

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 16726,
16727, 16728, 16729, and 17299 of
Placer County Water Agency to
Appropriate from Auburn Ravine,
Coon Creek, Doty Ravine, and Pleasant
Grove Creek in Placer County.

Decision D 1083

ADOPTED APR 11 '62

DECISION DENYING APPLICATIONS

County of Placer having filed Applications 16726, 16727, 16728, 16729, and 17299 for permits to appropriate unappropriated water and assigned the same to Placer County Water Agency; protests having been received; a public hearing having been held before the State Water Rights Board on January 19, and September 26, 1961, after due notice to the applicant and protestants; the applicant having appeared; evidence having been received; and the Board, having considered the same and now being fully advised in the premises, finds as follows:

1. (a) Application 16726 is for a permit to appropriate 35 cubic feet per second (cfs) by direct diversion from Auburn Ravine and 25,800 acre-feet per annum (afa) to be collected to on-stream storage in 11,700 acre-foot Auburn Ravine Reservoir.

(b) Application 16727 is for a permit to appropriate 25 cfs by direct diversion from Pleasant Grove Creek plus 11,000

afa from Auburn Ravine to be collected to off-stream storage in 13,500 acre-foot Whitney Ranch Reservoir plus 2,600 afa to be collected to on-stream storage in Whitney Ranch Reservoir.

(c) Application 16728 is for a permit to appropriate 75 cfs from Doty Ravine plus 23,000 afa from Auburn Ravine to be collected to off-stream storage in 32,000 acre-foot Doty Ravine Reservoir plus 10,800 afa to be collected to on-stream storage in Doty Ravine.

(d) Application 16729 is for a permit to appropriate 100 cfs by direct diversion from Coon Creek plus 32,800 afa to be collected to on-stream storage in 59,000 acre-foot Coon Creek Reservoir.

(e) Application 17299 is for a permit to appropriate 9,000 afa from Auburn Ravine to be collected to off-stream storage in 15,000 acre-foot Lincoln Reservoir on Coon Creek plus 6,000 afa to be collected to on-stream storage in Lincoln Reservoir.

2. The diversion season, as amended, for both direct diversion and collection to storage is November 1 to May 1 for all applications. The purposes of use are irrigation, domestic, and stockwatering. The latter use is excepted from Application 16729. The place of use in all applications is a gross area of 87,500 acres in western Placer County in T10 to 13N, R5 and 6E, MDB&M.

3. Ten protests to the applications were entered and by stipulation were withdrawn prior to or at the time of hearing.

4. The projects described in the applications being considered in this decision are a portion of a general plan for the proposed development of the water resources of Placer County and are related specifically to Unit C of that plan, being the Western Placer County Works (PCWA 2), also referred to as Water Delivery Units (PCWA 14). Unit A is a proposed system of works on the Middle Fork American River and tributaries for development of hydroelectric power and other uses. It is planned that revenue received from wholesaling of power will be used, first, to repay project costs, and second, to assist in financing other water conservation projects, including Unit C. Unit B consists of diversion facilities downstream from the Unit A works to convey water from the American River through a ridge into Auburn Ravine for use in western Placer County, being the same area which Unit C projects would serve. The principal functions of the Unit C reservoirs are twofold: (a) to develop storage and provide regulation of the winter runoff of the local streams, creeks, and ravines; and (b) to develop storage and provide re-regulation of a portion of the newly regulated water of Units A and B, thereby conserving more water of the American River watershed than would otherwise be possible.

5. The gross area which will be served by all applications under consideration is 87,500 acres, of which 79,000 acres are irrigable. The probable ultimate mean seasonal supplemental water requirement adjusted to the service area is about 150,000 acre-feet (PCWA 5 and 13). The yield of the reservoirs in Unit C

will furnish about 20 per cent of the probable ultimate requirements (PCWA 13). Assuming the availability of all the winter water at Wise Power House, which would be 44,000 acre-feet per season (PCWA 5), the yield would furnish about 50 per cent of the probable ultimate requirement of the service area. The applicant contemplates taking care of the deficiency by Units A and B of its General Plan (PCWA 13).

