

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the matter of Application 18024 )  
of William H. Graham to )  
appropriate water from an unnamed )  
creek in Lake County )

Decision No. D 931

ADOPTED APR 6 '59

Substance of the Application

Application 18024 was filed on March 4, 1958, for a permit to appropriate 70 acre-feet per annum by storage to be collected between November 1 of one year and May 31 of the succeeding year, both dates inclusive, from an unnamed stream in Lake County tributary to Clear Lake via Donovan Dry Creek thence Highland Creek. The point of diversion is located within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 15, T13N, R10W, MDB&M\*, and the water will be used for the irrigation of 35 acres in the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 22 of the same township. The storage dam, already constructed, is of earth, 27 feet high by 200 feet long and is provided with a 6-inch outlet pipe. The reservoir created by the dam has a surface area of 3 acres and a capacity of 70 acre-feet.

Protest and Answer

Protest against Application 18024 was submitted by Clear Lake Water Company. The protestant, claiming a prior right by use commencing prior to December 19, 1914, alleges that any storage

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\*All Townships and Ranges hereinafter mentioned are referred to Mount Diablo Base and Meridian.

on streams tributary to Clear Lake will result in reduction of its water supply which is used for agricultural purposes in Yolo County; that all water flowing into Clear Lake has been used continuously since 1860; that no unappropriated water exists except in years when there is above normal rainfall; and that the protest may be disregarded and dismissed if guarantees are provided that no water will be impounded except at such times as water is being spilled and wasted from Clear Lake.

In answer to the protest the applicant states that the watershed behind the dam is only 100 acres and that in a poor rainfall year the small amount of water collected would be needed for watering cattle when grazing that part of the ranch.

In a letter to applicant dated May 17, 1958, the protestant amplifies its protest with the following statement:

"The position of the Clear Lake Water Company has been and until additional downstream storage is developed, must continue to be that any storage of waters already developed constitutes an infringement of existing water rights and a reduction of the supply of water to lands already dependent upon these waters. That the amount of water you would use is small is not material since there are so many situations similar to yours that if developed would very materially reduce the already inadequate supply during years of low rainfall, unless guarantees are provided that no water for irrigation would be impounded except as really exists as excess, the Clear Lake Water Company must continue its protest.

"You indicate that you own the watershed and therefore you are undoubtedly riparian with rights to use the natural flow of the stream at the time it occurs but not for storage. I presume that the stream dries up rather early in the spring, and still leaves you with the problem of water for your cattle. To the extent that you need drinking water for the cattle, the Clear Lake Water Company has no objection to your storage of water."

#### Field Investigation

The applicant and protestant with the approval of the

State Water Rights Board stipulated to the proceedings in lieu of hearing as provided for under Section 737 of the Board's rules. Notice of an investigation was given to the applicant and protestant by certified mail and a field investigation was conducted on July 30, 1958, by Mr. J. J. Heacock, an engineer of the Board's staff. The applicant was present and the protestant was represented during the investigation.

#### Records Relied Upon

The records relied upon in support of this decision are Application 18204, and all relevant information on file therewith, with particular reference to the report of the field investigation made on July 30, 1958, by J. J. Heacock; Application 12389 of Big Valley Soil Conservation District, with particular reference to a letter dated July 18, 1958, from Clear Lake Water Company in connection therewith; Bulletin No. 20, Department of Water Resources, "Interim Report, Cache Creek Investigation", April, 1958; Bulletin No. 1, State Water Resources Board, "Water Resources of California", dated 1951; and U. S. Army Corps of Engineers quadrangle sheet, "Kelseyville", California, of the 15 minute series.

