

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 20862 of)
Lake County Flood Control and Water)
Conservation District to Appropriate)
from Scotts Creek in Lake County)

Decision 1322

DECISION APPROVING APPLICATION

The Lake County Flood Control and Water Conservation District having filed Application 20862 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 12-13, 1968; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Application 20862 is for a permit to appropriate 50,000 acre-feet per annum by storage from October 1 of each year to July 1 of the succeeding year for municipal, irrigation, domestic and recreational purposes from Scotts Creek in Lake County. The point of diversion is to be located in the NE $\frac{1}{4}$ of Section 22, T14N, R10W, MDB&M.

2. Scotts Creek originates in the hills west of Clear Lake and flows into Middle Creek about three miles northwest of Clear Lake. The waters of Middle Creek and Scotts Creek then flow into Rodman Slough thence Clear Lake.

3. Applicant proposes to construct an earthfill dam on Scotts Creek designed to impound 50,000 acre-feet of water. About 19,400 acre-feet will be withdrawn annually, some of which will be placed in underground storage for later recovery by agricultural wells. The rest of the water released from the reservoir will be rediverted from Scotts Creek and Clear Lake to supply water to various municipalities and for agricultural use.

4. The protests to Application 20862 raise issues as to whether the project would interfere with riparian rights to the waters of Clear Lake and prior appropriative rights along Cache Creek and the effect upon water quality in Clear Lake (see Water Code Section 13000.2).

Availability of Unappropriated Water

5. Unappropriated water exists in the Scotts Creek-Clear Lake-Cache Creek water system with sufficient frequency during the months of January through April to justify approval of Application 20862; that unappropriated

water occasionally exists in May and June, and may occur in October, November and December, and that it may be diverted without harm to protestants during those months provided such diversions are in accordance with the terms of the "Gopcevic" decree (discussed below) and the special permit term agreed to by applicant and protestant Yolo County Flood Control and Water Conservation District (see permit term No. 14 infra).

Records of flows in Scotts Creek at a point one mile downstream from the proposed dam site show a mean annual runoff of 49,530 acre-feet for the period 1960-61 through 1964-65. In 1964-65 the runoff was 92,290 acre-feet.

In its "Interim Review Report for Flood Control on Scotts Creek" the Corps of Engineers developed a record of flows for Scotts Creek at the dam site for the period 1921-1961. The record showed a mean annual runoff of 44,800 acre-feet.

Based upon this developed record, both the corps and the applicant agree that there would be, at times, water deficiencies for irrigation use. However, these deficiencies do not preclude the approval of the application since it is highly probable that the deficiencies can be made up by the purchase of exchange water from the Bureau of Reclamation's Tehama-Colusa Canal when the planned extension of the canal to Putah Creek is completed.

A decree issued in 1920 by the Superior Court of Mendocino County, in M. M. Gopcevic v. Yolo Water and Power Co., requires that the Clear Lake Water Company, as successor to the Yolo Water & Power Co.(1) maintain the level in Clear Lake between zero and 7.56 feet on the Rumsey gage at Lakeport. This decree protects the vested rights of the Clear Lake Water District and other riparians entitled to water from Clear Lake since the Yolo County Flood Control and Water Conservation District cannot withdraw water if its operations curve for lake withdrawals indicates that the lake level will drop to zero on the Rumsey gage by September 1.

According to the extended records of flow for the period 1921-1963, water was spilled at Clear Lake Dam, which controls the level of Clear Lake, in 25 of the 42 years in order to keep the lake from exceeding 7.56 feet on the Rumsey gage. This spill or nonirrigation release has occurred during the period December through June. The spill which occurred from December through April generally flowed unused to the Sacramento-San Joaquin Delta. Some spill was beneficially used by the downstream irrigation interests in May and they were able to utilize much of the spill that occurred in June. Winter storms frequently occur in October,

(1) The Clear Lake Water Company is now dissolved and its properties have been taken over by the Yolo County Flood Control and Water Conservation District.

November or December and, from the standpoint of practical operations, applicant would need to store floodwater that occurs during this period even though its release might be required later on for vested rights or other reasons.

Water Quality

6. Water Code Section 13000.2 states in part that

"... it is the policy of the state that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the state shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the state and shall be controlled so as to promote the peace, health, safety and welfare of the people of the state."

In the Board's opinion applicant's project will have no measurable effect upon water quality in the Scotts Creek-Clear Lake-Cache Creek water system and therefore approval of this application complies with the requirements of Water Code Section 13000.2.

Protestant has claimed that the water quality problems of Clear Lake, particularly the growth of algae, which causes offensive odors and thereby interferes with recreational activities on and adjacent to the lake, are alleviated when the winter flushing flows are allowed to move through the lake.

Conversely, protestant has claimed that if winter flows are held back from the lake and the flushing action

decreased, the algae problem will be aggravated. However, no technical evidence was introduced by protestant to support the above points or to indicate the volume of flushing water required to retard the growth of algae.

Applicant introduced expert evidence which indicated that only dilution rates greater than 700,000 acre-feet per year of water having an algae growth potential of 2 milligrams per liter would improve the Clear Lake algae problem. Applicant's evidence also indicated that the impoundment of the high-nutrient winter flows in the Scotts Creek Reservoir would more than offset any impairment of Clear Lake water quality due to the reduction in flushing flows.

