

See D-1422  
orders 80-20  
82-3  
82-9  
83-3  
83-7

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 16597, )  
16598, 16599, and 16600, issued )  
on Applications 14858, 14859, )  
19303, and 19304, )  
U. S. WATER AND POWER RESOURCES )  
SERVICE, )  
Permittee )

Order: WR 81-1  
Source: Stanislaus River  
Counties: Calaveras and  
Tuolumne

ORDER DENYING PETITION FOR RECONSIDERATION  
OF AND CLARIFYING ORDER WR 80-20

On November 20, 1980, the State Water Resources Control Board adopted Order WR 80-20, conditionally accepting and approving in part submittals by U. S. Water and Power Resources Service (Service) in accordance with Condition 3 of Decision 1422. On December 19, 1980, a petition for reconsideration of Order WR 80-20 was filed by Friends of the River.

Petitioner alleges that Order WR 80-20 overlooks several key considerations and is not supported by substantial evidence.

1. The allegations that the order is not supported by substantial evidence, fails to reflect study of all possible options and implications, and that the fishery and water quality release aspects of the order show signs of insufficient consideration are without merit. The Board's review and consideration of the New Melones Reservoir operation submittals of the Service has been lengthy, detailed, and thorough. The Board's review was initiated on February 15, 1979, when the Service first submitted an operation study. An informal technical workshop was

held on March 9, 1979, to discuss and solicit comments on whether the study conformed to conditions of Decision 1422. Following submittal of additional information and studies, a special workshop was held on September 12, 1979. Submission of written comments and legal briefs was requested by September 28, 1979. As stated in Order WR 80-20, a staff report was prepared in October 1979 to pull together all relevant information dealing with the prior operation submittals. The chronology of the extensive subsequent proceeding is set forth in Order WR 80-20.

2. Petitioner contends that the Board's action was premature because there is strong evidence that forthcoming information on water quality and fishery releases will call for a decrease in the water storage level. The Board recognizes, and Order WR 80-20 reflects, that possibility. Order WR 80-20 requires submission of revisions to both the fishery release schedule and the Vernalis water quality/flow relationship. Petitioner bases its arguments for deferral of action in part on opinions as to probable inflow to New Melones Reservoir in January-April. This reasoning is flawed for several reasons.

a. Condition 3 of Decision 1422 does not provide for less storage than the full amount required to meet those uses specified in Condition 2.

b. There is no assurance that storage of 438,000 acre-feet could be accomplished by deferring until March 1 retention of water in storage in excess of 300,000 acre-feet.

c. The Department of Water Resources (an interested party) has advised the Board that it will submit an operations study based upon an updated water quality relationship and different fish releases within several days. However, the Department of Fish and Game has not as yet agreed to a reduction in fish releases; there is no assurance that a new water quality relationship will result in less storage; and, finally, it is not certain that the new operations study can be fully reviewed, evaluated and acted upon by March 1. In any event, action can be taken under existing orders if a need for change is apparent.

3. The intent of Decision 1422, stated on page 17, is that no more water be impounded than is needed for satisfaction of prior rights and nonconsumptive purposes. The decision also states that the adverse consequences of such excess impoundment must be considered. Thus, it is clear that to the extent storage is necessary to provide for prior rights and authorized water quality and fishery releases, adverse consequences of that storage cannot be considered in the review authorized under Condition 3 of Decision 1422. To the extent adverse consequences might result from storage to a level which subsequent information shows is not necessary, such adverse consequences are consistent with Decision 1422 since Condition 3 itself provides for periodic updating of the operation study. The Board will consider revisions to the storage authorized in New Melones Reservoir as a result of further convincing information, regardless of its source when such information and confirming operation studies are received.

