

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19111 of
Sierra Nevada Water Company;
Applications 19509 and 19510 of Fulton
Water Company; Application 19629 of
Meyers Water Company; Application
19819 of Mountain Springs Water Company;
Application 19845 of Tahoe City Public
Utility District; and Application 20137
of Lawrence H. and Beryl S. Smith and
Robert H. Williams to appropriate from
Lake Tahoe and Coyote Creek in El Dorado
and Placer Counties

Decision D 1152

ADOPTED DEC 19 1962

DECISION APPROVING APPLICATIONS IN PART

The above-named applications are for permits to appropriate unappropriated water from Lake Tahoe and Coyote Creek, a tributary of Upper Truckee River. Protests having been received with respect to said applications, public hearings were held in Sacramento, California, on February 28, 1962, and on February 27, 1963. Board Member W. A. Alexander presided at both hearings. The essential features of the applications are set forth in Table 1. Application 19965 of Tahoe Paradise, Incorporated, also heard at the same time, will be the subject of a separate decision.

TABLE 1

Substance of the Applications

Applic. No.	Date Filed	Applicant	Source	Point of Diversion	Amounts	Diversion Purpose
				T: S*: TP*: RG*	cfs afa	: Season : (2)
19111	11/27/59	Sierra Nevada Water Company	Lake Tahoe	SE SW 33 16N 17E	0.35	1/1-12/31 D, R
19509	6/29/60	John A. Fulton (dba Fulton Water Company)	Lake Tahoe	SW SE 32 16N 17E	0.5	1/1-12/31 D, M
19510	6/29/60	"	Lake Tahoe	SE SE 21 16N 17E	2.0	1/1-12/31 D
19629	7/28/60	Meyers Water Co.	Coyote Creek	NW SW 25 12N 17E	2.33 104	1/1-12/31 D 10/1-6/1
19819	10/14/60	Duncan S. Davis (dba Mountain Springs Water Co.)	Lake Tahoe	SE NE 15 16N 17E	0.42	1/1-12/31 D
19845	11/16/60	Tahoe City Public Utility District	Lake Tahoe	SE SE 6 15N 17E	7.5	1/1-12/31 M
20137	5/18/61	Lawrence H. and Beryl S. Smith and Robert H. Williams	Lake Tahoe	SW NE 25 15N 16E	0.16	1/1-12/31 D

*All section, township and range designations are from Mt. Diablo Base and Meridian (MDB&M).
 (1) cfs = cubic feet per second; afa = acre-feet per annum.
 (2) D - Domestic; M - Municipal; R - Recreational.

The evidence and issues relative to water supply, vested rights, unappropriated water, interstate division of interstate waters, and conditions and limitations to be imposed in the public interest are to a large extent identical with the evidence and issues discussed by the Board in its Decision D 1056, adopted February 15, 1962, of which the Board takes official notice. In that decision the Board assumed to be surplus and unappropriated the water from Lake Tahoe and the Truckee River stream system "flowing by Derby Dam which is not required to satisfy decreed downstream Indian rights and which wastes into Pyramid Lake." An analysis of studies of the Department of Water Resources indicated the availability of unappropriated water. The same conclusion is indicated by the "Joint Report on the Use of Water in the Lake Tahoe Watershed," prepared by the State Engineers of Nevada and California, and dated June 1949 (Staff Exh. 3). As was the case in Decision D 1056, careful consideration must be given to quantitative diversion limitations expected to be imposed by the California-Nevada Compact, covering allocation of water in the Lake Tahoe Basin. Accordingly, individual applications will be considered on their own merits and then with respect to maximum monthly and annual limitations based on requirements. A staff study (introduced by reference, page 4, transcript of February 27, 1963) indicates, and the Board finds, that it is reasonable to limit requirements to a per capita use basis not in excess of 250 gallons per day. Because no long-term water development projects are involved, and because of anticipated Compact diversion

limitations, maximum requirements will be based on the year 1970, as was done in Decision D 1056.

