

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

WRA:ch
2-28-69
(3-6-69)

In the Matter of Application 20862)
of Lake County Flood Control and)
Water Conservation District to)
Appropriate from Scotts Creek in)
Lake County)

ORDER DENYING PETITION
FOR RECONSIDERATION OF DECISION 1322

On February 6, 1969, the Clear Lake Water District filed a petition with the State Water Resources Control Board to reconsider and revise its Decision 1322.

Petitioner alleges inter alia that Decision 1322 ignored vested rights in the quantity and quality of the waters of Clear Lake and that there is no unappropriated water in Clear Lake and Scotts Creek.

These allegations were orally presented to the Board at the hearing on Application 20862 which led to Decision 1322 and in a subsequent written brief received by the Board on May 3, 1968. The Board fully evaluated petitioner's arguments prior to rendering its decision and that decision is hereby reaffirmed.

The prior vested rights of petitioner are recognized and protected by the first paragraph and section 9 of the Board's order and by the 1920 Gopcevic decree discussed on page 4 of the decision. The decree controls the level of Clear Lake by regulating withdrawals of the Clear Lake Water Company. The decree

does not directly control inflow to the lake. In any event the Board has no authority to modify this judicial decree.

With respect to water quality, applicant introduced expert evidence which was unrebutted by petitioner that the project will have no measurable effect on the quality of the water in Clear Lake. Therefore whatever vested rights petitioner may have in the historic quality of the lake will remain unaffected.

To determine the amount of unappropriated water that is available for applicant's project, a determination was made as to the volume and frequency of the spill at Clear Lake Dam for nonirrigation purposes and the mean annual flow in Scotts Creek. A correlation of these determinations indicates that unappropriated water exists in Clear Lake and Scotts Creek with sufficient frequency to approve the application.

To provide for successful operation of a project, small deficiencies in projected availability of water may be made up by other means. In this instance it is perfectly acceptable for the applicant to purchase water from the United States Bureau of Reclamation to make up anticipated deficiencies in some years, and in event water is not available for purchase, the deficiency knowingly falls on applicant rather than on prior vested rights.

The water required to meet the vested rights of Clear Lake water users need not come, even in part, from Scotts Creek. It is sufficient if these rights are satisfied from other sources tributary to the lake.

The judgment of the Lake County Superior Court in Clear Lake Water Co. v. Highlands Water Co. (1965) stated that

water was not available for appropriation on a firm annual basis from Clear Lake. However, a firm annual supply of water is not necessary to successfully operate applicant's project, which is designed to provide holdover storage for several years to meet dry-year requirements. For such a project, the mean annual flow is a sufficient criterion to determine availability of unappropriated water.

NOW, THEREFORE, IT IS ORDERED that the petition for reconsideration of Decision 1322 be, and it is, denied.

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

Dated: March 6, 1969

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

GEORGE B. MAUL
George B. Maul, Member

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member