4. We now consider petitioner's paragraphs requesting specific language changes, numbered "1)" through "22)".

a. Several numbered paragraphs suggest language changes. In some cases -- paragraphs 1), 2), 5), 6) and 7) -- petitioner believes suggested changes would more accurately state Decision 1422 provisions or the Board's intent; in these cases we do not find that petitioner's suggestions represent such a degree of improvement as to warrant changes in Order WR 80-20. In some other cases -- paragraphs 14), 19), 20) and 22) -- petitioner suggests changes predicated upon Board acceptance of points made earlier, which earlier points are not accepted.

b. In paragraph 3) petitioner appears to suggest that the Board should refuse to allow compensating prior rights storage in New Melones Reservoir for Tulloch Reservoir storage lost to the Districts at such time as the Districts and the United States implement one of the Tulloch operations settlement alternatives required by the Districts' FERC license. We do not believe that Decision 1422 intended such refusal.

c. In paragraph 4) petitioner objects to the second and third sentences of paragraph 4 of Order WR 80-20. We clarify the second sentence to provide that the reason given therein for limiting storage is, under Decision 1422, not the exclusive reason.

d. In paragraph 9) petitioner correctly identifies an ambiguity between some of the findings of Order WR 80-20 and order paragraph 1. This ambiguity concerns the conditions

precedent to authorization of Tulloch compensating storage in New Melones Reservoir. We clarify our intent as follows:

Storage in New Melones Reservoir to compensate for the Districts' loss of storage rights in Tulloch Reservoir may begin immediately upon (1) implementation by the Districts and the United States of the Districts' FERC license provision regarding Tulloch operations, and (2) filing by either party of written evidence of such implementation. Any such agreement, particularly a short-term one, will be subject to expeditious review by the Board.

e. In paragraphs 10), 11), and 12) petitioner relies on the joint Resources Agency-Department of Water Resources-Department of Fish and Game (DFG) Memorandum as evidencing a release schedule different from the earlier DFG release schedule upon which the fishery allocation in Order WR 80-20 was based. We find that the joint memorandum, with its various qualifications on amounts of water for fishery needs falls short of being a clear revision of the earlier DFG release schedule which is of record in this proceeding.

f. In paragraph 13) petitioner suggests language to make it clear that the Board may use information from sources other than the permittee and earlier than the permittee may make such information available, to revise water allocations contained in Order WR 80-20. The Board's intent to so act is stated clearly in paragraph 3, above.

g. Order WR 80-20 found that the previously submitted clearing plan may no longer be appropriate, in view of its condition that the interim period be of sufficient duration to justify the investment. In paragraph 15) petitioners content that

there is no evidence in the record to support this finding. The information before the Board at the time of Order WR 80-20 indicated that the United States Army Corps of Engineers was proceeding to implement a different clearing plan. The intent of Finding 13 was to make it clear that if this information was correct a new clearing plan and its advance submittal to the Board was necessary.

h. In paragraph 16) petitioner contends that the statement in paragraph 14 of Order WR 80-20, that "Nowhere is this concern [that is, the national concern over dependence on imported energy sources] more valid than in California" is not based on evidence in the record. This fact is a matter of official notice.

i. In paragraph 17) petitioner urges that conducting a hearing on additional water use at New Melones Reservoir, without participation by permittee United States Water and Power Resources Service, sets a bad precedent. We share petitioner's concern; permittee's refusal to participate in California administrative proceedings on New Melones water rights is reprehensible. However, the Board views its duty to take all steps to prevent waste of water and to secure reasonable use and diversion of water seriously and will not foreclose any process directed to that end.

j. In paragraph 18) petitioner recommends language by which the Board would "anticipate" that authorized flood

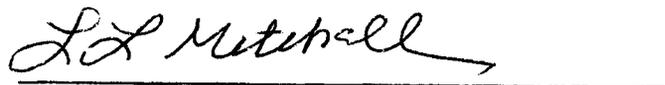
control operations at New Melones are harmonized with the objective of avoiding premature destruction of the upstream canyon. While flood control operations are preempted by federal law, we do anticipate that flood control operations should be in accord with generally accepted flood regulation practices, the authorized storage of water for beneficial uses and the objective of Decision 1422 to minimize inundation of the upper canyon, to the extent such objective can be furthered consistent with accepted flood regulation practices.

k. In paragraph 21) petitioner again refers to the conditions precedent to authorization of compensating storage for Tulloch in New Melones Reservoir. We have clarified our intent in subparagraph d., above.

IT IS HEREBY ORDERED that the petition for reconsideration of Order WR 80-20 is denied.

Dated: JANUARY 14, 1981

  
Carla M. Bard, Chairwoman

  
L. L. Mitchell, Vice-Chairman

  
Jill B. Dunlap, Member

  
F. K. Aljibury, Member

