

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permitted)
Application 26671)
COUNTY OF SHASTA - COUNTY)
SERVICE AREA NO. 6,)
Permittee)
U. S. BUREAU OF RECLAMATION,)
Petitioner)

Order: 82- 11
Source: Pit River Arm of
Shasta Lake
County: Shasta

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE BOARD:

Application 26671 having been approved by operation of law under Government Code Section 65956 on January 1, 1982; Permit 18569 having been issued on August 19, 1982; the Board having received a petition for reconsideration of issuance of Permit 18569 filed on August 31, 1982 by the U. S. Bureau of Reclamation; the petition having been duly considered; the Board finds as follows:

Substance of Permit 18569 (Application 26671)

1. Permit 18569 authorizes diversion of 0.7 cubic feet per second from the Pit River Arm of Shasta Lake to be diverted from January 1 to June 30 and from September 1 to December 30 of each year for municipal use within Shasta County Service Area No. 6 referred to as Jones Valley.

Substance of Petition for Reconsideration

2. Petitioner contends that issuance of Permit No. 18569 "is not supported by any evidence before the Board". Petitioner requests that the Board reconsider issuance of the permit and deny the permit or, in the alternative, that the Board rescind the permit and consolidate consideration of Application 26671 with consideration of similar applications currently pending before the Board.

3. Petitioner's statement in support of the petition further alleges:

(a) There is no water available for appropriation under Permit 18569.

(b) Issuance of Permit 18569 confers Central Valley Project benefits upon the permittee without charge and is therefore in violation of Federal Reclamation Law.

(c) Issuance of the permit is inconsistent with past Board decisions.

Discussion

4. Application 26671 was filed on December 23, 1980. The application was completed and notice was issued on June 30, 1981. Notice was provided to the petitioner by certified mail. No protests were filed against the application. In accordance with the provisions of Government Code Section 65956, the application was deemed approved by operation of law on January 1, 1982 since it was not protested and had not been acted upon within 180 days of the time it was complete.

5. Permit 18569 was issued on August 19, 1982. In accordance with Section 761(c) of Title 23, California Administrative Code, Permit 18569 contains all applicable standard permit terms and the authorized season of diversion is consistent with past decisions of the Board concerning the availability of unappropriated water upstream from Shasta Dam.

6. The stated intention of Chapter 4.5 (commencing with Section 65920), Division 1, Title 7 of the Government Code is to expedite public agency decisions on development projects (Government Code Section 65921). Government Code Section 65952 provides that responsible agencies shall approve or disapprove a project within 180 days from the date the lead agency has approved or disapproved the project

project or within 180 days after which the completed application for the project has been received and accepted as complete, whichever is later. Section 65956(c) provides that failure to act to approve or disapprove a project within the applicable time limit shall be deemed approval of the project. Protested water rights applications are exempt from the 180 day time limit under Government Code Section 65955.

7. The petitioner received notice of the application yet elected not to file a protest. Neither the petition for reconsideration nor the statement submitted in support of the petition explain why a protest was not filed within the protest period specified by Water Code Section 1302. For the Board to reconsider approval of Application 26671 under such circumstances would be clearly contrary to the policy of expediting the regulatory process as established by Chapter 4.5, Division 1, Title 7 of the Government Code.

8. Granting a petition for reconsideration by a party who received notice yet elected not to file a protest would be the equivalent of extending the protest period to a time after the permit is issued. Although Water Code Section 1330 authorizes the Board to accept late protests upon a showing of good cause, there must be some reasonable limit on the protest period. In this instance, the petitioner offers no explanation for the failure to file a protest, yet seeks reconsideration after the permit has been issued. For the Board to grant the petition for reconsideration would effectively extend the protest period to 30 days after a permit has been issued. Such a policy would seriously undermine the administrative process governing water rights applications.

9. Permit 18569 authorizes diversion of a reasonable amount of water to be applied to a reasonable and beneficial use. The season of diversion authorized by the permit excludes July and August and is therefore

consistent with past Board findings regarding the season of availability of unappropriated water upstream of Shasta Dam. In Decision 990, the Bureau's water rights at Shasta Dam were made "subject to depletion of stream flow above Shasta Dam by the exercise of lawful rights to the use of water for the purpose of development of the counties in which the water originates, whether such rights have heretofore or may be hereafter initiated or acquired ..." (Decision 990, page 84, emphasis added). The maximum upstream depletion allowed by Decision 990 is 700,000 acre-feet in any one year or 4,500,000 acre-feet in any consecutive ten-year period. These maximum limits on upstream diversions under the county of origin protections of Decision 990 are not exceeded by issuance of Permit 18569.

10. The petitioner alleges that issuance of Permit 18569 is not supported by any evidence before the Board. No hearing was conducted on the matter since the application was not protested and was deemed approved by operation of law. However, the information set forth in Paragraph 9 above establishes that the Board's files contain evidence supporting issuance of Permit 18569.

11. Issuance of Permit 18569 is not inconsistent with Decision 893 which denied several competing applications for diversion of water at Folsom Dam and Nimbus Dam due to lack of access by the applicants and due to potential administrative confusion. The point of diversion specified in Permit 18569 is on the Pit River Arm of Shasta Lake, not at the dam itself. Therefore, the type of administrative difficulties referred to in Decision 893 are not involved in this instance. The permittee has submitted a copy of a special use permit from the U. S. Forest Service granting access to the point of diversion specified in the permit. Although the petitioner disputes the permittee's right of access, the Board is not the proper

forum for resolving such a dispute. (23 California Administrative Code, Section 749). Consistent with past Board practice, the permit which was issued states that it should not be construed as conferring upon the permittee the right of access to the point of diversion.

12. In view of the findings above, it is not necessary to consider the other points raised in the petitioner's Statement in Support of Petition for Reconsideration. Those issues are likely to be raised in future proceedings before the Board involving applications against which the petitioner has filed written protests.


Conclusion

12. The Board concludes that it would be improper to reconsider issuance of Permit 18569.

ORDER


NOW, THEREFORE, IT IS ORDERED that the petition for reconsideration of Permit 18569 is denied.


Dated: October 21, 1982


Carole A. Onorato, Chairwoman


L. L. Mitchell, Vice Chairman


Jill D. Golis, Member


F. K. Aljibury, Member


Warren D. Noteware, Member