Sierra Nevada Water Company Application 19111 is for a permit to appropriate 0.35 cubic foot per second (cfs), year-round, from Lake Tahoe for domestic and recreational purposes. Applicant is a public utility corporation subject to the jurisdiction of the California Public Utilities Commission. Its service area, known as Dollar Point, is on the northwest side of Lake Tahoe, about 2.5 miles northeast of Tahoe City. The gross area of the development is about 185 acres contiguous to Lake Tahoe, all of which is to be subdivided into residential lots. Recreational use of water in a swimming pool is expected to require a flow of 0.02 cfs for six months of the year. The balance of the 0.35 cfs requested would be for domestic use. It is possible that monthly requirements for June through September may exceed this amount. Application 21398 has been filed by the Company for an additional supply. The Company's requirements (within limits of Application 19111) are not in excess of 22 acre-feet in a maximum month, or 188 acre-feet in any year.

John A. Fulton (dba Fulton Water Company) (hereinafter called Fulton) Applications 18248*, 19509 and 19510 request appropriation from Lake Tahoe to serve an area located at the

*Application 18248 of John A. Fulton was approved by Decision D 1056 and, after reconsideration, reinstated by Order adopted on March 14, 1963.

northwest corner of Lake Tahoe, about 5 miles northeast of Tahoe City. Applicant is a public utility under the jurisdiction of the Public Utilities Commission. Application 18248 was approved for year-round diversion, limited to a maximum diversion rate of 0.74 cfs and a total diversion of 280 acre-feet in any year.

Application 19510 requests year-round diversion at the rate of 2 cfs for an area almost identical to the place of use presently authorized for Application 18248. Petitions are now pending to authorize the identical place of use for both applications. If approved, the newly authorized place of use would be similar to that now authorized for Application 18248, except that it would add a small excluded area. As originally filed, each application proposed a single point of diversion, located about one mile apart. Petitions are now pending in connection with each application to add the point of diversion requested in the other application. It is found that no legal user of water would be prejudiced by the proposed change of place of use or change of points of diversion. An order will be entered approving said petitions.

The Board finds that the total 1970 diversion requirements of the area to be served by Applications 18248 and 19510 will be about 50.5 acre-feet in a maximum month and 314 acre-feet in any year. Said figures are inclusive of and not in addition to comparable amounts already authorized.

Fulton's Application 19509 relates to a separate water system to serve a separate place of use located about one mile to

the southwest of Fulton's place of use previously described. It is found that the 1970 diversion requirements for this area will be about 12 acre-feet in a maximum month (equivalent to a continuous flow of 0.193 cfs) and 74 acre-feet in any year.

Fulton (and other applicants) will be expressly authorized to have an instantaneous rate of diversion in excess of that computed and authorized on a continuous-flow basis, provided the maximum month and annual limits are not exceeded. Such a provision should permit Fulton to meet its daily peak requirements and comply with reasonable requirements of the Public Utilities Commission without exceeding monthly or annual limits.

Meyers Water Company (hereinafter called Meyers)

Application 19629 requests authority to appropriate 2.33 cfs, year-round, and to appropriate 104 acre-feet by storage, between October 1 of each year and June 1 of the succeeding year, from Coyote Creek, a tributary of the Upper Truckee River. Meyers is a wholly-owned subsidiary of Tahoe Paradise, Inc., and a public utility under the jurisdiction of the California Public Utilities Commission.

Meyers seeks by petition to change the proposed place of use under Application 19629 to an area of a little over 5,000 acres identical with the place of use authorized by Decision D 1056 for appropriation pursuant to its Applications 18021, 18030, 18031, 18038 and 18039. A common distribution system is planned for the entire area. It is found that the change would not operate to the injury of any legal user of water from the source involved, and the consolidated place of use will be authorized.

Since the evidence of requirements with respect to subject application is for the most part identical with that introduced by Meyers at the earlier hearing, the Board will regard the maximum monthly and annual limits imposed by Decision D 1056 as still being applicable but will approve subject application for the purpose of firming the supply and adding flexibility to the system.