Based upon the evidence introduced at the hearing, it is apparent that applicant's project will have a negligible effect on the growth of algae in Clear Lake. The positive effect of the project in preventing the inflow of nutrients to Clear Lake during periods of flood flow will offset the negative effect of the project in reducing the flushing flows.

Parenthetically, the Board notes that the major source of nutrients, which aggravate the algae problem, is from discharges from local sewage outlets and drainage from irrigated land and that no adequate waste disposal systems currently exist in the Clear Lake basin. The algae problem bears a direct relationship to the adjacent population and is not caused by retention of water in adjacent streams.

Fish and Game

7. The Department of Fish and Game stated that its protest might be dismissed if applicant agreed to the inclusion of a special permit term requiring the maintenance of an inactive pool of 3,000 acre-feet in the reservoir. Applicant has agreed and a condition to this effect will be included in the permit.

From the foregoing findings, the Board concludes that Application 20862 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

ORDER

IT IS HEREBY ORDERED that Application 20862 be, and it is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 50,000 acre-feet per annum by storage to be collected from about October 1 of each year to about July 1 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. The maximum quantity herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before December 1, 1971, 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, 1973.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.

7. 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 Resources Control 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 and to carry out legally established water quality objectives.

8. Permittee shall allow representatives of the State Water Resources Control 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.

9. Water entering the reservoir or collected in the reservoir during and after the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights.

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 Resources Control Board to comply with the preceding paragraph.

10. Permittee shall install and maintain suitable measuring devices in order that accurate measurement can be made of the quantity of water flowing into and out of said reservoir.

11. 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.

12. Unless constructed by the United States, construction of the dam shall not be commenced until the Department of Water Resources has approved plans and specifications.

13. Permittee shall, at all times, maintain a minimum pool of not less than 3,000 acre-feet in Scotts Creek Reservoir, for the purpose of fishlife maintenance and recreation.

14. This permit is subject to the prior rights of the Clear Lake Water Company now owned by the Yolo County Flood Control and Water Conservation District. Should the level of Clear Lake not reach an elevation of 7.56 feet above zero as measured on the Rumsey gage at Lakeport, California, during the period from October 1 of each year to June 1 of the succeeding year, permittee, upon demand of said district, shall, either by releases down the natural channel of Scotts Creek or otherwise (including releases from other reservoirs), deliver into Clear Lake (a) the amount of water, as measured at the point of entry into Clear Lake, which would have reached Clear Lake had there been no storage of water under this permit during such period, or (b) such lesser amount which, if not stored by permittee during such period, would have caused the level of Clear Lake to

reach 7.56 feet on the Rumsey gage at some time during such period. Such delivery of water into Clear Lake shall be commenced no later than June 15 and completed within 60 days after commencement. The amount of water to be delivered into Clear Lake under clause (a) above shall be the amount stored under this permit during such period of October 1 to June 1 of the same water year, unless the Board, on petition of the permittee and after notice and hearing, determines and prescribes another method for ascertaining the amount of water described in clause (a) above. The Board shall retain continuing jurisdiction for ten years after the initial date of operation of the project within which it may make such determination, and also within which the Board may, on petition of the permittee and after notice and hearing, prescribe operating procedures for ascertaining the amount of water described in clause (b) above. Notwithstanding the requirements of the release of water by permittee set forth above, any water released from Clear Lake by said district during the period from October 1 of each year to June 1 of the succeeding year and not used beneficially pursuant to such prior rights of the Clear Lake Water Company shall be considered surplus water regardless of the level of Clear Lake at the time of said release, and permittee shall be entitled to retain an equivalent amount of water for storage in accordance with the priority of its permit even though Clear Lake does not reach the level of 7.56 feet on the Rumsey gage.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: JAN 9 1969

GEORGE B. MAUL
George B. Maul, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

RALPH J. MCGILL
Ralph J. McGill, Member

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member

STATE OF CALIFORNIA
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ORDER NO. WR 73-2

ORDER SETTING ASIDE DECISION 1322

A peremptory writ of mandate having been issued by the Superior Court of California for the County of Lake commanding the State Water Resources Control Board to set aside Decision 1322 approving Application 20862 of the Lake County Flood Control and Water Conservation District, and remanding said proceeding to the Board to reconsider its action in the light of the Court's judgment;

Said Court having adjudged that any permit issued in approval of Application 20862 should contain appropriate conditions recognizing the prior and paramount riparian and littoral rights represented by Clear Lake Water District, and protecting such rights by providing adequate assurance that there shall be no impoundment of any waters of Scotts Creek which would result in any substantial reduction in lake levels during the recreation season below those which would have obtained in the absence of the project;

NOW, THEREFORE, IT IS ORDERED that Decision 1322 be, and it is hereby, set aside in conformity to the Court's

peremptory writ of mandate. A hearing will be held upon notice to the parties to consider the conditions that should be imposed in the permit.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: January 4, 1973

ABSENT

W. W. Adams, Chairman

RONALD B. ROBIE
Ronald B. Robie, Vice Chairman

E. F. DIBBLE
E. F. Dibble, Member

ROY E. DODSON
Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER
Mrs. Carl H. (Jean) Auer, Member