING APPLICATION IN PART

Mace Meadow Estates, Inc., having filed Application 23491 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 September 21, 1971; 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 23491 is for a permit to appropriate 45 acre-feet per annum by storage to be collected from December 1 of each year to May 31 of the succeeding year for irrigation, fire protection, and recreational purposes from Pioneer Creek, tributary to Sutter Creek, in Amador County. The point of diversion is in the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 15, T7N, R13E, MDB&M.

Applicant's Project

2. Applicant has constructed a dam and reservoir with a capacity of about 42 acre-feet across Pioneer Creek near its headwaters for use by a mountain foothill subdivision. The dam

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which has an 8-inch outlet pipe near its base, is located just downstream from a mountain meadow that formerly was a bog. Applicant has developed a spring in the boggy area to the extent that it is estimated that the flow into the reservoir is increased by 50 percent in the early spring (RT 79). Pioneer Creek emerges as a flowing, intermittent stream just downstream from the dam, and flows about 4-1/2 miles to its junction with Sutter Creek. Pioneer Creek dries up in July of every year.

#### Proposed Use of Water

3. Applicant has sold 450 lots on which 80 cabins have already been built. Ultimately, applicant intends to sell a total of 1,000 lots. Domestic use in the subdivision will be from wells not connected with this application. Part of applicant's property is located in the service area of Pioneer Irrigation District, and apparently applicant can contract with the district for additional water supplies (RT 17). Applicant's reservoir is for the primary purpose of irrigating a 9-hole golf course which is located adjacent to the reservoir. Recreational use for fishing and boating will be subordinate to use for irrigating the golf course, but some water is always to be retained in the reservoir. Subdivision promotional material has not represented this reservoir to be a recreational facility. Use of the reservoir for fire fighting would supplement water supplies pumped from wells and stored in tanks.

### The Watershed Area

4. The watershed area tributary to the reservoir consists of about 280 acres, about 80 percent of which are owned by the applicant (RT 8).

### Protests Based on Existing Uses

5. Trout are usually planted in Pioneer Creek by the Department of Fish and Game downstream from the dam and downstream from tributaries of Pioneer Creek. If applicant's storage season ends before the trout season begins, the dam will not adversely affect fish or fishing in Pioneer Creek.

6. Many persons located downstream from the dam, both on Pioneer Creek and on Sutter Creek, are concerned about possible adverse effects from applicant's project, particularly in the late spring and summer months. Most of the protestants claim riparian rights and use water from Pioneer Creek primarily for irrigation, domestic, stock watering, fire protection and recreational purposes. The Preston School of Industry (California Department of Youth Authority) holds various appropriative rights to divert from Sutter Creek. The business manager testified that the earliest in the last 20 years that their dam has failed to spill was May 25 and therefore he indicated that the school would not be prejudiced by a storage season that ended no later than that date (RT 82).

## Availability of Unappropriated Water

7. The USGS gaging station at Sutter Creek (located 10 miles downstream from the junction of Pioneer Creek) has monthly and yearly runoff records for a total of 12 years between 1935 and 1966. The drainage area above the gaging station is about 48 square miles and the drainage area above applicant's dam is about 0.4 square mile. On a relative watershed area basis, it is reasonable to assume Pioneer Creek at applicant's dam to have a flow equal to about 0.8 of one percent of the flow at the gaging station. Assuming that 0.8 of one percent of the flow at the gaging station is available to the applicant, the reservoir would fill between December 1 and March 31 in 9 out of 12 years, and would nearly fill in two of the remaining three years. Limiting the storage season to the period between December 1 and the succeeding March 31 will reasonably meet the applicant's needs, will terminate storage at about the beginning of the irrigation season, and will not unreasonably interfere with the water rights of any protestants.

8. 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.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 23491 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 23491 be, and it is, approved in part, and that a permit be issued to the applicant subjected to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 45 acre-feet per annum by storage to be collected from December 1 of each year to March 31 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

4. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

5. 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 Resources Control 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.

6. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

7. Permittee shall allow representatives of the State Water Resources Control 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.

8. Permittee shall maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

9. Permittee shall establish a permanent organization not later than December 31, 1972, which will, to the Board's satisfaction, properly operate and maintain the permittee's reservoir.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Seaside, California.

Dated: April 6, 1972

W. W. ADAMS  

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W. W. Adams, Chairman

E. F. DIBBLE  

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E. F. Dibble, Vice Chairman

NORMAN B. HUME  

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Norman B. Hume, Member

RONALD B. ROBIE  

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Ronald B. Robie, Member