#### Description of the Watershed

The source of water is an unnamed stream which heads on the easterly slopes of the Coast Range near the  $S\frac{1}{2}$  corner of Section 15, T13N, R10W. The creek flows in a northeasterly direction for about one mile to its confluence with an unnamed stream flowing southward from Donovan Valley, thence about one mile in a southerly direction to its junction with Highland Creek. Highland

Creek heads on the easterly slopes of the Coast Range about two miles to the southwest of point of diversion under Application 18024, and flows in a circuitous course about 1.5 miles to the northwest to the aforementioned junction, thence courses southeasterly, thence northeasterly approximately five miles to Adobe Creek, thence northerly approximately five miles to Clear Lake. The watershed above the applicant's dam, according to the U. S. Soil Conservation Service, has an area of approximately 100 acres which is a fairly steep canyon having a dense covering of brush, and ranging in elevation from about 2,500 feet at its highest point to about 1,800 feet at the dam.

#### Water Supply

Plate 3, Bulletin No. 1, State Water Resources Board, "Water Resources of California", 1951, indicates that the mean seasonal precipitation over the watershed is about 40 inches. According to the applicant, storms in the area are frequently violent, and sometimes have an intensity of 12 or more inches in one week. The dam was built in 1952, and according to Mr. Graham it has filled every year since that time.

Bulletin No. 20, Department of Water Resources, "Interim Report Cache Creek Investigation", April, 1958, shows on Page A-7 thereof a seasonal summary of a study of monthly yield of Clear Lake. The study is hypothetical, made in conjunction with future proposed downstream storage and the table shows average seasonal spill from Clear Lake to be about 115,500 acre-feet for the 45-year period 1911-12 through 1955-56, with only three seasons showing zero spill, and 1,400 acre-feet or more in all other seasons.

Protestant Clear Lake Water Company submitted a tabulation showing historical spill, releases for irrigation, and water diverted from Clear Lake for irrigation for the 38-year period 1920-21 through 1957-58. Table I is arranged to show a comparison of the hypothetical data from Bulletin 20 with the spills which, according to the Company's records, actually occurred.

TABLE I

Comparison of Spills, Bulletin 20 vs. Clear Lake Water Company Records  
(in acre-feet)

<u>Season</u>	<u>Bulletin 20</u>	<u>Company</u>	<u>Season</u>	<u>Bulletin 20</u>	<u>Company</u>
1911-12	9,700	No record	1935-36	37,600	145,708
13	20,700	No record	37	17,500	12,091
14	465,700	No record	38	408,500	449,961
1914-15	411,900	No record	39	0	-
16	141,200	No record	1939-40	204,800	199,450
17	18,400	No record	41	543,700	603,355
18	2,600	No record	42	389,000	467,386
19	11,400	No record	43	175,600	202,101
1919-20	21,500	No record	44	7,900	-
21	120,700	80,485	1944-45	11,700	-
22	13,700	-	46	37,900	50,351
23	32,000	-	47	11,800	-
24	0	-	48	129,500	-
1924-25	96,200	65,866	49	4,400	-
26	82,400	35,193	1949-50	21,300	-
27	382,400	347,143	51	129,100	139,317
28	80,800	75,363	52	309,800	399,829
29	1,400	-	53	174,800	235,357
1929-30	17,500	-	54	67,900	131,126
31	0	-	1954-55	36,400	-
32	3,800	-	56	462,500	590,501
33	3,900	-	57	No record	38,264
34	4,300	-	58	No record	228,566
1934-35	73,400	54,443			
Average - 45 years				115,500	
Average - 38 years					119,800
			<u>Years of Record</u>	<u>Years spill</u>	<u>Years no Spill</u>
Bulletin 20 (Hypothetical)			45	42	3
Company records			38	21	17

### Use by Protestants

Clear Lake Water Company claims a right antedating the Water Commission Act to store water in Clear Lake for later release down Cache Creek (the outlet of Clear Lake) and rediversion and use for irrigation on the Sacramento Valley floor in Yolo County between Cache and Putah Creeks. The Company is limited in the elevation to which it can store water in Clear Lake by court order. Accordingly its normal operation includes releases of water from Clear Lake during the early part of the rainfall season to provide sufficient space in the Lake for flood control for the latter part of the season. Under a stipulated judgment in the case of M. M. Gopcevic, et al. vs. Yolo Water and Power Company, et al., Superior Court, Mendocino County, Clear Lake must not exceed an elevation of 7.56 feet as measured on the Rumsey gage at Lakeport, California.

