STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 18785 and 18786 of Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District to Appropriate from South Fork Eel River in Lake and Mendocino Counties, and Request for Release from Priority of Applications 17039 through 17044 in Favor of Applications 18785 and 18786

ORDER RESCINDING DECISION 1345

On September 18, 1969, the board adopted Decision 1345 approving in part Application 18785 of Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District (hereinafter referred to as "district"), denying Application 18786,and releasing the priority of Applications 17039 through 17044 in favor of Application 18785.

The California Department of Fish and Game (hereinafter referred to as the "department"), a protestant to Applications 18785 and 18786, filed a petition for reconsideration of Decision 1345 with the board on October 17, 1969. The petition was based on the board's denial of a request by the department to reserve jurisdiction pursuant to Water Code Section 1394 over any permit issued on Application 18785 for the purpose of imposing terms and

conditions for the protection of the fishery resource involved, following a study to be made by the department.

In denying the request for reservation of jurisdiction, the board pointed out that as any future fish protection terms which might result from future studies could not be made binding on diversion of water for power purposes by the Pacific Gas & Electric Company under its water right License 1424 and other vested rights, they would be ineffectual. The department contended that the fact that the company's federal power license expires in 1972 was not fully considered.

It is true that if the power license is recaptured by the United States and the power facilities abandoned, the district would be able to control the diversion of water from the Eel to the Russian River under any permit issued under Decision 1345 on Applications 18785 and 18786 without regard to fish life in the Eel River. Accordingly, on November 6, 1969, the board ordered that Decision 1345 be reconsidered.

Applications 18785 and 18786 cover water presently stored in Lake Pillsbury on South Fork Eel River and diverted directly from the river at Capehorn Dam by the Pacific Gas and Electric Company through the company's Potter Valley Power Plant into the Russian River. The direct diversion has been in operation since the year 1907 and the storage of water since 1922. Except for a relatively small amount of water which the company delivers to the Potter Valley Irrigation District, the water, after its release from the power plant, is impounded by the applicants' Coyote Valley Dam and is then rediverted into the applicants' systems, exported outside the Russian River Basin to areas served by the Sonoma District, used by many diverters along

the Russian River or for upstream flows in the river as provided for in Decision D 1030 for recreation and maintenance of fish life. The applicants do not intend to make any change in this historic diversion of water from the Eel River into the Russian River Basin, but are seeking permits from the board as a means of perpetuating this diversion, should the company discontinue the project.

The board is persuaded by the department's contention that proceedings by the Federal Power Commission may alter the company's project sufficiently to warrant further consideration of the matter of fish requirements. Should the department's study demonstrate that mandatory releases of water for fish protection in the Eel River would be in the public interest, the board should be able to impose appropriate permit terms.

In opposition to the department's petition, applicants cite the Natural Soda Products Company case* as authority for the principle that users within the Russian River watershed are entitled to a continuation of the historic diversion of water from the Eel River, and therefore, the board should not require any of that water to be left in the Eel River. The department does not agree that the Natural Soda Products case is applicable to the Eel-Russian situation. The board concurs with the department's view. The applications were filed and are considered by the board on the assumption that the diversion might otherwise be discontinued and that the water is unappropriated except to the extent that prior rights of Pacific Gas and Electric Company continue to be exercised. The fact that the project has been in operation for a number of years is not material. The board's

*Natural Soda Products Company v. City of Los Angeles, 23 Cal. 2d 193

authority to condition permits in the public interest is the same as it would be if the water had not been previously diverted.

The company's power license (FPC Project No. 77) will expire April 15, 1972. Upon the expiration of the license, the United States will have the right to take over the entire project subject to certain financial requirements. The company has submitted a report to the FPC to show that the public interest would best be served by the issuance of a new license to the company and that a federal takeover would not be in the public interest. The U. S. Bureau of Reclamation has recommended to the FPC that consideration be delayed for five years pending further study by the Bureau of the proposed English Ridge Reservoir, which, if constructed, would inundate a portion of the company's project. In any event, a final decision as to whether the company will be able to continue with its hydroelectric project is several years away. Should the project be relicensed, the need for permits under Applications 18785 and 18786 would appear to be unnecessary. On the other hand, should the project be abandoned by the company, the board should be able to determine, in the public interest, what water, if any, should be provided in the Eel River for the maintenance of fish.