A stipulation with the Department of Fish and Game for the release of water in Coyote Creek for fish preservation was found reasonable by the Board and approved in the earlier decision. The Board will again for the same purpose require in the natural channel of Coyote Creek below the proposed dam "a flow of 0.25 cubic foot per second or the natural flow, whichever is less." (Emphasis added). Since the water to be appropriated under Application 19629 rises largely from springs which will be inundated by the reservoir proposed under the filing, the applicant requests a preconstruction observation period of three years for postconstruction use in calculating "natural flow." This request is found to be reasonable, and required commencement of construction will be postponed to July 1, 1966.

Duncan S. Davis (dba Mountain Springs Water Company)
Application 19819 requests appropriation, year-round, from Lake Tahoe at the rate of 0.42 cubic foot per second for an area at the north end of the lake known as Agate Bay Development Sites. The applicant is a public utility under the jurisdiction of the Public Utilities Commission, and its present source of water is a

spring. Maximum development of the area to be served from Lake Tahoe is expected by 1968, at which time the requirements for a maximum month are computed as 26 acre-feet and, for beneficial use of water for a full year, not to exceed 160 acre-feet. The wintertime practice of "bleeding," or allowing water to run freely for the sole purpose of preventing freezing of pipes, does not involve beneficial use of water. Quantities of water requested for "bleeding" have been excluded. For purposes of this computation the Board adopted the wintertime-summertime ratio of use of the nearby and comparable Fulton system.

Tahoe City Public Utility District Application 19845

seeks appropriation, year-round, of 7.5 cfs from Lake Tahoe for an anticipated service area of 1,000 acres located near the outlet of Lake Tahoe to the Truckee River. The District now has a service area of about half that size which is served with spring water and some lake water. Utilizing the District's population projections to 1970 and the 250 gallons per capita, the District's maximum monthly requirements from all sources are computed as 72 acre-feet and its annual requirements as 444 acre-feet. Accordingly, monthly and annual limitations will include water from all sources. The evidence does not justify adoption by the Board of the District's daily per capita requirement estimates.

Lawrence H. and Beryl S. Smith and Robert H. Williams

Application 20137 requests appropriation of 0.16 cfs, year-round, from Lake Tahoe to serve an area of approximately 70 acres located about 4 miles south of Tahoe City on the westerly side of State

Highway 89. Maximum month requirements for 1970 are found not to exceed 9 acre-feet and the annual diversion not to exceed 50 acre-feet. This application was originally filed in the name of "Kimberly W. Mosier, representing the Tahoe Mutual Water Company (not formed at this date)." (Emphasis added). At the hearing on February 28, 1962, Mr. Mosier testified that it was definitely intended to incorporate a mutual water company to serve the place of use (RT 155), and indicated that shares would be issued to the purchaser of each lot (RT 151). The application indicates the subdivision is intended to contain 140 lots, each of which would be dependent on the future mutual water company for its water supply. Establishment of such a water company by the applicant would be consistent with the Board's rules 754 and 756, and would simplify administration by the Board of appropriative water rights to serve the 140 lots. Accordingly, it is found to be in the public interest to require the applicants to form a mutual water company or arrange for some comparable agency capable of permanent service to the place of use.

The evidence indicates and the Board finds that unappropriated water exists in the Lake Tahoe Basin, including all proposed points of diversion, and that subject to suitable limitations and conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 19111, 19509, 19510, 19629, 19819, 19845, and 20137 should be approved in part, and that permits should be issued to

the respective applicants for a total annual quantity not to exceed 3990 acre-feet including 3040 acre-feet under earlier permits issued pursuant to Decision D 1056 and subject to limitations and conditions of general or specific applicability as indicated.

