

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the)
Diversion and Use of Water)
from Big Bear Lake and Bear) ORDER: WR 95-5
Creek in San Bernardino)
County by) SOURCE: Bear Creek
)
BIG BEAR MUNICIPAL WATER) COUNTY: San Bernardino
DISTRICT and)
)
BEAR VALLEY MUTUAL WATER)
COMPANY.)
_____)

ORDER MODIFYING WATER RIGHT ORDER 95-4
AFTER A PETITION FOR RECONSIDERATION

1.0 INTRODUCTION

On February 16, 1995, the State Water Resources Control Board (SWRCB) adopted Order WR 95-4. Order WR 95-4 requires minimum releases of water from Bear Valley Dam for fishery protection. On March 14, 1995, the City of Big Bear Lake (City) filed a timely petition for reconsideration. In the petition for reconsideration, the City requests that the SWRCB reconsider sections 3.6, 3.7, and 5.5.5 of Order WR 95-4 and modify these sections as the City requests. The City notes that the SWRCB rejected the City's request at the SWRCB's meeting on February 16, 1995 to delete these sections before adopting Order WR 95-4.

The SWRCB has received a response to the City's motion from California Trout, Inc. (Cal-Trout), the complainant in the proceeding that resulted in Order WR 95-4. Cal-Trout does not oppose the petition for reconsideration if it is narrowly limited to the three sections and does not result in changes that are central to the purpose of Order WR 95-4. Cal-Trout would object to any changes that directly or indirectly modified any of the requirements regarding Bear Creek.

2.0 GROUNDS FOR RECONSIDERATION

The SWRCB may order reconsideration on all or a part of a decision or order adopted by the SWRCB upon petition by affected persons. (Wat. Code § 1357.) The SWRCB's regulations list the following causes upon which an interested person may petition the SWRCB for reconsideration:

- a. Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- b. The decision or order is not supported by substantial evidence;
- c. There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- d. Error in law. (23 Cal. Code Regs. § 768.)

The City apparently alleges that the order is not supported by substantial evidence in the record. In effect, the City is disputing the way that the evidence was analyzed for these findings. As a remedy, the City suggests that the SWRCB reopen the hearing record and receive new evidence which either was not provided or was not available at the time of the hearing.

The City also contends that the evidence it presented in the hearing is now out of date, and that more recent information contradicts the evidence the City presented. This suggests an argument that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced. Most of the new evidence, however, was generated after the hearing, and so could not have been considered in the hearing.

3.0 THE SUBSTANCE OF SECTIONS 3.6, 3.7, AND 5.5.5

Sections 3.6, 3.7, and 5.5.5 of Order WR 95-4 contain findings that address the current and potential depletion of water from Bear Valley as a result of consumptive use of water in Bear Valley. These sections are not necessary to the SWRCB's determination of the required instream flows in Bear Creek and the actions required of the respondents in Order WR 95-4.

These sections describe the relationship between water supply and water use within Bear Valley. These sections point out that excessive water use in Bear Valley together with the export of waste water out of the valley could affect the lake level. Although the City argues that ground water is not in continuity with the lake, the existence of continuity makes no difference with respect to the effect on lake levels of ground water pumping. Because the valley is an isolated hydrological basin, the net amount of water in the valley will be the same whether the wells that supply municipal and domestic water uses in Bear Valley are in percolating ground water or are in continuity with the lake or the streams that feed the lake. Precipitation in the watershed refills both the subsurface water supply and the lake. During periods of excess precipitation, water that cannot be retained in the basin will run off. During periods of inadequate precipitation, water removed from the system will not be fully replaced. More water could be removed from the system through consumptive uses and export of reclaimed waste water than through releases of water from Big Bear Lake for instream flow in Bear Creek.

The SWRCB included sections 3.6, 3.7, and 5.5.5 because, notwithstanding its careful balancing of the needs of the beneficial uses in both the lake and Bear Creek, and despite the minimal effect of the required releases on the lake level, future depletions of water from the valley because of consumptive use and discharges of waste water could cause the lake level to

ORDER

IT IS HEREBY ORDERED that:

1. Sections 3.6, 3.7, and 5.5.5 of the findings in Order WR 95-4 are hereby deleted from that order.
2. All other findings, terms and conditions in Order WR 95-4 shall remain in full force and effect.
3. This order shall be attached to Order WR 95-4.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 3, 1995.

AYE: John P. Caffrey
Mary Jane Forster
Marc Del Piero
James M. Stubchaer
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board