

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 8943	}	
Issued on Application 19145	}	Order: WR 77-8
JOHN T. and MARGARET B. CASEY,	}	Source: Goose Creek
Licensees.	}	County: Shasta

ORDER APPROVING STIPULATION AND AGREEMENT
WITH AMENDMENT

BY BOARD MEMBER ADAMS:

License 8943 was issued to the predecessors of John T. and Margaret B. Casey on February 7, 1969, authorizing onstream storage of 6,400 annual acre-feet of water from Goose Creek in Lake Margaret (Haynes Reservoir). The license contains a term subjecting it to an agreement between the licensees and Pacific Gas and Electric Company (PG&E) which restricts licensees' diversions to times when there is water in excess of that necessary to satisfy PG&E's prior rights to divert for power purposes at its Pit 3, 4, and 5 power plants. PG&E having complained to the Board that the licensees have diverted water in violation of said agreement, a hearing was held on July 29, 1975, pursuant to Water Code Section 1675 to determine whether License 8943 should be revoked for violation of terms contained therein. Licensee and PG&E having presented evidence at the hearing, and having

submitted briefs since the hearing, all of which having been duly considered, the Board finds as follows:

1. Goose Valley, through which Goose Creek flows, was originally a swamp with no outflow. Later the predecessors of the licensees blasted a rock reef at the lower end of the Valley to reclaim swamp lands and made water available for the stream below (RT 126). There is now a structure at the lower portion of the licensees' ranch which is used to control the flows of Goose Creek. The system is "closed" during the period of April 1 through October 1; that is, the available water is recycled for irrigation purposes and no water escapes downstream. At the close of the irrigation season, which normally occurs in October, water is released downstream from the ranch at a relatively large rate of flow (RT 125).

2. Licensees claim that their method of operation produces benefits to PG&E in that the large rate of releases made after their irrigation uses have been completed enables water to reach Lake Britton (the headwaters of the PG&E hydroelectrical power system on the Pit River) which otherwise would not have reached it. They claim that their return water would have been absorbed by the intervening channel or utilized by others had it been released at a lesser rate of flow during the irrigation season.

3. At the conclusion of the hearing on June 24, 1975, the Hearing Officer asked the parties to attempt to work out a new operating agreement within 30 days (RT 156). This period was later extended to March 1, 1976. On December 9, 1975, the parties entered into a tentative "Stipulation and Agreement". The tentative agreement left it to the Board to decide whether the licensees should receive credit for any water they release into Goose Creek at the end of the irrigation season against water they may be obligated to release to PG&E from their Lake Margaret, which supplies water to their ranch. This is the only issue to be resolved by the Board.

4. Under the stipulation of December 9, 1975, the rights of the licensees under License 8943 is expressly subject to all prior rights of PG&E to water from the Pit River which includes riparian rights, rights affirmed by adjudication, pre-1914 appropriative rights and rights represented by permits and licenses to appropriate water.

5. PG&E is entitled to the water returned by the licensees at the end of the irrigation season to satisfy their prior riparian and appropriative rights. Waters returning to the stream from which they were originally diverted are subject to the same riparian rights as are other waters in the stream (Southern California Investment Co. v. Wilshire 144 Cal. 68, 77 Pac. 767). Therefore, to the extent that water returned by the

licensee at the end of the season is subject to riparian claim, including the requirement that it be natural in time, then PG&E can claim it as a riparian. Also, appropriative rights attach to return waters in the same watershed (Scott v. Fruit Grower's Supply Co. 202 Cal. 47, 258 Pac. 1095). To the extent that the end of season releases are previously stored waters, they accrue to PG&E appropriative rights upon release. There is no legal basis for the licensees' claim that they are entitled to an offset of water which they may improperly store in Lake Margaret.

From the foregoing findings, it is concluded that:

1. The licensees should not receive a credit or offset of water released or bypassed at the end of the irrigation season against water they may be required to release from Lake Margaret under the Stipulation and Agreement by the licensees and PG&E December 9, 1975.

2. License 8943 should be amended to substitute a reference to the Stipulation and Agreement of December 9, 1975, in place of the reference to the Stipulation and Agreement dated December 30, 1960.

IT IS SO ORDERED.

Dated: August 18, 1977

/s/ W. W. ADAMS
W. W. Adams, Member

/s/ JOHN E. BRYSON
John E. Bryson, Chairman

/s/ W. DON MAUGHAN
W. Don Maughan, Vice Chairman