ORDER

IT IS HEREBY ORDERED that Applications 19111, 19509, 19510, 19629, 19819, 19845, and 20137 be, and they are, approved in part, subject to vested rights and to the limitations and conditions of special applicability as set forth in the following Orders and to the limitations and conditions of general applicability to be included in each permit as follows:

1. The maximum amount herein stated may be reduced in the license if investigation warrants.
2. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.
3. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.
4. Permittee shall allow representatives of the State Water Rights Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

ORDER

IT IS HEREBY ORDERED that:

1. The amount of water to be appropriated under the permit issued pursuant to Application 19111 of Sierra Nevada Water Company for domestic and recreational purposes shall be limited to the amount which can be beneficially used and shall not exceed 0.35 cubic foot per second by direct diversion year-round. The instantaneous rate of diversion under the permit may exceed said rate, provided that the amount of water appropriated shall not exceed 22 acre-feet in any month (equivalent to a continuous flow of 0.35 cfs). Total appropriation under this permit shall not exceed 188 acre-feet in any year.

2. Actual construction work shall be completed on or before December 1, 1969.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

ORDER

Petitions having been filed by John A. Fulton (dba Fulton Water Company) to change the points of diversion and place of use described in his Applications 18248 and 19510 so that each application will have the same two points of diversion and the same place of use, as described in detail in said petitions, and it being found that the proposed changes will not operate to the injury of any lawful user of water, IT IS HEREBY ORDERED that said four petitions be, and they are, approved; and IT IS FURTHER ORDERED that:

1. The amount of water to be appropriated under the permit issued pursuant to Application 19509 of John A. Fulton (dba Fulton Water Company) for domestic and municipal purposes shall be limited to the amount which can be beneficially used and shall not exceed 0.193 cubic foot per second by direct diversion year-round. The instantaneous rate of diversion under the permit may exceed said rate, provided that the amount of water appropriated shall not exceed 12 acre-feet in any month (equivalent to a continuous flow of 0.193 cfs). Total appropriation under this permit shall not exceed 74 acre-feet in any year.

2. The amount of water to be appropriated under the permit issued pursuant to Application 19510 of John A. Fulton (dba Fulton Water Company) for domestic and municipal purposes shall be limited to the amount which can be beneficially used and shall not exceed 0.82 cubic foot per second by direct diversion year-round. The instantaneous rate of diversion under the permit may exceed said rate, provided that the amount of water appropriated under this permit and under Application 18248 shall not exceed 50.5 acre-feet in any month (equivalent to a continuous flow of 0.82 cfs). Total appropriation under this permit and under the permit issued pursuant to Application 18248 shall not exceed 314 acre-feet in any year.

3. Actual construction work shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1969.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

ORDER

A petition having been filed to change the place of use as described in Application 19629 of Meyers Water Company to be identical with the amended place of use as authorized (but misdescribed by clerical error) in Applications 18021, 18030, 18031, 18038, and 18039 of Meyers Water Company, and it being found that the proposed change of place of use would not operate to the injury of any lawful user of water;

IT IS HEREBY ORDERED that said petition be, and it is, approved and that the consolidated place of use for Applications 18021, 18030, 18031, 18038, 18039, and 19629 of Meyers Water Company be amended or corrected to describe a place of use as follows:

SW $\frac{1}{4}$ of Section 19; S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 21; SE $\frac{1}{4}$ of Section 21; W $\frac{1}{2}$ of SW $\frac{1}{4}$ and SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22; W $\frac{1}{2}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 27; N $\frac{1}{2}$, SW $\frac{1}{4}$ and N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 28; W $\frac{1}{2}$, SE $\frac{1}{4}$ and S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 29; Section 30; N $\frac{1}{2}$ and SE $\frac{1}{4}$ of Section 31; and W $\frac{1}{2}$ of Section 32, all in T12N, R18E, MDB&M; W $\frac{1}{2}$ of Section 5; NE $\frac{1}{4}$ and E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 6; E $\frac{1}{2}$ of NE $\frac{1}{4}$ and E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 7; W $\frac{1}{2}$ of Section 8; W $\frac{1}{2}$, W $\frac{1}{2}$ of NE $\frac{1}{4}$ and W $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 17; and N $\frac{1}{2}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 20; all in T11N, R18E, MDB&M; E $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 25; NE $\frac{1}{4}$ of Section 25; and the NE $\frac{1}{4}$ of Section 36, all in T12N, R17E, MDB&M.

