

LHG:CP
10-11-67

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of License 1205,)
issued on Application 882,)
of Helen Knox Dixon, et al.,)
to Appropriate from Sacramento)
River in Sutter County)

ORDER DENYING
PETITION FOR RECONSIDERATION
OF DECISION D 1282

On October 2, 1967, Helen Knox Dixon, Carolyn Knox, and Marilyn Knox Larson petitioned the State Water Rights Board to reconsider and set aside its Decision D 1282, and to make an order granting their petition to change the place of use authorized by License 1205 (Application 882). The licensed place of use is adjacent to the Sacramento River and admittedly is riparian to the river. The proposed new place of use is an area separated from the river by a railroad right-of-way. If the petition to change the place of use is allowed, the petitioners' new place of use would have a priority senior to that of the U. S. Bureau of Reclamation, instead of a junior priority, as at present. The petitioners would then continue to irrigate their presently licensed place of use under their riparian right, which they assert was dormant when they acquired their appropriative right.

The petitioners' five grounds for reconsideration were all considered by the Board in Decision D 1282.

Petitioners' first three grounds for reconsideration relate to Water Code Section 1702, which provides:

"Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved."

Petitioners say that water has been used north of the railroad on the proposed place of use for nearly forty years, without protest or objection from anyone. Petitioners say that the Board should determine injury as of the time the change actually occurred, not when the Board makes the finding required by Section 1702, and that at that time the change did not "operate to the injury of any legal user of the water involved." As explained in Decision D 1282, Section 1702 looks to the present and future, not to the past.

Petitioners also urge that the Bureau was not a "legal user" of the water, within the meaning of Section 1702, when petitioners' predecessors first used water on the proposed new place of use. Petitioners do not question the Board's findings that: "The Bureau stores water in Shasta and other reservoirs for summer release down the Sacramento River, and it has direct diversion rights to appropriate water from the river, with priorities of 1927 and 1938." (Decision D 1282, p. 2) As the Board interprets Section 1702,

the question is whether the Bureau is now a legal user of the water involved, not whether the Bureau was using water of the Sacramento River forty years ago, at a time when petitioners were using water outside their licensed place of use.

Petitioners' last two grounds for reconsideration relate to the fact that they have an admitted riparian right to use water on their presently authorized place of use. These grounds are not new, and were carefully considered in Decision D 1282.

NOW, THEREFORE, IT IS ORDERED that the petition for reconsideration of Decision D 1282 be, and it is denied.

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

Dated:

/s/ George B. Maul
George B. Maul, Chairman

/s/ W. A. Alexander
W. A. Alexander, Member

Board member Ralph J. McGill dissents from the foregoing order.