### Discussion

Table I indicates that in not less than 55 per cent of the years of record and probably up to 93 per cent of such years water is spilled from Clear Lake into Cache Creek and may be considered unappropriated water insofar as the protestant is concerned. Statements made by the applicant regarding the water crop occurring above his project indicate that unappropriated water would be similarly available at his point of diversion. The protestant recognized this condition in a letter to the Board regarding Application 12389 of the Big Valley Soil Conservation District under date of July 18, 1958, which stated as follows:

"Even though no unappropriated water exists in the watershed above the Clear Lake Dam until such time as the 7.56 feet elevation is reached, the situation could exist where the lake is not full until late in the rainy season when some of the tributaries would no longer have enough runoff to fill the reservoirs built on them, yet others would be flowing and have to be spilled as surplus. In order to get the fullest utility of the total runoff from the watershed, the Clear Lake Water Company would be agreeable to permits being issued for storage on tributaries of Clear Lake which would permit impounding at any time even though the rights of the Clear Lake Water Company were not satisfied on the condition that if the lake does not eventually fill, these waters so impounded would be released for flow to the lake".

Since the applicant's project is located so that water can be released therefrom into a natural stream channel leading to Clear Lake, the concession offered by the Clear Lake Water Company in connection with Application 12389 can be applied equally well to Application 18024. To make it effective a permit term stating the substance of the paragraph referred to in the letter of July 18, 1958, should be included to give adequate protection to the prior rights of the Clear Lake Water Company.

#### Conclusions

The information indicates and the Board finds that unappropriated water in the Clear Lake Watershed, including the source under Application 18024, frequently exists which may be taken and used without injury to any downstream user; that the intended uses under Application 18024 are beneficial and that the application may be approved and permit issued to the applicant provided it is appropriately conditioned for the protection of downstream prior rights, and if so conditioned will permit further development of the water resources of the watershed above Clear Lake which the Board considers to be in the best public interest.

ORDER

Application 18024 for a permit to appropriate unappropriated water having been filed, a protest having been submitted, stipulations to proceedings in lieu of hearing having been submitted, an investigation having been held by the Board, the Board having considered all of the available information and now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 18024 be and the same is hereby approved and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 70 acre-feet per annum by storage to be collected from about November 1 of each year to about May 31 of the succeeding year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Construction work shall be completed on or before December 1, 1960.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

5. Progress reports shall be filed promptly by permittee upon forms to be provided annually by the State Water Rights Board until license is issued.

6. This permit is subject to the prior rights of Clear Lake Water Company. Should the level of Clear Lake not reach an elevation of 7.56 feet above zero as measured on the Rumsey gage at Lakeport, California, during the period of October 1 of each year and June 1 of the succeeding year, permittee shall, upon demand of Clear Lake Water Company, release from his reservoir into the natural stream channel the water impounded during the storage season under this permit.

Provided, however, that the amount of water released shall be sufficient only to meet the aforesaid elevation requirement after holders of permits subsequent in time and subject to the same condition shall have complied therewith.



Provided further, that any water released from Clear Lake by Clear Lake Water Company during the period October 1 of each year and June 1 of the succeeding year for purposes other than irrigation shall be considered surplus regardless of the level of Clear Lake at the time of said release and the permittee shall be entitled to retain an equivalent amount of water for storage in accordance with the priority of permits subject to this same condition even though Clear Lake does not reach the level of 7.56 feet on the Rumsey gage.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at \_\_\_\_\_, California, on this \_\_\_\_ day of \_\_\_\_\_, 1959.

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Henry Holsinger, Chairman

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W. P. Rowe, Member

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Ralph J. McGill, Member