In view of the several issues involved, including a lack of need for permits by the district for some time in the future, it is the decision of this board that Decision 1345 should be rescinded in its entirety and that the applications should revert to their former status, to be reconsidered at a later date. In the meantime, the department will be expected to proceed with its study with reasonable dispatch, as it is the board's intention that hearings be held and the fish release issue resolved, insofar as these

applications are concerned, before the matter of relicensing is considered by the Federal Power Commission, in order that the commission, in its deliberations, may have the benefit of the board's viewpoint as to what is the public interest regarding the beneficial uses of water.

The department's study, in considering the need for mandatory releases of water for protection of fish in the Eel River, should also show how the attendant reduction of transbasin flow into the Russian River Basin will affect the beneficial uses made through the diversions from the Russian River and through the instream flows provided for in board Decision D 1030 for recreation and maintenance of fish life.

IT IS ORDERED that Decision 1345 be, and it is, hereby rescinded.

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

Dated: January 8, 1970

Kerry W. Mulligan, Chairman

W. A. Alexander, Vice Chairman

Norman B. Hume, Member

E. F. Dibble, Member

Ronald B. Robie, Member

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 18785 and 18786 of Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District to Appropriate from South Fork Eel River in Lake and Mendocino Counties, and Request for Release from Priority of Applications 17039 through 17044 in Favor of Applications 18785 and 18786

ORDER GRANTING PETITION FOR RECONSIDERATION FOR LIMITED PURPOSE

On September 18, 1969, the Board adopted its Decision 1345 approving in part Application 18785 of Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District (hereinafter referred to as "District"), denying Application 18786, and releasing the priority of Applications 17039 through 17044 in favor of Application 18785. The California Department of Fish and Game (hereinafter referred to as the "Department"), a protestant to Applications 18785 and 18786, filed a petition for reconsideration of Decision 1345 with the Board on October 17, 1969.

The petition is based on the Board's denial of a request by the Department to reserve jurisdiction pursuant to Water Code Section 1394 over any permits issued pursuant to Applications 18785 and 18786 for the purpose of imposing terms and conditions for the protection of the fishery resource involved following a study to be made by the Department.

In denying the request for reservation of jurisdiction, the Board pointed out that as any future fish protection terms which might result from future studies could not be made binding on diversion of water for power purposes by the Pacific Gas & Electric Company under its water right License 1424 and other vested rights, they would be ineffectual.

The Department contends that the fact that the Company's federal power license expires in 1972 was not fully considered. It is true that if the power license is recaptured by the Federal Government and the power facilities abandoned, the District would be able to control the diversion of water from the Eel to the Russian River under the permit to be issued pursuant to Application 18785 without regard to fish life. This may not be in the public interest.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that Decision 1345 be reconsidered for the limited purpose of determining whether jurisdiction should have been reserved as requested by the Department. The hearing will be limited

to such additional evidence and argument as the Board may find to be required for consideration of the issues raised in the petition.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California, on November 6, 1969.

Kerry W. Mulligan, Chairman

W. A. Alexander, Vice Chairman

Norman B. Hume, Member

E. F. Dibble, Member

Ronald B. Robie, Member

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 18785 and 18786 of Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District to Appropriate from South Fork Eel River in Lake and Mendocino Counties, and Request for Release from Priority of Applications 17039 through 17044 in Favor of Applications 18785 and 18786	Decision 1345

DECISION APPROVING APPLICATION 18785 IN PART, DENYING APPLICATION 18786, AND RELEASING THE PRIORITY OF APPLICATIONS 17039 THROUGH 17044 IN FAVOR OF APPLICATION 18785

Sonoma County Flood Control and Water Conservation District (hereinafter referred to as "Sonoma District") and Mendocino County Russian River Flood Control and Water Conservation Improvement District, having filed Applications 18785 and 18786 for permits to appropriate unappropriated water and having requested a release from priority of Applications 17039 through 17044 in favor of the applications; protests having been received; a public hearing having been held before the State Water Resources Control Board on October 8, 1968; applicants and protestant Department of Fish and Game having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. (a) Application 18785 is for a permit to appropriate 345 cubic feet per second by direct diversion, and 93,700 acre-feet per annum (afa) by storage, both year-round, for municipal, industrial, irrigation, and streamflow maintenance for fish and wildlife protection from the Eel River in Lake, Mendocino, and Sonoma Counties. The point of diversion to storage is to be located within the NW¼ of NW¼ of Section 18, T18N, R10W (Lake Pillsbury), and the point of direct diversion is within the NE¼ of SE¼ of Section 30, T18N, R11W (Capehorn Dam), MDB&M. Numerous points of rediversion are to be located within the Russian River Basin.

