

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23276 of )  
San Benito County Water Conservation )  
and Flood Control District, and )  
Application 23597 of Santa Clara )  
Valley Water District, and )  
South Santa Clara Valley Water )  
Conservation District to Appropriate )  
from Pacheco Creek, Arroyo Dos )  
Picachos, Arroyo de Las Viboras and )  
Santa Ana Creek in Santa Clara and )  
San Benito Counties. )

Decision 1436



1436

DECISION DENYING APPLICATIONS

BY BOARD VICE CHAIRMAN ROBIE:

San Benito County Water Conservation and Flood Control District having filed Application 23276 and Santa Clara Valley Water District and South Santa Clara Valley Water Conservation District having filed Application 23597 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on February 9 and 16, 1973; applicants 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 Applications

1. Application 23276 is for a permit to appropriate a total of 14,113 acre-feet per annum (afa) by storage to be collected from November 1 of each year to May 31 of the succeeding year for irrigation, municipal and industrial purposes from

Pacheco Creek (10,333 afa), Arroyo Dos Picachos (1,260 afa), Arroyo de Las Vibros (1,260 afa) and Santa Ana Creek (1,260 afa) in San Benito and Santa Clara Counties. The points of diversion are to be located within NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 5, T11S, R6E; NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of projected Section 18, T11S, R6E; SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of projected Section 31, T11S, R6E; NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of projected Section 25, T11S, R5E, all MDB&M.

2. Application 23579 is for a permit to appropriate 60,000 afa by storage to be collected from October 1 of each year to July 1 of the succeeding year for irrigation, domestic, industrial and recreational purposes from Pacheco Creek in Santa Clara County. The point of diversion is located within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 32, T10S, R6E, MDB&M.

#### Applicants' Projects

3. Under Application 23276 San Benito County Water Conservation and Flood Control District (San Benito) intends to use the Hollister-Watsonville conduit of the U. S. Bureau of Reclamation's (Bureau) proposed San Felipe project to transport water from the sources to spreading grounds where it will be percolated into the underground. The water will be pumped from underground storage for use in San Juan Valley. If the San Felipe project is not constructed, San Benito may construct a smaller project (RT 48).

4. Application 23597 of the Santa Clara Valley Water District and South Santa Clara Valley Water

Conservation District (Santa Clara) also contemplates use of certain facilities of the Bureau's San Felipe project. The Districts' plan to construct a 60,000 acre-foot reservoir on Pacheco Creek which will be used for temporary storage of flood flows and for interim storage of imported water from San Luis Reservoir to be delivered through the San Felipe project's proposed Pacheco Tunnel. The water will be released from the reservoir into a proposed Santa Clara Canal which will convey water to spreading grounds for percolation into the underground. Water will be pumped from underground storage for use in the Santa Clara Valley. If the San Felipe project is not constructed Santa Clara may build a smaller project (RT 155). However, the District believes a more desirable alternative would be a project that includes all of the districts involved in the subject applications (RT 65).

#### Protestants

5. Department of Fish and Game (Department) protested only Application 23597. However, the absence of a protest to Application 23276 was due to an oversight and the Department was recognized as an interested party to that application at the hearing (RT 129). The Pacheco Creek basin is an important wildlife habitat and Pacheco Creek is a valuable spawning area for steelhead (RT 121-124). The Department requested the Board to reserve jurisdiction in the matter of imposing permit terms to protect fish and game as applicants' plans are too indefinite for the Department to make specific recommendations to the Board (RT 128).

Pacheco Pass Water District (Pacheco) protested Application 23597 of Santa Clara. It holds Permit 15898 and License 2879 to appropriate from Pacheco Creek and License 2486 to appropriate from the Pajaro River to which Pacheco Creek is tributary. It claims it needs all the flow in Pacheco Creek during the winter and spring months to help recharge the groundwater within the district. Also, it considers Santa Clara's application premature since the San Felipe project will not be constructed until the year 1982 at the earliest (RT 100). Pacheco did not protest Application 23276 of San Benito because of possible future participation in its project (RT 107, 108).

San Benito protested Santa Clara's Application 23597 on the basis of its earlier Application 23276 only to make sure that Santa Clara does not take water needed by users in the San Benito service area (RT 152).

Santa Clara protested San Benito's Application 23276. It is concerned that approval of that application and other applications on the same sources may prevent the construction of a more valuable multipurpose project (RT 56, 65).

The Monterey County Flood Control and Water Conservation District and Santa Cruz County Flood Control and Water Conservation District and certain individuals did not appear at the hearing in support of their protests.

#### Applicants' Ability to Proceed with Diligence

6. As previously stated in the description of the applicants' projects, San Benito proposes to divert water from the

source streams via the proposed Hollister-Watsonville conduit of the Bureau's San Felipe project and Santa Clara proposes to store water that will be delivered from San Luis Reservoir through the San Felipe project's Pacheco Tunnel.

The present construction schedule for the San Felipe project calls for one year to accomplish final design work and five years to complete construction. Since there is no appropriation of money for the construction of the San Felipe project in the 1974 federal budget, the earliest completion date for the project is 1980 and that depends upon money for the final design being made available by "write in" and construction money being included in the 1975 budget (RT 6). Also, it should be pointed out that the Bureau at the time of the hearing on the subject applications had not studied the plans of San Benito for introducing local water into the Hollister-Watsonville conduit (RT 6).

7. Due to their projects' dependence on federal government action the applicants cannot proceed expeditiously with construction and beneficial use of water. Further, San Benito could not say whether the construction of a project would be feasible without the Bureau's project; additional study would be required to answer that question (RT 48). Further, Santa Clara has not committed itself to proceed with the project covered by its application, but is attempting to put together a multi-agency development involving the Bureau, U. S. Corps of Engineers, and San Benito and Pacheco Districts (RT 65). They have not, as yet, investigated all alternative projects they wish to consider before proceeding with construction (RT 65, 66, 68).

8. Neither Santa Clara nor San Benito has the ability to proceed with construction of their projects and place the water to beneficial use within a reasonable time. Board Rule 776 (23 California Administrative Code 776) provides:

"776. Reasonable Promptness Required. An application will be denied when it appears after hearing that (a) the applicant does not intend to initiate construction of the works required for the contemplated use of water within a reasonable time and thereafter diligently prosecute the construction and use of water to completion, or (b) the applicant will not be able to proceed within a reasonable time, either because of absence of a feasible plan, lack of the required financial resources, or other cause."

State Filing

9. During the hearing San Benito requested that, in the event the Board denies its application, the Board make its own filing under Water Code Section 10500 which would show approximately the same place of use proposed by the District (RT 11). While under Water Code Section 10504 the Board is given the authority to approve assignments and releases of priority of so called "state filings", it has no authority to initiate a filing. That is a matter which is solely within the responsibilities of the Department of Water Resources. If San Benito wishes to pursue the matter further it should address its request to that Department.

From the foregoing findings the Board concludes that Applications 23276 and 23597 should be denied.

ORDER

IT IS HEREBY ORDERED that Applications 23276 and  
23597 be denied.

Dated: June 20, 1974

We Concur:

RONALD B. ROBIE  

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Ronald B. Robie  
Vice Chairman

W. W. ADAMS  

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W. W. Adams, Chairman

ROY E. DODSON  

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Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER  

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Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN  

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W. Don Maughan, Member