ORDER

IT IS HEREBY ORDERED that:

1. The amount of water to be appropriated under the permit issued pursuant to Application 19629 of Meyers Water Company for domestic purposes shall be limited to the amount which can be beneficially used and shall not exceed 2.33 cubic feet per second by direct diversion to be diverted year-round and 104 acre-feet per annum by storage to be collected from about October 1 of each year to about June 1 of the succeeding year. The instantaneous rate of diversion under the permit may exceed 2.33 cfs, provided that the amount of water appropriated by direct diversion shall not exceed 143 acre-feet in any month (equivalent to a continuous flow of 2.33 cfs).

2. Actual construction work shall begin on or before July 1, 1966, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

3. Said construction work shall be completed on or before December 1, 1969.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

5. The permittee shall release at all times into the natural channel of Coyote Creek, immediately below Coyote Dam, a flow of 0.25 cubic foot per second, or the natural flow, whichever is less, to maintain fishlife.

6. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the

bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

7. Permittee shall install and maintain suitable measuring devices (a) upstream from the high-water elevation of his reservoir and (b) immediately below his storage dam in order that accurate measurement can be made of the quantity of water flowing into and out of said reservoir.

8. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

9. A separate application for approval of plans and specifications for construction of the dam described in this approved water right application shall be filed with and approved by the Department of Water Resources prior to commencement of construction of the dam.

10. The total amount of water appropriated by direct diversion under permits issued pursuant to Applications 18021, 18030, 18031, 18038, 18039, and 19629 shall not exceed 345 acre-feet in any calendar month, and total diversions under said permits shall not exceed 2,760 acre-feet in any year.

ORDER

IT IS HEREBY ORDERED that:

1. The amount of water to be appropriated under the permit issued pursuant to Application 19819 of Duncan S. Davis (dba Mountain Spring Water Company) for domestic purposes shall be limited to the amount which can be beneficially used and shall not exceed 0.42 cubic foot per second by direct diversion year-round. The instantaneous rate of diversion under the permit may exceed said rate, provided that the amount of water appropriated shall not exceed 26 acre-feet in any month (equivalent to a continuous flow of 0.42 cfs). Total appropriation under this permit shall not exceed 160 acre-feet in any year.

2. Actual construction work shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

3. Said construction work shall be completed on or before December 1, 1969.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

ORDER

IT IS HEREBY ORDERED that:

1. The amount of water to be appropriated under the permit issued pursuant to Application 19845 of Tahoe City Public Utility District for municipal purposes shall be limited to the amount which can be beneficially used and shall not exceed 1.16

cubic feet per second by direct diversion year-round. The instantaneous rate of diversion under the permit may exceed said rate, provided that the amount of water appropriated shall not exceed 72 acre-feet in any month (equivalent to a continuous flow of 1.16 cfs). Total appropriation under this permit, when added to all other water delivered by the permittee to its customers within the place of use authorized for Application 19845, shall not exceed 72 acre-feet in any month or 444 acre-feet in any year.

2. Actual construction work shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

3. Said construction work shall be completed on or before December 1, 1969.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

ORDER:

IT IS HEREBY ORDERED that:

1. The amount of water to be appropriated under the permit issued pursuant to Application 20137 of Lawrence H. and Beryl S. Smith and Robert H. Williams for domestic purposes shall be limited to the amount which can be beneficially used and shall not exceed 0.16 cubic foot per second by direct diversion year-round. The instantaneous rate of diversion under the permit may exceed said rate, provided that the amount of water appropriated shall not exceed 9 acre-feet in any month (equivalent

to a continuous flow of 0.16 cfs). Total appropriation under this permit shall not exceed 50 acre-feet in any year.

2. Actual construction work shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

3. Said construction work shall be completed on or before December 1, 1969.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

5. No water shall be appropriated under this permit until the permittees have established a mutual water company or some other organization capable, to the satisfaction of the State Water Rights Board, of supplying the place of use on a continuous and permanent basis.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, this day of , 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member