

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22111
of Love Creek Heights Mutual Water
Association, Inc., to Appropriate
from Love Creek in Santa Cruz County

Decision 1295

DECISION DENYING APPLICATION

Application 22111 of Love Creek Heights Mutual Water Association, Inc., having been filed; protests having been received; a public hearing having been held before the State Water Rights Board (predecessor of the State Water Resources Control Board) on February 1, 1967, at Santa Cruz, California, conducted by Board Members Kent Silverthorne (former Chairman) and W. A. Alexander; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the State Water Resources Control Board finds as follows:

1. Application 22111 is for a permit to appropriate 15,000 gallons per day by direct diversion, year round, for domestic use from Love Creek, tributary to San Lorenzo River, in Santa Cruz County. The point of diversion is to be located within the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 33, T9S, R2W, MDB&M.

2. Applicant association serves water to its members within portions of three quarter-quarter sections located near Love Creek, about a mile north of Ben Lomond, at about elevation

500 feet. There are 32 water-user members at present, of whom six are year-round resident families. The others are weekend or summer residents. The association area contains 96 lots, and a membership share in the association is issued upon the original sale of each lot.

3. Although the application requests water on a year-round basis, the applicant has a spring on its property which is ample to cover its present needs for roughly nine months of the year (RT 12). Most of the testimony of the applicant and of the many protestants related to the critical summer months.

4. Love Creek is one of a dozen important tributaries of the San Lorenzo River. On October 31, 1963, the Central Coastal Regional Water Pollution (now Quality) Control Board adopted a policy statement for the discharge of sewage effluents in the San Lorenzo River Basin, of which official notice is taken. That Board recognized the beneficial uses that are to be protected in the basin as including, among other uses, sportsfishing and "spawning and migration of sportsfish, habitat for many forms of aquatic life, including fish and the biological life (plant and animal) upon which they feed." The California Department of Fish and Game introduced testimony that Love Creek is valuable as a nursery for salmon and steelhead trout. The applicant agreed to the permit condition requested by the Department as the basis for withdrawal of its

protest: at all times to release into the natural stream channel immediately below the point of diversion the following flows of water:

June 1 through November 30 -- 0.5 cubic foot per second, or the natural flow of the stream, whichever is less; and

December 1 through May 31 -- 5.0 cubic feet per second, or the natural flow of the stream, whichever is less.

We find that these streamflows are necessary for the maintenance of the fishery in San Lorenzo River and its tributaries.

5. The flows of Love Creek are at their lowest just when they are most needed by the applicant. About 20 protests were filed by individuals with property located along Love Creek, downstream from the applicant's proposed point of diversion and upstream from Ben Lomond, where the creek joins the river. Ten of these protestants testified at the hearing, and some had a power of attorney to protest on behalf of neighbors.

6. In general, the protests were by laymen, without the technical background that would justify unqualified reliance in estimating the flow of Love Creek. Some testimony was useful in this connection, however. In evaluating the testimony, it should be borne in mind that the applicant has agreed to bypass in the summer one-half second foot of water, which is equivalent to about 225 gallons per minute (gpm).

Streamflow testimony included the following:

- (1) The Department of Fish and Game estimated the flow of Love Creek down at its mouth to be a half-second foot on July 26, 1966 (RT 68). There would be somewhat less water at the proposed point of diversion than at the mouth of Love Creek. The year 1966 was a somewhat dry water year.
- (2) July and August are the critical months, when it is hottest (RT 94). "You can practically walk across it [the creek] with shoes like this on and not hardly get your feet wet" (RT 95).
- (3) One protestant who pumps water from Love Creek had to go to a neighbor to get water several times in the summer of 1966 (RT 128).
- (4) One downstream protestant dug a well next to the creek to 100 feet, then 120, then 145 feet, to get water (RT 144).
- (5) One protestant, with some experience in measuring water, estimated that the low flow of Love Creek at Smith Creek would be about 40 or 50 gpm (RT 149).
- (6) A director of San Lorenzo Valley County Water District, with 21 years experience as fire chief in surveying streams for water in the

summertime, testified that one would be lucky to have as much as 200 gpm flow down Love Creek in the months of July and August. In 1966, he estimated the flow to have dropped to about 50 gpm (RT 155, 156).

7. On May 22, 1967, the parties were advised of the Board's intention to make observations and flow measurements of Love Creek in the summer months, to help determine the availability of unappropriated water. The applicant, on December 12, 1967, was informed of the results of the measurements, and advised of the Board's intention to use these measurements in this decision unless it objected to that procedure. The applicant's officers made no objection. The measurements of Love Creek were made by engineers of the Board's staff both at the proposed point of diversion and at Ben Lomond. Results were as follows:

Love Creek Streamflow Measurements
(in cubic feet per second)

<u>Date</u>	<u>At Application 22111 Point of diversion</u>	<u>At Ben Lomond</u>
June 12, 1967	1.27	2.49
June 28, 1967	1.02	1.56
July 18, 1967	0.67	0.746
July 27, 1967	0.58	1.10
Aug. 10, 1967*	0.45	0.74
Aug. 11, 1967*	0.45	0.67
Aug. 22, 1967	0.37	0.685
Sept. 21, 1967*	0.24	0.40
Oct. 18, 1967*	0.16	----

* Measured at Concrete Channel near proposed point of diversion. Flow too low to measure conveniently at proposed point of diversion.

8. The applicant association is located within the boundaries of San Lorenzo Valley County Water District. The district is willing and capable of serving the applicant, provided an adequate line extension and storage agreement is entered into (RT 108). Applicant's officers concede that such an agreement is probably the ultimate solution to their problem, but they still request approval of the application as part of a temporary solution.

9. The measurements made during the summer of 1967, a year with 130 percent of normal precipitation, indicates that water in excess of that required to be bypassed for fishlife is not available during the months of August, September, and October. These measurements support the testimony of the protestants, and do not even take into consideration possible additional requirements of water needed by these protestants. In a normal water year, water in excess of the one-half second foot required to be released for fishlife might not be available even in July. There is not sufficient unappropriated water available even to justify the issuance of a temporary permit for the months of August, September, October, and possibly July. These are the months when the water is needed. A permit for the balance of the year would serve no useful purpose.

From the foregoing findings, the Board concludes that Application 22111 should be denied.

