

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23865)
and 23943 of Boyd Trucking Company,)
Inc., to Appropriate From Two Unnamed)
Streams in Shasta County)
_____)
)

Decision 1425

DECISION DENYING APPLICATIONS

BY BOARD MEMBER ROBIE:

These applications were the subject of a public hearing on December 15, 1972, at which the applicant appeared and presented evidence in support of the applications. The evidence received at said hearing having been duly considered, the Board finds as follows:

Application 23865 is for a permit to appropriate a total of 910 acre-feet per annum (afa) by storage in two reservoirs (230 afa in Boyd Reservoir 1 and 680 afa in Boyd Reservoir 2) for recreation and fish culture purposes. Reservoir 1 is complete and in operation; Reservoir 2 is about two-thirds complete (RT 22).

Application 23943 is also for a permit to appropriate a total of 910 afa by storage in two reservoirs (430 afa in Boyd Reservoir 3 and 480 afa in Boyd Reservoir 4) for recreation and fish culture purposes. The only construction work that has been done on Dam 3 is the excavation of the cutoff trench. Nothing has been done with regard to Dam 4 other than map preparation and design (RT 22).



The applications were unopposed, but the hearing was deemed necessary because the sizes of the reservoirs exceeded the Board's guidelines for privately owned and used recreational reservoirs. The testimony given at the hearing raised serious doubt regarding compliance with the prerequisites for issuing a permit without regard to the size of the reservoirs.

Without question unappropriated water is available. Applicant's Exhibits 4 and 5, together with the testimony of its expert witness, are convincing proof that this requirement for a permit has been met. However, we are unable to make a favorable finding required by Water Code Section 1375(c) that the intended use will be beneficial.

As stated above, the applications are for permits to appropriate water for recreational and fish culture purposes. Details as to how the water would be used were lacking from the application except for a statement that fish culture would be noncommercial. At the hearing the actual project operation plans were explored in detail with James O. Boyd, owner of the Boyd Trucking Company, applicant. He was unable to provide a definite plan for development of the project. A fair summary of his testimony follows:

He has no definite plans at the present for any substantial recreational use of the water impounded; although the reservoirs would make an attractive area for a subdivision, he has no serious intent personally to subdivide (RT 29); he is not sure what may eventually happen to the

property (RT 29) but the reservoirs will enhance the value of building sites (RT 30). In the meantime, the public will be excluded from the reservoirs because public use would interfere with the applicant's ability to continue to lease the property for cattle grazing (RT 29); he is the only person living on the property now (RT 27); migratory birds will use the reservoirs for resting ponds (RT 24); and the water will eventually be used for boating and other water contact activities (RT 25). The only plans with regard to fish culture are that some fish will be planted, such as catfish or bass, that would be adapted to the temperature of that type of reservoir (RT 29).

The design of the reservoirs as to size seems to be realistic, in view of the objective to fit the particular terrain of the area, and the applications should not be disapproved because the reservoirs are not compatible with the Board's guidelines. Also, the feasibility of the project has been shown by the construction work already completed. Esthetic enjoyment is a beneficial use that may be protected against quality degradation under the Porter-Cologne Act (Water Code Section 13050(f)), and esthetic enjoyment of a reservoir located in scenic surroundings is a form of recreation. Recreation is one of the uses covered by these applications and, in any case, is one of the beneficial uses of water to be considered in acting on applications to appropriate water (Water Code Section 1257). But these favorable aspects do not offset the negative features.



The use of water in this State must be both reasonable and beneficial. (Calif. Const. Art. 14, Sec. 3; Joslin v. Marin Municipal Water Dist. 67 Cal. 2d 132, 142; 60 Cal. Rptr. 377, 384, (1967)). To impound the large volumes of water requested for the esthetic enjoyment of a single family until the adjacent lands are sold at some indefinite future date is not a reasonable use of water.

Further, in acting upon applications to appropriate water, the Board is required to consider the public interest involved and reject an application when, in its judgment, the proposed appropriation would not best conserve the public interest (Water Code Sec. 1255). The storage of substantial quantities of water to afford recreation for a few is not in the public interest.

There are no definite plans for utilizing the water except for enhancing the value of the property as a potential subdivision. This alone cannot be considered as a beneficial use of water. Had the applicant been able to present a reasonable plan for developing the property in the reasonably near future, with the reservoirs serving as a nucleus of the development, we may have looked upon the applications in a more favorable light. However, Sections 776 and 777 of Title 23 of the California Administrative Code provide that an application must be denied if the applicant does not intend diligently to place the water to beneficial use. We also quote from 51 Cal.Jur.2d, Waters, Section 350:

"Uses Not Reasonably Beneficial; Future Use.--
One may appropriate all the water in a stream for a beneficial purpose, but a diversion for the purpose

of acquiring a title for future use when additional land may be developed for agriculture is not a beneficial use, and no rights accrue by such a diversion. A claim to a water right that has no other basis than its value for possible future use is merely speculative. . . ." (Citing Weaver et al. v. Eureka Lake Company, 15 Cal. 271).

Based upon a careful consideration of all relevant facts, we find that Applications 23865 and 23943 are premature and should be denied without prejudice to the filing of new applications at such time as a project which will place the water to reasonable and beneficial use within a reasonable period can be developed.

IT IS HEREBY ORDERED that Applications 23865 and 23943 be denied.

Dated: April 19, 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