

all D-1422
ORDERS WR 80-20
81-1
82-3
82-9
83-3

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. BUREAU OF RECLAMATION,)
Permittee.)
ORDER: WR 83-7
SOURCE: Stanislaus River
COUNTIES: Calaveras and
Tuolumne

ORDER DENYING PETITION OF
SOUTH DELTA WATER AGENCY AND DELTA WATER USERS ASSOCIATION
FOR RECONSIDERATION OF ORDER WR 83-3

BY THE BOARD:

1. On April 4, 1983, South Delta Water Agency and Delta Water Users Association (hereinafter Petitioner) filed with the State Water Resources Control Board (hereinafter Board) a petition for reconsideration of Order WR 83-3. Order WR 83-3 amended specified conditions of Water Right Decision 1422 (hereinafter D-1422) and specified terms of the water right permits issued pursuant to D-1422. D-1422 was adopted in 1973. In D-1422 the Board found, among other things, that unappropriated water was available, and approved the appropriation of water at New Melones Reservoir up to 2,400,000 acre-feet by storage and up to 6000 cfs by direct diversion. The 6000 cfs is for power purposes only. The Board reserved jurisdiction to make further orders on specified subjects when evidence became available. Order WR 83-3 is a further order on two subjects contained in D-1422.

2. Petitioner requests that the Board hold a further hearing in the matter of Order WR 83-3 and amend Order WR 83-3 to include provisions protecting prior water rights in the southern Delta and protecting the public interest in the southern Delta.

3. Petitioner set forth several arguments to support its petition. These arguments are discussed below.

4. First, Petitioner introduced its arguments with some background statements starting on page 4 (Introduction). At the outset, several assertions contained in the Introduction must be dealt with.

a. Petitioner quotes one of the key issues contained in the Notice of Water Right Hearing in this proceeding a being "[s]hould the Board issue a further order allowing increased storage in New Melones Reservoir for consumptive uses?" This is a partial quotation of one of the key issues. By quoting in this fashion, Petitioner misrepresents Key Issue 2, which reads as follows:

"What progress has the United States Bureau of Reclamation made toward establishing firm commitments to deliver water for consumptive uses which would require storage in New Melones Reservoir of more than 438,000 acre-feet of water? Should the Board issue a further order allowing increased storage in New Melones Reservoir for consumptive uses?"

Clearly, the second sentence must be read in light of the first and not independently. When read in context, this issue is narrow. It refers only to whether the United States Bureau of Reclamation has established firm commitments to deliver water, thereby meeting a D-1422 prerequisite to exercising its full

storage rights at New Melones Dam. Its meaning is far narrower than might be argued when part of it is taken out of context.

b. Petitioner asserts that in Water Right Decision 1485 the Board failed to provide any water quality standards for the southern Delta, and so has failed to provide any protection for the water supply in the channels of the southern Delta. Since D-1485 is not a subject of this proceeding, it is difficult to discern the relevance of its contents. Additionally, the assertion that the Board has provided no protection for the water supply in the southern Delta is incorrect. In D-1422, the Board in Order Paragraph 5 required that the Bureau release water from New Melones Reservoir "to maintain a mean monthly total dissolved solids concentration in the San Joaquin River at Vernalis of 500 parts per million or less...." Vernalis is within the southern Delta. Thus, some protection has been provided. Further, in an appropriate proceeding, release requirements for water quality objectives can be altered pursuant to jurisdiction reserved in Order Paragraph 6 of D-1422.

c. Petitioner asserts that it was not allowed to present evidence during the hearing in this proceeding. However, all of the exhibits and written testimony offered by Petitioner were accepted in evidence. While this evidence could be used only to the extent that it was relevant, it was not refused.

d. Petitioner implies that as a result of Order WR 83-3 the permittee will divert water to places outside of the Stanislaus River watershed for consumptive use or will in some

other way deprive the southern Delta of water. However, Order WR 83-3 does not authorize diversions out of the counties of Stanislaus, Tuolumne, Calaveras, and San Joaquin. Since the southern Delta is within San Joaquin County, it can be served by the permittee if arrangements are made between the permittee and users of water in the southern Delta.

5. Next, in part III, Petitioner argues that the Board did not give it a fair hearing. This argument apparently is based on the theory that questions upon which the Petitioner attempted to present evidence were relevant to the proceeding. Petitioner wanted the Board to consider the amount of flow needed in the southern Delta for water quality maintenance. In arguing that this subject was an issue in the hearing, Petitioner again misstates Key Issue 2 by quoting only a part of it. Key Issue 2 requires a determination whether the United States has met a prerequisite set forth in Order Paragraph 2 of D-1422 for additional impoundment in New Melones Reservoir, viz., that firm commitments exist to deliver water. Key Issue 2 does not contemplate an examination of flow requirements for water quality maintenance. To consider these flow requirements, the Board would have had to announce in its hearing notice that it would consider revising water release requirements for water quality objectives (jurisdiction to revise these requirements is reserved in Order Paragraph 6 of D-1422). The Board did not announce consideration of these requirements. Consequently, the subject raised by Petitioner was irrelevant and could not be considered in this proceeding,

although it could be considered in a future proceeding. Had the Board in this proceeding considered the issue advanced by Petitioner, it would have acted without notice to persons other than Petitioner who may be interested in water release requirements.

