

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25144 )  
North Canyon Lake Association )  
Applicant )

Richard E. Winkelman, et al )  
Protestants )

and )

Application 25843 )  
Richard E. Winkelman and Juanita )  
M. Ward )  
Applicants )

North Canyon Lake Association )  
Protestants )

Application 25844 )  
Gary W. Jackson and Jeannie M. )  
Jackson )  
Applicants )

North Canyon Lake Association )  
Protestants )

Application 25845 )  
Owen J. Masters and Pamela R. )  
Masters )  
Applicants )

North Canyon Lake Association )  
Protestants )

Order: WR 81-13

Source: North Canyon Creek

County: El Dorado

ORDER DENYING PETITION FOR RECONSIDERATION

BY THE BOARD:

On September 17, 1981, the Board adopted Decision 1578 deferring action on Applications 25144, 25843, 25844 and 25845. On October 19, 1981 the Board received a Petition for Reconsideration of Decision 1578 filed on behalf of Applicants Winkelman and Ward, Masters and Jackson.

### Substance of Petition

1. The Petition makes the following three contentions:

(1) The Ranchers should not have been denied a permit based upon lack of certainty about their easement to operate the reservoir because the evidence clearly shows that they do have such an easement.

(2) The Ranchers are entitled to a permit because the California Supreme Court in its Shirokow decision (26 Cal. 3d 301, 162 Cal. Rptr. 30) stated that it did not anticipate that its decision would result in the destruction of "all beneficial uses of water originally undertaken in reliance on prescription."

(3) The Ranchers have an existing, valid water right because their impoundment and use of water commenced prior to 1923.

### Discussion

2. The Board's Decision 1578 deals in detail with the issues raised by contentions one and three above. The Board continues to feel that the resolution of these issues as set forth in Decision 1578 is correct. Further, it should be mentioned that the Ranchers have not been "denied" a permit as the Petition contends. The Board has merely deferred action on competing applications until the matter of access can be resolved. This resolution may occur as a result of an agreement among the parties or as a result of litigation.

3. Contention two is not specifically addressed in Decision 1578. However, it should be noted that the court in Shirokow did not find (as the petitioner appears to be implying) that all existing beneficial uses commenced between 1914 and the present must be permitted by the Board if an application

is filed. Obviously, such a holding on the part of the court would totally undermine the permit system. As a matter of fact, the court explicitly stated the following in connection with its discussion of how the Board should handle existing uses when an application for such uses is filed:

"If the board determines a particular use is not in furtherance of the greatest public benefit, on balance the public interest must prevail." (26 Cal, 3d. at 310)

Conclusion

4. The Board finds that Decision 1578 was appropriate and proper for the reasons stated above.

ORDER

NOW, THEREFORE IT IS ORDERED that the petition for reconsideration of Decision 1578 is denied.

Dated: **NOV 5 1981**

ABSENT

Carla M. Bard, Chairwoman

L. L. Mitchell  
L. L. Mitchell, Vice-Chairman

Will B. Dunlap  
Will B. Dunlap, Member

F. K. Aljibury  
F. K. Aljibury, Member

