

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25153)

ALLEN A. COSTA AND JOYCE A COSTA)

Applicants)

ALTA IRRIGATION DISTRICT AND
LAKESIDE DITCH COMPANY)

Protestants)

Decision: 1520

Source : Cottonwood Creek

County : Tulare

DECISION APPROVING APPLICATION 25153

BY THE BOARD:

Allen A. and Joyce A. Costa having filed Application 25153 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 March 7, 1978; applicants and protestants having appeared and presented evidence; a post-hearing investigation having been authorized and conducted; the evidence received at the hearing and investigation having been duly considered; the Board finds as follows:

Substance of the Application

1. Application 25153 is for a permit to appropriate 2.46 cubic feet per second from Cottonwood Creek tributary, via other streams to Tulare Lake. The season of diversion is from January 1 to October 1 for irrigation. The point of diversion is within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 10, T17S, R25E, MDB&M.

Applicants' Project

2. Each irrigation season the applicants construct an earth dam about 2 $\frac{1}{2}$ feet high to pond water over an 18-inch pipe leading to an offset well. A 7.5 horsepower pump, having a delivery capacity of about 2.46 cubic feet per second

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(1100 gallons per minute), pumps from the well to a standpipe on the distribution line. The water is used to supplement four existing groundwater wells in supplying water for irrigation of 197 acres. The applicants appear to have a riparian right for diversion of the natural flow of Cottonwood Creek and have filed Statement of Water Diversion and Use S9558. The application is to gain a right to water not covered by riparian rights, as discussed later.

Background

3. Cottonwood Creek is tributary to Tulare Lake via Elbow Creek, Cross Creek, and Tule River. Evidence before the Board indicates that all water reaching Tulare Lake has been put to beneficial use since before 1878, the last time Tulare Lake overflowed into the San Joaquin River. Prior Board Decisions 1018 and 1432 on the Tule River, and 1435 on Sand Creek tributary to Cross Creek, all found that no unappropriated water was available. All decisions involved appropriations in the upper watersheds for diversion of natural flow.

Protests

4. Alta Irrigation District and Lakeside Ditch Company filed protests against approval of the application on the basis of injury to vested rights.

5. Alta alleges injury to lands within its boundaries by depriving those lands of natural groundwater recharge. Cottonwood Creek runs through several miles of the southern portion of Alta, beginning just downstream from the applicants. Alta claims no right to divert from Cottonwood Creek. There was no evidence or testimony presented at the hearing regarding Alta's protest or use of water.

6. Lakeside claims a right to use water from various sources including Cottonwood Creek, on the basis of use begun in 1874. It has filed Statement of Water Diversion and Use S3162. Lakeside is located about 20 miles downstream from the applicants.

Availability of Unappropriated Water

7. Flow in Cottonwood Creek is measured at a gaging station about 13 miles upstream of the applicants' project. The gage drains an area of about 60 square miles, and the records show the creek to be dry from July through November. In the 80 square-mile watershed tributary to the applicants' diversion point, spring, summer, and fall flows are largely return flows from frost protection and irrigation. Return flows are mainly foreign water comprised of runoff from groundwater or water imported from the San Joaquin, Kings, and Kaweah Rivers. The applicants' primary source of foreign water is the abandoned return flows from the 500-acre Westward Farms, two miles upstream of the applicants. That flow appears to be adequate to supply the applicants' supplemental needs.

8. Lakeside is seldom receiving its full entitled flow in Cross Creek as vested in the pre-1914 appropriative right it claims. Accordingly, Lakeside as a holder of a prior appropriative right has first claim to foreign water introduced into Cottonwood Creek.^{1/} However, in this case hydraulic continuity seldom exists in the reach of Cottonwood and Cross Creeks between the applicants and Lakeside during the season that foreign water is being introduced. Consequently, the foreign water seldom reaches Lakeside and

^{1/} The Board made a similar finding in its Decision 1274, the Little Shasta River Decision.

is available for use by the applicants. Should the applicants not divert and use the foreign water, it would percolate into the streambed and recharge the groundwater basin. However, the groundwater pumpers, including Alta Irrigation District, have no vested overlying right to foreign water.

Environmental Consideration

9. The Board has prepared a Negative Declaration in accordance with the Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and the State Guidelines and has determined that the project will not cause any significant adverse effects on the environment.

Conclusions

10. From the foregoing findings, the Board concludes that Application 25153 should be approved and that a permit should be issued to the applicants subject to the conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED THAT Application 25153 be approved and that a permit be issued to the applicants subject to vested rights. The permit shall contain all applicable standard permit terms (6, 10, 11, 12, and 13)* in addition to the following conditions:

* The Board maintains a list of standard permit terms. Copies of these are available on request.

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2.46 cubic feet per second by direct diversion from January 1 to October 1. The maximum amount diverted under this permit for all uses shall not exceed 735 acre-feet per year.

2. The applicants shall install a measuring device satisfactory to the State Water Resources Control Board which is capable of measuring the quantity of water diverted from Cottonwood Creek. Such measuring device shall be properly maintained.

3. During the period between January 1 and October 1 if, in the absence of permittees' diversion, hydraulic continuity would exist between permittees' diversion point and Lakeside Ditch Company, permittees shall not divert water but shall open their diversion works and allow the water to flow undiminished downstream.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1983.

Dated: August 16, 1979

/S/ W. DON MAUGHAN

W. Don Maughan, Chairman

/S/ L. L. MITCHELL

L. L. Mitchell, Member

/S/ WILLIAM J. MILLER

William J. Miller, Vice Chairman

/S/ CARLA M. BARD

Carla M. Bard, Member