

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Application 31636

James and Patricia Costello

ORDER CANCELING APPLICATION

SOURCE: Unnamed Stream Tributary to Sacramento River

COUNTY: Tehama

WHEREAS:

1. James and Patricia Costello (Applicants) filed a water right application with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), on September 12, 2006, requesting the right to divert 49 acre-feet per annum (afa) from an unnamed stream tributary to the Sacramento River.
2. The Applicants applied to appropriate water by building an earthen dam connecting two hills, damming an ephemeral drainage and thus creating a reservoir. The water was to be used for stock watering, recreation, and the irrigation of future wildlife habitat. The application was accepted on September 14, 2006, and was noticed on August 13, 2007. No protests were filed.
3. In a letter dated April 23, 2009, the Division requested that Applicants submit: 1) confirmation that they intend to continue processing Application 31636; and 2) acknowledgement that they agree to retain the engineering and environmental consultants needed to prepare the Water Availability Analysis (WAA) and to prepare the appropriate California Environmental Quality Act (CEQA) or public trust document to analyze the environmental impacts of this project; or 3) provide written justification and documentation to support a position that approval of the project is exempt from the requirements of CEQA. A response to item (1) was due by May 23, 2009. A response to item (2) was due by October 20, 2009. The letter contained a warning that failure to submit the information requested within the time period provided could result in the cancellation of the application under Water Code section 1276. To date, the Division has not received the required information.
4. On May 20, 2009, the Applicants advised the Division that the project is exempt from CEQA and the hiring of engineering and environmental consultants constitutes a waste of time and money.
5. On August 31, 2009, Division staff advised the Applicants that we had reviewed the application and determined that the project is not exempt from CEQA. Additionally, the WAA submitted did not fulfill the requirements of the April 23, 2009 letter, because it did not address how much water must remain instream to serve prior rights and public trust resources.
6. The August 31 letter gave the Applicants until October 1, 2009 to enter into a Memorandum of Understanding (MOU) to prepare the above documents. The letter also contained a warning that failure to submit the information requested within the time period provided could result in the cancellation of the application under Water Code section 1276. To date, the Division has not received the required information.

7. The Applicants, after due notice, have failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.)
8. The State Water Board has delegated the authority to cancel applications to the Deputy Director of the Division pursuant to Resolution No. 2012-0029. The Deputy Director has redelegated this authority to the Assistant Deputy Director in the absence of the Deputy Director, pursuant to redelegation order dated July 6, 2012.

THEREFORE, IT IS ORDERED THAT APPLICATION 31636 IS HEREBY CANCELED.

Applicant is hereby put on notice that any diversion of water from the point of diversion proposed under this application may be subject to administrative civil liability of up to \$500 per day without further notice, pursuant to Water Code section 1052. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Applicant shall document any diversions made under claim of riparian or pre-1914 water rights by filing a Statement of Water Diversion and Use with the State Water Board in accordance with Water Code sections 5100 through 5108.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for *Barbara Evoy, Deputy Director*
Division of Water Rights

Dated: **JUN 17 2013**