

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 1441

DECISION APPROVING APPLICATION IN PART

BY THE BOARD:

Lake County Flood Control and Water Conservation District filed Application 20862 on July 16, 1962, for a permit to appropriate unappropriated water. Protests were received and a public hearing was held before the State Water Resources Control Board on March 12 and 13, 1968. Applicant and protestants appeared and presented evidence, following which the Board adopted Decision 1322 on January 9, 1969, approving the application subject to various terms and conditions deemed necessary to protect prior vested rights.

In response to a petition by the Clear Lake Water District, the Superior Court of Lake County issued an alternate writ of mandate to inquire into the validity of the decision. After hearing, the court issued a peremptory writ remanding the matter to the Board to reconsider its action in the light of the court's findings, conclusions, and judgment.

The court adjudged that any permit issued in approval of Application 20862 should contain appropriate conditions

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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 recreational season below those which would have been obtained in the absence of the project.

Decision 1322 was set aside by the Board on January 4, 1973. Thereafter, a proposed decision substantially in conformance with this decision was submitted to the parties and was accepted by them as complying with the mandate of the court.

The Board having considered the evidence of its 1968 hearing and the findings and judgment of the court, together with subsequent arguments and recommendations of the parties as to the proper content of any amended order, now finds as follows:

Applicant's Project

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 (af) of water. About 19,400 af 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.

Protests

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.

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; unappropriated water occasionally exists in May and June and may occur in October, November, and December. Such water may be diverted without harm to protestant Yolo County Flood Control and Water Conservation District during those months, provided such diversions are in accordance with the terms of the "Gopcevic" decree (discussed below). However, the interests of the parties riparian to Clear Lake, including those represented by Clear Lake Water District, require that

Clear Lake be maintained as high as reasonably possible during the recreational season of about May 15 to about September 30.

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

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 damsite for the period 1921-61. The records showed a mean annual runoff of 44,800 af.

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 Company¹, maintain the level in Clear Lake between zero and 7.56 feet on the Rumsey gage at Lakeport.

According to the extended records of flow for the period 1921-63, 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

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.

of the spill that occurred in June. Accordingly, the season of unappropriated water, when also considering the interests of those around the lake, is found to be from October 1 to May 15.

Water Quality

6. Applicant's project will have no measurable effect upon water quality in the Scotts Creek-Clear Lake-Cache Creek water system.

Clear Lake Water District 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, this 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 af per year of water having an algae growth potential of two 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.

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 af in the reservoir. Applicant has agreed and a condition to this effect will be included in the permit.

Environmental Considerations

8. An environmental impact statement prepared by the U. S. Army Corps of Engineers, which proposes to construct the project, together with Statement of Findings signed by Colonel James C. Donovan, District Engineer, Sacramento District of the Corps, have been reviewed and considered. They present an adequate disclosure of environmental impacts, none of which requires any change in the Board's decision.

From the foregoing findings, the Board concludes that Application 20862 should be approved in part 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 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 October 1 of each year to May 15 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 allowed herein for appropriation may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before December 1, 1977, 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, 1980.

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

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 and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing

evaporation losses from water surfaces; (4) controlling phreato-phytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be take pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

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 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 riparian owners on Clear Lake, including those represented by Clear Lake Water District and the prior rights of 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 May 15 of the succeeding year, permittee 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 May 15 and completed by May 31 unless a smaller rate of release is necessary to avoid flood damage. 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 May 15 of the same water year.

Notwithstanding the requirements for the release of water by permittee set forth above, if any water is released from Clear Lake by Yolo County Flood Control and Water Conservation District during the period from October 1 of any year to May 15 of the succeeding year and not used beneficially under its prior rights (i.e., "spill"), then permittee shall be entitled to retain in storage water of the current season in an amount equal to the amount of water of the current season which is impounded at the time of any such release, even though Clear Lake does not reach said level of 7.56 feet.

The Board shall retain continuing jurisdiction, on petition of permittee and after notice and hearing, to determine

the method of ascertaining the amount of water described in clause (a) or (b) above and, also, to modify appropriately the foregoing release provisions keyed to failure of the lake to reach 7.56 feet if it be established that arrangements have been effected under which -- without regard to the lake reaching said level of 7.56 feet -- the lake levels will be protected adequately against any substantial reduction thereof during the recreational season (May 15 to September 30) below those levels which would have been obtained in the absence of the project.

Dated: November 21, 1974

W. W. ADAMS

W. W. Adams, Chairman

RONALD B. ROBIE

Ronald B. Robie, Vice Chairman

ROY E. DODSON

Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER

Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN

W. Don Maughan, Member