

GMC
8-30-68
(9-5-68)

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

a (9-5-68)

In the Matter of Application 22042
of California Leisure Lands, Inc.,
et al., to Appropriate from Pope Creek
in Napa County

ORDER DENYING PETITION FOR RECONSIDERATION

The petition of the Department of Fish and Game, filed on August 19, 1968, asks the Board to reconsider that portion of Decision 1307 which failed to require applicants to bypass 0.5 cubic foot per second during the months of May and June for fish.

Petitioner cites Water Code Section 1243 which directs the Board to "take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources."

In its decision the Board determined, in effect, that to require release of water in this particular situation for the preservation of fish would not be in the public interest because no catchable trout have been planted in Pope Creek during the last few years and landowners have denied the public access to the stream. The petition calls attention to testimony that only certain sections of the stream

have been closed to the public and that the primary reason for requesting bypass of this water was to maintain a warm water fishery, particularly for bass and bluegills.

In light of the allegations of the petition the Board has reviewed the entire record concerning the existence of the warm water fishery in Pope Creek. We find that the principal evidence of the extent and value of this fishery was an estimate by the Department of Fish and Game, based upon a creel census conducted in 1962 and 1963 that "the use of this area for warm water fishing is approximately 750 man days per year" (RT 58, 82). No evidence of the number of fish present or caught was offered and the estimate of man days is of little significance in view of the fact that since the creel census was taken landowners have closed much of the stream to public fishing (RT 57-58, 82).

The petition urges the Board to protect the fishery for future utilization whether or not it is presently utilized. Under some circumstances such protection might be justified, but we do not find the requisite facts in this record. Here we have neither substantial evidence of the present value of the fishery nor the probable extent of its utilization in the future. Measured against a present and certain need of the water for irrigation, the department's request cannot be approved in this instance.

NOW, THEREFORE, IT IS ORDERED that the petition for reconsideration of Decision 1307 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: September 5, 1968

/s/ George B. Maul
George B. Maul, Chairman

/s/ W. A. Alexander
W. A. Alexander, Vice Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ Norman B. Hume
Norman B. Hume, Member

/s/ E. F. Dibble
E. F. Dibble, Member