

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2007-0006-EXEC

In the Matter of Petition for Reconsideration of

Minnie A. Corda, et al.

Cancellation of Application 31036

SOURCE: Unnamed Streams tributary to San Antonio Creek, thence Petaluma River

COUNTY: Marin

ORDER DENYING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR:

1.0 INTRODUCTION

By this order, the State Water Resources Control Board (State Water Board) denies the petition for reconsideration of the cancellation of Application 31036 submitted by Minnie A. Corda Limited Partnership and the Testamentary Trust of Ernest H. Corda (Applicant) through Henry Corda.

2.0 RECONSIDERATION OF A DECISION OR ORDER

Any interested person may petition the State Water Board for reconsideration of a decision or order on any of the following grounds:

- (a) [i]rregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) [t]he decision or order is not supported by substantial evidence;
- (c) [t]here is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) [e]rror in law. (Cal. Code Regs., tit. 23, § 768.)

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (Id., § 770, subd. (a)(1).)

Alternatively, after review of the record, the State Water Board also may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration falls within the scope of the authority delegated under Resolution No. 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, set aside or modify the decision or order, or take other appropriate action. The State Water Board has not designated decisions by the Executive Director as precedent decisions pursuant to the Administrative Procedures Act. (Board Order WR 96-1, at p. 17, fn. 11.)

3.0 FACTUAL BACKGROUND

Applicant has held license 7165 since 1965. This license allows diversion to storage of 23 acre-feet annually (afa) for stock watering use. On March 21, 2000, Application 31036 was filed with the Division to divert 298 afa to storage for purposes of vineyard irrigation and frost protection.

The State Water Board, Division of Water Rights (Division) conducted an inspection on October 25, 2006. Upon inspection, the Division determined that, while the pond covered by license 7165 had a potential capacity of 39 acre-feet, it was only licensed for 23 acre-feet, leaving 16 acre-feet of storage unlicensed. Additionally, the pond was being used for irrigation, a use not authorized under License 7165 but sought under Application 31036. The inspection also evidenced additional storage facilities as follows:

- a) A "lower" reservoir, constructed on an unnamed channel tributary to San Antonio Creek, with an estimated capacity of 21 acre-feet, and covered under Application 31036. The reservoir was being used for non-consumptive purposes.
- b) Two stock ponds, each with a capacity of less than 10 acre-feet.

On November 14, 2006, the Division cancelled Application 31036 because Applicant was not diligently pursuing the application.

Applicant contacted the Division by letter postmarked December 1, 2006 and requested reconsideration of the cancellation order. He has filed for stock pond registration for the two stock ponds with the Department of Fish and Game and the Division.

4.0 DISCUSSION

Applicant requests that the State Water Board reconsider cancellation of the application and that, rather than cancel the application, the State Water Board modify the application, reducing the diversion to storage from 298 afa to 60 afa. The application as modified would cover the entire storage capacity of the licensed pond and the 21 acre-feet in the "lower" reservoir, which has already been constructed.

Applicant argues for reconsideration based upon his confusion surrounding procedure when an applicant fails to act diligently on the application. This does not constitute cause for reconsideration under section 768 of the State Water Board's regulations. Applicant has presented no grounds that warrant reconsideration.

5.0 CONCLUSION

The petition submitted by Applicant fails to raise substantial issues related to the causes for reconsideration. For this reason, the State Water Board finds that the Division's order canceling the application was appropriate and proper.

ORDER

IT IS HEREBY ORDERED, that the petition for reconsideration is denied.

Dated: February 23, 2007

ORIGINAL SIGNED BY:
Thomas Howard
Acting Executive Director