(b) Application 18786 is identical to Application 18785 except that it is for power generation, streamflow maintenance for the protection and enhancement of fish and wildlife, recreational, and aggregate processing purposes.

2. Applications 18785 and 18786 cover Eel River water presently stored in Lake Pillsbury and diverted directly from the river at Capehorn Dam by the Pacific Gas and Electric Company (hereinafter referred to as "the Company") through the Company's Potter Valley Power Plant into the Russian River. The Company's project has been in operation since the year 1907. Except for 9,408 acre-feet of water which the Company delivers to the Potter Valley Irrigation District, this water, after its release from the power plant, is impounded by the applicants' Coyote Valley Dam (Lake Mendocino) and is then rediverted into the applicants' system, exported outside the Russian River Basin to areas served by the Sonoma District, or used by the many diverters along the Russian River.

3. Protestant Lake County Flood Control and Water Conservation District has entered into a stipulation with the applicants which provides that the District's protest can be considered withdrawn if any permit issued on Application 18785 or Application 18786, and any release from priority of state applications, contain a provision limiting the applicants' rights under the permit to the historical diversions of water from Eel River to the Russian River through the Potter Valley Power Plant (Applicants' Exhibit 14).

The applicants do not intend to make any change in the historical diversions of water or use any water in excess of that authorized by Permits 12947 (Application 12919A) and 12948 (Application 12920A) covering their Coyote Valley Project (Applicants' answer to protestants; RT/138). The maximum amount of water diverted through the Potter Valley Tunnel in recent years occurred in water year 1966-67 when approximately 221,000 acre-feet were diverted. A term limiting diversions to this amount should be included in any permit issued pursuant to the applications and in any release from priority of the state applications.

4. Although the Company owns all the facilities used to store and divert the Eel River water into the Russian River, the requirement that the applicants must show that they can obtain access to the source covered by the applications is met by the spirit if not the letter of the Sonoma District's agreement with the Company, dated July 31, 1965 (Applicants' Exhibit 20). The Company, which had representatives at the hearing on

Applications 18785 and 18786, has made no protest or objection to the applications. The project is located within the Mendocino National Forest, and the Forest Service also has no objection to the approval of the applications (letter from Regional Forester of March 19, 1968, filed with Application 18785).

5. The Company holds License 1424 covering storage of 102,366 afa from November 1 to June 1 from the Eel River for storage in Lake Pillsbury for power purposes. It also claims other rights to water from the Eel River for its Potter Valley project under early filings made prior to the enactment of the Water Commission Act and by virtue of certain conveyances and agreements (Applicants' Exhibits 15 through 19). The Company holds a Federal Power Commission license which will expire in 1972. The Company intends to apply for a renewal of this license. The Company's rights to store and divert water for power purpurposes are entirely adequate for continued operation of the power generation feature of the project, and approval of Application 18786 for power generation would be mere duplication and is unnecessary. These rights currently held by the Company will be available for assignment to the applicants in the event the Company's FPC license is not renewed and a license is issued to the applicants.

The water covered by the Company's prior rights for power purposes is available for the consumptive uses described by Application 18785 when it leaves the tailrace of the Potter Valley Power Plant. However, the gross storage capacity of Lake Pillsbury is 86,785 acre-feet of water (Applicants'

Exhibit 28, p. 15), and the Company holds Licenses 1199 and 5545 (Applications 5661 and 6594) covering 9,408 afa of Lake Pillsbury water for consumptive use within the Potter Valley Irrigation District. Therefore, storage of water authorized by any permit issued on Application 18785 should be limited to 77,377 afa. Records of USGS gaging stations on the Eel River show that the storage season for Lake Pillsbury has been from about November 1 to June 1, and any permit issued on Application 18785 should restrict storage to that period.

6. Use of water for recreation is an important feature of the project and should be approved. The most convenient means of accomplishing this is to transfer recreation use from Application 18786 to Application 18785. Application 18786 should then be denied.

7. Unappropriated water is available to supply the applicants under Application 18785, 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. There is no unappropriated water to supply the applicants under Application 18786.

8. The intended use of water is beneficial.

9. Protestant Department of Fish and Game has requested the Board to reserve jurisdiction over any permit issued pursuant to Applicant 18785 or Application 18786, for the purpose of imposing terms and conditions for the protection of the fishery resource involved, after a study is made by the Department. However, any future fish protection terms which might result

from such studies could not be binding on diversion of water for power purposes under License 1424 and other vested rights. Such terms in permits issued on Application 18785 would therefore be ineffectual. The request of the Department of Fish and Game therefore is denied.

