

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22314 )  
of Dye Creek Cattle Company and )  
Tuscan Company to appropriate from )  
an Unnamed Stream in Lassen County )  

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Decision 1332

*Cancelled*  
6-20-69

DECISION APPROVING APPLICATION

Dye Creek Cattle Company and Tuscan Company having filed Application 22314 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Rights Board, predecessor of the State Water Resources Control Board, on October 3, 1967; applicants and protestant having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Application 22314 is for a permit to appropriate 828 acre-feet per annum (afa) by storage from October 1 of each year to May 1 of the succeeding year for irrigation, stockwatering, and recreational purposes from an unnamed stream in Lassen County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 19, T29N, R10E, MDB&M.

2. The applicants propose to construct a reservoir with a capacity of 828 acre-feet on an unnamed stream approximately one mile upstream from McKenzie Meadows. The unnamed stream flows through the meadows to join Goodrich Creek. Goodrich Creek continues from this junction approximately 4 miles to Mountain Meadows Reservoir of the protestant, Pacific Gas and Electric Company (hereinafter referred to as "PG&E"). Hamilton Branch, North Fork Feather River, connects Mountain Meadows Reservoir with Lake Almanor. Water stored in the applicants' proposed reservoir is to be used for the irrigation of permanent pasture to be developed in the eastern portion of McKenzie Meadows, stockwatering, and commercial recreation.

3. There are no records of the flows of the unnamed stream. The total area tributary to the applicants' proposed reservoir is 3.3 square miles and the average annual precipitation in the area is approximately 35 inches. The average unimpaired October-through-April runoff at the reservoir site is an estimated 2,772 acre-feet (Applicants' Exh. 3). Water is physically present to fill the applicants' reservoir.

4. PG&E stores water in Lake Almanor and diverts directly from the North Fork Feather River and tributaries for the generation of power at its Hamilton Branch, Butt Valley, Caribou, Rock Creek, Cresta and Poe plants. At the

time of the hearing another plant (Belden) was nearing completion. At the hearing and in its briefs, PG&E directed its protest toward possible interference with operation of Lake Almanor as a storage reservoir for the power plants below. The applicants' proposed storage of 828 afa of water from the unnamed stream would result in 500 afa less water than is now available for storage by the company in Lake Almanor (RT 33). Water is spilled at the Hamilton Branch Power Plant above Lake Almanor every year and PG&E makes no contention that the applicants' project will interfere with the generation of power at that plant (RT 55).

5. PG&E argues that the appropriation proposed by the applicants would reduce the amount of water retained as carry-over storage in Lake Almanor unless the company reduces its generation of power by failing to release an equivalent quantity of water from the lake (Protestant's Brief, p. 2). It contends that hydroelectric operators should be allowed to maintain "reasonable reserves" to carry them through dry years and that a reduction in carry-over storage would be harmful even though the full realization of it might be postponed to sometime in the future (Protestants's Brief, pp. 5, 6). The company contends that because (1) the entire inflow to the lake can be controlled and either directly diverted through the power plant or retained in storage for

later release through the plant and (2) since 1958 the only water that has been released past the dam has been that required for maintenance of fish, no unappropriated water exists (Protestant's Brief, p. 7).

Applicants argue that during a 15-year period of study (1950-1966) PG&E made no use of the water which applicants propose to appropriate and that had applicants' project been in operation during this period the only effect would have been to reduce minimum storage in Lake Almanor by 7,500 acre-feet, from 604,800 acre-feet to 597,300 acre-feet. They say no less power would have been generated unless the company "could measure the infinitesimal effect of this depletion through a reduced head" (Applicants' Opening Brief, p. 4).

6. PG&E claims the right to store up to 1,308,000 acre-feet at Lake Almanor and to divert the natural flow of the North Fork Feather River through its Butt Valley Power Plant pursuant to six notices of appropriation of water filed in the year 1902 and one in the year 1911 (RT 64, 67; Protestant's Exhs. C through I). Evidence was introduced that PG&E has used practically all of the available natural flow of the river through its power plants except such water as has been retained in storage and that all of the water that has been released from storage, except mandatory fish

releases, has been used to generate power (RT 2, 3). The Board assumes for the purposes of this decision that PG&E has established rights to use the full natural flow by direct diversion for power purposes (as distinguished from storage of water) and that the applicants should not be allowed to interfere with this use.