6. Next, under part III of its petition, Petitioner asserts that the Board must (1) insure that the diversions under the permit will not impair downstream prior rights and (2) protect the public interest. In this argument Petitioner is confusing the present proceeding with the original water right application proceeding which led to D-1422. In D-1422 the Board subjected the water right permits to prior rights and it included conditions to protect the public interest. These provisions of D-1422 remain in D-1422. Since Order WR 83-3 is merely a further order, the prior rights protection provisions suggested by Petitioner would repeat existing provisions. They are therefore unnecessary in Order WR 83-3. The public interest was considered in Order WR 83-3 regarding issues relevant to the proceeding.

7. Finally, under part III, Petitioner suggests that the permittee will, as a result of Order WR 83-3, be allowed to use water for consumptive purposes in some location other than the place of use allowed in Decision 1422. This suggestion is incorrect. Order WR 83-3 does not change the allowed place of use of water stored in New Melones Reservoir. Testimony presented by the permittee and other parties concerning use of water outside the place of use was limited and was accepted only to show the amounts of water that can be used in those areas pending a need for it

in the four-county place of use set forth in Order Paragraph 4 of D-1422, assuming that a future petition for change in place of use is approved.

8. In part IV of the petition, Petitioner argues that the Board committed errors in law (1) because it refused to consider evidence of the amount of unappropriated water available for appropriation and (2) because it did not include provisions in Order WR 83-3 to protect prior water rights in the southern Delta and to protect the public interest in the southern Delta.

First, we find that the Board acted properly in not considering evidence of the amount of unappropriated water available for appropriation. This issue was irrelevant to the proceeding leading to Order WR 83-3. It was considered and decided in D-1422, when the Board found that there was unappropriated water available to satisfy the demands of the project as proposed, without causing any substantial injury to any lawful user of water. (See D-1422, finding 6, page 10.) All of the water considered in the proceeding leading to Order WR 83-3 was water for which the permittee had already obtained an appropriation permit. No need or authority existed to repeat, for purposes of Order WR 83-3, the examination of water availability done for D-1422. Additionally, the evidence and issues advanced by Petitioner regarding water for prior rights, public interests downstream, and remedying the effects of the Central Valley Project are not precluded from being considered in future proceedings designed for those purposes, and properly noticed.

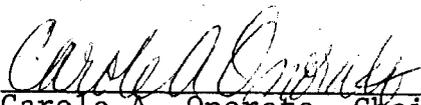
Second, no provisions were required in Order WR 83-3 to protect prior water rights because these rights are already protected by the permits issued pursuant to D-1422.

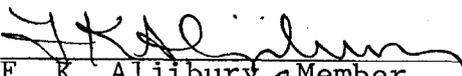
Third, no provisions were required in Order WR 83-3 to protect the public interest in the southern Delta by revising water release requirements because the required flows were not an issue in the Order WR 83-3 proceeding. These flows can be considered in a future proceeding pursuant to jurisdiction reserved in Order Paragraph 6 of D-1422.

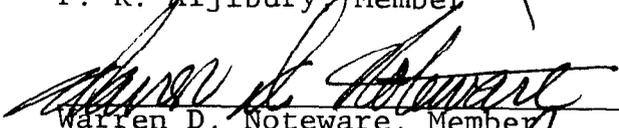
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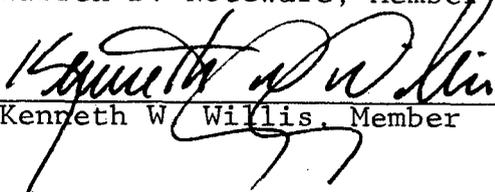
1. The petition is denied.
2. Order WR 83-3 is affirmed.
3. Denial of this petition is without prejudice to a petition for the Board to exercise its reserved jurisdiction under Order Paragraph 6 of Water Right Decision 1422 to revise water release requirements for water quality objectives.
4. Denial of this petition is without prejudice to a complaint requesting the Board to enforce the prior rights of water users in the southern Delta.

Dated: JUN 1 1983


Carole A. Onorato, Chairwoman


F. K. Aljibury, Member


Warren D. Noteware, Member


Kenneth W. Willis, Member

