

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 78-67

DIRECTING THE EXECUTIVE DIRECTOR TO REFER TO THE ATTORNEY GENERAL THE MATTER OF UNAUTHORIZED DIVERSION OF WATER BY STORAGE IN A RESERVOIR OF HAMILTON AND BRODY ON AN UNNAMED STREAM TRIBUTARY TO SHINGLE CREEK IN EL DORADO COUNTY

WHEREAS:

1. A complaint, dated December 15, 1977, was received from Karen B. Guthrie, attorney representing four downstream water users, alleging the construction of a dam and unauthorized storage of water therein by A. L. Hamilton, on an unnamed stream tributary to Shingle Creek in El Dorado County.
2. Application 25172 was filed on October 15, 1976, by Mr. Hamilton and William Brody, M.D., for storage of water from said unnamed stream, for which a permit has not yet been issued.
3. By certified letter of January 23, 1978, the Division of Water Rights directed Mr. Hamilton and Dr. Brody to release all water stored in said reservoir immediately at a rate that would not cause damage to downstream property owners and to continue to bypass all waters entering the reservoir until such time as a valid permit is issued. Mr. Hamilton and Dr. Brody were advised that failure to comply with this directive would cause the staff to recommend that the Board refer the matter to the Attorney General's office for appropriate action.
4. An inspection of the Hamilton-Brody reservoir on February 22, 1978 showed that the reservoir contained runoff water that would otherwise be available for appropriation by downstream users with valid water rights, and the water therein had not been released back to the stream as directed. By letter of March 27, 1978, the Division of Water Rights advised Mr. Hamilton and Dr. Brody that the Board would take preliminary action to refer this matter to the Attorney General if the reservoir were not emptied.
5. On April 3, 1978, staff inspected the reservoir site and found that the reservoir was full and that no apparent attempt had been made to comply with the Division of Water Rights' directives.

6. This matter was considered by the Board at its April 6, 1978, Workshop. It was decided that since Mr. Hamilton and Dr. Brody had filed an application to store water in the subject reservoir, and since no downstream water rights holder was being injured by the storage, the Division of Water Rights should attempt to negotiate a physical solution with Mr. Hamilton and Dr. Brody before the next Board meeting.
7. On April 12, 1978, such negotiations took place and Mr. Hamilton agreed to bypass all inflow to the reservoir by means of siphoning over the spillway or cutting the spillway level deeper. Mr. Hamilton further agreed that as soon as weather and ground conditions permitted, he would clear out the dam's clogged outlet pipe and allow the reservoir to drain. This agreement was confirmed by letter of April 24, 1978.
8. On August 15 and 30, 1978, staff investigated the reservoir site and found that the reservoir was full and that no apparent attempt at meeting the terms of the April 12, 1978, agreement had been made.
9. By certified letter of September 19, 1978, to Mr. Hamilton, and of September 22, 1978, to Dr. Brody, the Division of Water Rights advised that the Board would consider this matter again at its October 3, 1978, Workshop, unless an affidavit is submitted before then affirming that the outlet pipe is no longer clogged and the stored water is draining.
10. No such affidavit has been submitted.

THEREFORE BE IT RESOLVED:

1. That the State Water Resources Control Board does direct and authorize the Executive Director to refer the matter of storage of water without a valid permit in the Hamilton-Brody reservoir to the Attorney General for appropriate action to require the release of water collected without a permit and to prevent any further storage of water until a permit is issued.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 19, 1978.

A handwritten signature in cursive script, appearing to read "Clint W. Whitney".

Executive Director
(Clint W. Whitney)