7. No evidence was introduced by PG&E that all of the large quantity of water held in Lake Almanor will ever be used through the power plants. While a water right may include reasonable carry-over storage to safeguard against periods of below-normal supply, the quantity that may be held for such purpose is no more than that reasonably necessary to assure continuance of the supply that has been used. (See Duckworth v. Watsonville Water and Light Company, 150 Cal. 520, 533, 89 Pac. 338; Lindblom v. Round Valley Water Company, 178 Cal. 450, 457, 173 Pac. 994.)

8. The power generation capacity of Butt Valley Power Plant depends in part upon the elevation of Lake Almanor since it is a complete pressure system (RT 54-55). Even though a reduction of 500 acre-feet would lower the lake level only about 1/50th of a foot (RT 86), annual loss of this head over a period of years might eventually have a significant effect upon PG&E's power revenue. Therefore, further consideration is required of PG&E's claimed right to the storage of water at Lake Almanor.

9. In the year 1927 Almanor Dam was raised to increase the capacity of Lake Almanor to 1,308,000 acre-feet. Due to leakage the enlarged capacity was used for only a short period and thereafter until the year 1962 the maximum amount of water stored was approximately 650,000 acre-feet. In the year 1963 storage was increased and by 1967, when permission was given by the Department of Water Resources, Division of Safety of Dams, 1,030,000 acre-feet were stored in the lake (RT 74; Applicants' Exh. 4; Source: U.S.G.S Water Supply Papers).

Water Code Section 1202 provides in part:

1202. The following are hereby declared to constitute unappropriated water:

- (a) . . .
- (b) All water appropriated prior to December 19, 1914, which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation, or which has not been put, or which has ceased to be put to some useful or beneficial purpose.

Applying the requirement of diligence in placing water to beneficial use pursuant to the 1902 and 1911 notices to appropriate water, the Board concludes that PG&E's right to storage in Lake Almanor may have become fixed during the period of approximately 35 years from about 1928 to 1963 when the storage in the lake did not exceed 650,000 acre-feet.

It is, of course, understood that this Board has no jurisdiction to finally determine the validity or extent of PG&E's claimed pre-1914 appropriative rights obtained pursuant to the notices earlier mentioned. However, in view of the substantial question which in the Board's opinion exists concerning the validity of PG&E's right to store in excess of 650,000 acre-feet, and having in mind that the burden rests upon one asserting a prior right to prove its existence, the Board will assume for purposes of this decision that the excess storage is without right as against the applicants. The Board's action will not, of course, prevent PG&E from securing a judicial determination of its rights in a proceeding brought for that purpose.

10. Although PG&E may now be storing water in Lake Almanor in excess of its demonstrated rights, that storage has been accomplished and the water that is now in the lake is not physically available to the applicants located upstream. So long as no more water is withdrawn from the lake each year than was withdrawn before the capacity of the lake was increased, the applicants have no cause to object to operation of the lake at a higher level.

However, the storage of water at Lake Almanor involves a consumptive use of water from upstream sources by replenishment of evaporation losses from the lake. These

losses with the lake at the 650,000 acre-foot level were an estimated 67,400 acre-feet annually. The additional impoundment of water in the lake since the year 1963 has created a larger surface area with estimated evaporation losses of 70,626 acre-feet annually, or an increase of 3,226 acre-feet. PG&E has no right to insist upon continued flows from sources above the lake to support this additional consumptive use of water and this water is available for appropriation by others.

11. Unappropriated water is available to supply the applicants, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

12. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22314 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.

#### ORDER

IT IS HEREBY ORDERED that Application 22314 be, and it is, approved, and that a permit be issued to the applicants 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 828 acre-feet per annum by storage to be collected from about October 1 of each year to about May 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 September 1, 1969, 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, 1971.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1972.

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.

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 and to the extent that appropriation of water is not authorized under this permit.

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. 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.

11. Construction of the dam shall not be commenced until the Department of Water Resources has approved plans and specifications.

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

Dated: FEB 20 1969

~~KERRY W. MULLIGAN~~  
Kerry W. Mulligan, Chairman

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

GEORGE B. MAUL **ABSENT**  
George B. Maul, Member

NORMAN B. HUME  
Norman B. Hume, Member

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