

see 80-13
D-1558

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24758)
ARTHUR ANDREOTTI,)
Applicant)
UNITED STATES WATER AND POWER)
RESOURCES SERVICE, ORLAND UNIT)
WATER USERS' ASSOCIATION AND)
WILLIAM H. AND HENRY H. DEANE)
Protestants)

Order: WR 80-18
Source: Unnamed Stream
and Indian Creek
County: Colusa

ORDER AMENDING AND AFFIRMING,
AS AMENDED, DECISION 1558

BY THE BOARD:

Three petitions for reconsideration of Decision 1558, which approved Application 24758, having been filed, the Board having adopted Order WR 80-13, which granted the petitions for reconsideration, the Board having reviewed the administrative record in the above matter finds as follows:

1. The three petitions for reconsideration were timely filed on behalf of or by the following interested or affected parties:
 - a. Protestant U. S. Water and Power Resources Service (Service);
 - b. Counsel for Protestant Orland Unit Water Users Association;
 - c. Manager for Protestant Orland Unit Water Users Association.
2. The three points cited by the Service as basis for requesting reconsideration all involved matters which were considered in arriving at Decision 1558. The petition alleges that the decision is not supported by substantial evidence, is inconsistent with Decision D 990 and includes errors in law: The points made by the Service and our responses are as follows:

a. *The Board violated Section 685, Title 23, California Administrative Code in ordering that "Any water released from East Park and Stony Gorge Reservoirs before April 30 for flood control purposes shall be counted as water collected to storage in those two reservoirs." (paraphrased and quoted).*

The purpose of condition 7 in Decision 1558 was to establish an effective and practical method of equitably determining the quantity of unappropriated water available to the applicant in any given year. If spills and releases through the outlet pipes of East Park and Stony Gorge Reservoirs by the protestant before the irrigation season are not counted as water available for appropriation at those locations, the capacity of those reservoirs could effectively be increased up to the amount of any unused storage capacity in Black Butte Reservoir downstream. Inasmuch as Black Butte Reservoir seldom spills and is situated outside the county of origin for uses out of the watershed of origin, the Board considers that such potential increase in the effective storage capacity of East Park and Stony Gorge Reservoirs would be a violation of the entitlements governing storage in those reservoirs. In addition if the Service chooses to forego storing surplus streamflow for any reason during the winter collection season, Andreotti should not be obligated to replace the lost water later in the season. The Board concurs that the reference to "flood control" should be deleted. A revised term is included later in this order.

b. *The Board has no jurisdiction over flood control.*

The Board claimed no jurisdiction over flood control in Decision 1558. This point is also addressed under (a) above.

c. *The Board erred in its determination of the availability of unappropriated water because the analysis considered spill water as stored water.*

The consideration of controlled releases for any reason as water available for appropriation in accordance with the revised term included below is proper and in accordance with the priority system of first in time first in right. The second chance to fill the Service reservoirs should come after the applicant's first chance to fill his reservoir.

3. Counsel for Protestant Orland Unit Water Users' Association requested that:

a. *A condition should be included in any permit issued requiring participation in and compliance with the conditions of any watermaster service program which may be reinstated as a result of a petition which has been filed with the Federal District Court.*

The Board agrees that a term to this effect should be in the permit and a special permit term will be included mandating participation in any future watermaster program imposed by State or Federal Courts or by the State Department of Water Resources to regulate diversions within the Stony Creek watershed.

b. *the following condition be deleted; "Any water released from East Park and Stony Gorge Reservoirs before April 30 for flood control purposes shall be counted as water collected to storage in those two reservoirs."*

This matter has been discussed previously and the reference to flood control will be deleted from the term.

4. *Manager for Protestant Orland Unit Water Users Association objects to inclusion of the words "or provide other means satisfactory to the State Water Resources Control Board" in term 4 in the Decision 1558. The Manager believes that an outlet pipe through the bottom of the Andreotti dam should be specifically required.*

The Board agrees that special conditions in Stony Creek watershed warrant deletion of these words in this and any other newly-issued permits therein. Accordingly, term 4 in Decision 1558 will be amended to require an outlet pipe through the Andreotti dam.

Conclusions:

From the foregoing findings, the Board concludes that Decision 1558 should be amended in part and that a permit should be issued with the amendments and supplemental terms set forth in the following order:

ORDER

IT IS HEREBY ORDERED that Decision 1558 is amended and supplemented as follows:

(1) Term No. 4 in Decision 1558 is modified to read,
"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 in order that water entering the reservoir which is not authorized for appropriation under this permit may be released."

(2) Term No. 7 in Decision 1558 shall be modified to read as follows:
"During any water year (October 1 of each year to September 30 of the succeeding year) when runoff, including water from the East Park Feeder Canal, entering East Park and Stony Gorge Reservoirs is insufficient to fill those reservoirs by April 30, the permittee shall release water through his diver-

sion facilities collected during the current storage season to flow downstream to East Park and Stony Gorge Reservoirs. The permittee shall release said water at as high a rate as possible not to exceed the capacity of the stream channel. Nothing in this term shall require release of water legally collected during previous water years nor shall permittee be required to release water to replace water released from East Park and Stony Gorge Reservoirs prior to April 30 unless such releases were necessary to fulfill downstream rights."

(3) The following additional term shall be included in the order of Decision 1558:

"The permittee by accepting this permit agrees to subject storage and release of water under Application 24758 to the control of any watermaster appointed by a court of competent jurisdiction or by the State Department of Water Resources to regulate diversions within the Stony Creek watershed."

Dated: October 16, 1980

/s/ CARLA M. BARD

Carla M. Bard, Chairwoman

/s/ WILLIAM J. MILLER

William J. Miller, Vice-Chairman

/s/ L. L. MITCHELL

L. L. Mitchell, Member

/s/ JILL B. DUNLAP

Jill B. Dunlap, Member

ABSENT

F. K. Aljibury, Member