6. Many of the elements of the projects covered by the applications are to be modified, and the engineering consultants for the applicant have work under way to determine the optimum features and desirable development program for these projects (PCWA 13).

7. Unit C is not planned for construction until after Units A and B have been developed. Commencement of construction of Units A and B is dependent upon many factors, including execution of a satisfactory contract for sale of power, favorable bond election, sale of bonds, acquisition of water rights, obtaining necessary Federal permits and licenses, and completion of final engineering plans (PCWA 14). It is estimated that the awarding of construction contracts and actual construction of Units A and B will take five and one-half years (PCWA 14). Since it is not known when construction contracts can be awarded, neither a completion date for Units A and B nor a starting date for Unit C can be reliably estimated.

8. By Decision D 893, issued on March 18, 1958, the Board denied earlier applications by the County of Placer for

development of water of the Middle and North Forks American River on the ground that the county was not yet ready to proceed with its proposed projects. The county filed new applications for Units A and B which are of later date than the ones here considered.

9. Among the essential elements of a permit to appropriate water issued pursuant to the provisions of Division 2 of the Water Code are the periods of time specified in the permit for beginning construction work, for completion of construction work, and for application of the water to beneficial use. Article 4, Chapter 6, Part 2, Division 2, of the Water Code sets forth the requirements which must be met in this regard, as follows:

"1395. Actual construction work upon any project shall begin within the time specified in the permit, which time shall not be less than 60 days from the date of the permit.

"1396. The construction of the work thereafter ... shall be prosecuted with due diligence in accordance with this division, the terms of the permit, and the rules and regulations of the board.

"1397. The work shall be completed ... in accordance with this division, ... and the terms of the permit and within the period specified in the permit."

In light of these provisions of the law, every applicant bears the burden of providing persuasive information upon which the Board can rely in fixing the respective periods of time. Arbitrary dates are insufficient, because the periods of time must be reasonable when related to the purposes and magnitude of the proposed project.

The applicant has failed to furnish a reasonably firm estimate of the date when construction of Unit C will be commenced

and will not be able to do so until the uncertainties relating to its other projects have been resolved.

10. As a corollary to the preceding paragraph, an applicant must be ready, willing, and able to commence construction of the necessary works within a reasonable time after receiving a permit. If there are obstacles to commencing construction immediately, he must be prepared to apply himself at once and with diligence to overcoming such obstacles and to continue steadfastly to press toward as early a construction start as is reasonably possible, without distraction by other business, including other water projects. If he is not ready to assume such responsibility, his application is premature and should be denied. As this Board stated in its Decision D 893 in connection with its denial of applications for lack of an immediate plan to proceed promptly with construction and beneficial use of water, "It is a settled principle that an application to appropriate is not a proper instrument to make a reservation of water for development at an indefinite and uncertain time in the future." See also Decisions D 989, D 984, D 921, D 907, D 896, D 884, D 869. The policy in such circumstances is clearly set forth in the California Administrative Code, Title 23, Section 776, as follows:

" ... the board will not countenance any attempt to reserve water for future use where there is no intent to proceed promptly with development."

The only applications not subject to the foregoing rules are those filed by the California Department of Water Resources

pursuant to Section 10500 of the Water Code and held by the California Water Commission for future assignment to qualified applicants. Such applications are the only means by which water can be reserved for future use without regard to the exercise of diligence.

11. The applicant is not prepared to undertake construction of the works proposed by these applications, nor does it plan to initiate action leading toward their construction for an indefinite time in the future. Instead, it plans to devote all of its efforts and resources toward development of other projects.

From the foregoing findings, the Board concludes that there is no basis in the record of these applications for the Board to specify the period of time for beginning construction work, that the applicant is not prepared to proceed with development of the projects described in the applications with reasonable promptness and due diligence, and that the applications should, therefore, be denied.

IT IS HEREBY ORDERED that Applications 16726, 16727, 16728, 16729, and 17299 be, and the same are, denied without prejudice to refiling when applicant is prepared to proceed with diligence toward construction of the projects described therein.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the _____ day of _____, 1962.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member