10. Other users of water from the Russian River share the concern of the applicants over any interruption in the supply of Eel River water that has historically been available to them through the Potter Valley Power Plant. The permit issued on Application 18785 should be issued not only to the applicants but also to the applicants as trustees for other users holding vested rights to water from the Russian River below the point where the Eel River water enters the Russian River. This is in accordance with the intent of the applicants at the time of filing Application 18785 (RT 324).

11. The applicants have requested a release from priority of Applications 17039, 17040, 17041, 17042, 17043, and 17044 filed by the State of California, in favor of Applications 18785 and 18786. These applications cover storage at the proposed Willow Ridge, Sequoia, and Bell Springs reservoirs on the Eel River. The water covered by the state applications is to be used within the Eel River watershed and for export to state water project service areas. The sole effect on the release from priority, if granted, would be to reverse the priority as between the state filings, which were filed in 1956, and Application 18785, which was filed in 1959. The priority relationship between Application 18785 and the state

filings on the one hand, and all other applications on the Eel River stream system on the other hand, would remain unchanged.

The project covered by Application 18785 is not in conflict with the general or coordinated plan for the development of the State or with water quality objectives established by law and will not deprive the counties of origin of any water which may be necessary for their development (Water Code Sections 10504 and 10505). Department of Water Resources Bulletins No. 3, "The California Water Plan", and No. 160-66, "Implementation of the California Water Plan", include the storage of water in Lake Pillsbury and diversion of water from the Eel River into the Russian River through the Potter Valley Power Plant. The Department of Water Resources has no objection to the approval of Application 18785 and the release from priority of state Applications 17039 through 17044 (letter of October 8, 1968, from Director to Chairman of State Water Resources Control Board). All studies show a large surplus of water in the Eel River over and above the future needs of the counties of origin.

From the foregoing findings, the Board concludes that Application 18785 should be approved in part and that a permit should be issued to the applicants, subject to the limitations and conditions set forth in the order following, that the recreation purpose of use requested in Application 18786 should be transferred to Application 18785, after which the remaining portion of Application 18786 should be denied, and that the request for release from priority of Applications 17039, 17040, 17041, 17042, 17043, and 17044 in favor of Application 18785 should be granted.

ORDER

IT IS HEREBY ORDERED that the priority of Applications 17039, 17040, 17041, 17042, 17043, and 17044 be, and they are, released in favor of Application 18785, subject to the following reservations and conditions:

1. The prior right of any county in which the water covered by Application 18785 originates to the use of such water as may be necessary for the development of such county as provided for in Section 10505 of the Water Code.

2. In accordance with Section 10504.5(a) of the Water Code, the recipients of the release from priority made herein shall, before making any changes determined by the State Water Resources Control Board to be substantial in the project in furtherance of which the release from priority is made, submit such changes to the Board for its approval.

3. That rights under Application 18785 be limited to the historical diversions of water from the Eel River by the Pacific Gas and Electric Company under License 1424 and other vested rights, and shall not authorize a use of water from the Russian River in excess of that authorized by Permits 12947 (Application 12919A) and 12948 (Application 12920A).

IT IS FURTHER ORDERED that Application 18785 be, and it is, approved in part, and that a permit be issued to the applicants and to the applicants as trustees for other users holding vested rights to water from the Russian River below the point where the Eel River water enters the Russian River, 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 345 cubic feet per second by direct diversion, year-round, and 77,377 acre-feet per annum by storage, to be collected from about November 1 of each year to about June 1 of the succeeding year, and shall be further limited to the historical diversions from the Eel River by the Pacific Gas and Electric Company under License 1424 and other vested rights which have not exceeded 221,000 afa.

The rights acquired under this permit shall not authorize a use of water from the Russian River in excess of the permittee's rights under Permits 12947 (Application 12919A) and 12948 (Application 12920A).

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

3. Complete application of the water to the proposed use shall be made on or before December 1, 1985.

4. 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.

5. 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.

6. 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.

7. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

8. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval, in compliance with Water Code Section 10504.5(a).

IT IS FURTHER ORDERED that recreation use be transferred from Application 18786 to Application 18785 and that Application 18786 be, and it is, denied.

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

Dated: September 18, 1969

Kerry W. Mulligan, Chairman

W. A. Alexander, Vice Chairman

ABSENT

Norman B. Hume, Member

E. F. Dibble, Member

ABSTAINED

Ronald B. Robie, Member