

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 679, 13525
15582, 15581, 12049 Issued on
Applications 1379, 17139, 17149,
17235, and 18414,
NORTH TAHOE PUBLIC UTILITY DISTRICT,
Permittee,
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,
Protestant

Order : WR 79-7

Sources: Watson Creek, Lake
Tahoe, and Dollar
Creek

County : Placer

ORDER APPROVING PETITIONS
FOR EXTENSIONS OF TIME

BY BOARD CHAIRMAN MAUGHAN:..

The time to complete construction and application of water to be proposed use under Permits 679 (Application 1379), 13525 (Application 17139), 15582 (Application 17149), 15581 (Application 17235), and 12049 (Application 18414) held by North Tahoe Public Utility District (permittee) having expired, petitions for extensions of time were filed by the permittee. A public hearing was held before the State Water Resources Control Board (Board) on August 25, 1977, to determine whether extensions of time should be granted or a license issued and to provide a forum for the Board to receive input for the development of Board policy for the administration of water rights in the Lake Tahoe and Truckee River Basins. Protests having been received to the granting of an extension of time; permittees and interested persons having appeared and presented evidence; the evidence having been duly considered, the Board finds as follows:

Substance of the Permits

1. The substance of Permits 679, 13525, 15582, 15581 and 12049 is summarized in Appendix A, attached hereto. As Appendix A indicates, the source

for all these permits is either Lake Tahoe or tributaries to it. Furthermore, the present development schedule requires completion of construction and application of this water to the proposed use by December 1, 1975.

Permittee's Project

2. Permittee is a major water purveyor for the north shore area of Lake Tahoe. It serves, among other areas, the communities of Cornelian Bay, in part, Lake Forest, Tahoe Vista, and Brockway. The Agate Bay Water Company and Fulton Water Company also serve water in the general northshore area. The service area of the permittee contains a large number of buildable, undeveloped residential lots.

Background

3. On December 8, 1859, the Commissioner of the General Land Office' withdrew the lands comprising the Pyramid Lake Indian Reservation, hereinafter referred to as the "reservation", from the public domain for the use of the Pyramid Lake Paiute Tribe of Indians (hereinafter referred to as the "Tribe"). President U. S. Grant later confirmed this withdrawal by an executive order dated March 23, 1874. The reservation contains about 475,000 acres surrounding Pyramid Lake.

4. Pyramid Lake is a body of water located about 30 miles northeast of Reno. It has a surface area of about 110,000 acres and has a present depth of over 300 feet. Pyramid Lake is the terminus of the Truckee River and its tributaries and like many bodies of water in the Great Basin it has no outlet. Consequently, with evaporation of water from the lake the salt concentration or salinity in' the lake gradually increases.

5. When the federal government withdrew land from the public domain and reserve it for a federal purpose, it reserved by implication appurtenant water then unappropriated to the' extent needed to carry out

the purpose of the reservation. This principle of law was first stated in the landmark case entitled Winters v. United States, 207 U.S. 564, 28 S.Ct. 207 (1908) and it is commonly called the "Winters doctrine". It has been followed by a long line of cases. See United States v. New Mexico, U.S. ___, 96 S.Ct. 3012 (1978); Cappaert v. United States, 426 U.S. 128, 96 S.Ct. 2062 (1976) and the cases cited in them.

6. On June 17, 1902 the Reclamation Act of 1902 (32 Stat. 388) became law and immediately thereafter on July 2, 1902 the Secretary of Interior authorized the construction and operation of the **Newlands** project under the Reclamation Act of 1902. The **Newlands** Project contemplated diversion of water from both the Truckee River and Carson River for use on arid lands surrounding Fallon, Nevada.

7. On March 13, 1913, the United States commenced a quiet title action in the United States District Court for the District of Nevada, entitled United States of America v. Orr Ditch Water Company, et al., in Equity No. A-3, hereinafter referred to as the "Orr Ditch" case. On September 8, 1944, the court entered a final decree in the Orr Ditch case. The reservation was awarded a Winters doctrine reserved water right with a priority date of December 8, 1859, for irrigation of land within the reservation.

8. The United States commenced an action on its own behalf and on behalf of the Tribe on December 21, 1973, in United States District Court for the District of Nevada, entitled United States v. Truckee-Carson Irrigation District, et al., Civil No. R-2987 JBA U.S.D.C., Nevada, This action sought, among other things, to establish a Winters doctrine reserved water right in the United States for the maintenance and preservation of Pyramid Lake and the lower reaches of the Truckee River for fishery purposes. The Tribe intervened in these proceedings. On February 5, 1975, the District Court ordered that the affirmative defenses of res judicata and collateral estoppel be bifurcated

for separate trial before the court. On December 12, 1977, the District Court entered a judgement dismissing with prejudice the complaint. The District Court concluded that the doctrine of res judicata precluded the United States and the Tribe from asserting and litigating the alleged Winters doctrine reserved water right for fishery purposes. The United States and the Tribe have appealed the adverse decision to the Ninth Circuit Court of Appeals.

9. At the Board hearing on the petitions for extension of time, one of the parties objected to certain evidence being introduced into the record for Board action on said petitions. Staff was directed to review the evidence proffered and to clarify what constituted the hearing record. On May 11, 1978, staff transmitted a list of testimony, exhibits and closing argument that would be considered the hearing record. Two comments on the list were received. The Tahoe City Public Utility District commented in part:

1. In connection with Staff Exhibit 11, which is the Environmental Protection Agency 'Final EIS Wastewater Treatment and Conveyance System, North Lake Tahoe-Truckee River Basin (TTSA)', we ask that the Supplement to that Final EIS be included as part of the exhibit....

2. Since the hearing was held on August 25, 1977, the Federal District Court in Nevada has rendered a decision in the case of United States of America and Pyramid Lake Paiute Tribe of Indians v. Truckee-Carson Irrigation District, et al., Civil No. R-2987-JBA.... A copy of the court's Memorandum Decision, Findings of Fact and Conclusions of Law, Judgment, and Certificate is enclosed. We ask the Board take official notice of this decision and consider it in acting both on the petitions for extension of time and the development of a general policy for the Tahoe-Truckee Basin."

The Pyramid Lake Paiute Tribe of Indians requested that the Board take official notice of the Notices of Appeal and the Order of the Ninth Circuit Court of Appeals allowing the appeal.

10: The Board concludes that the hearing record as set forth in the Board letter dated May 11, 1978 on the petitions for extension of time should be augmented as requested by the Tahoe City Public Utility District and by the

Tribe for the following reasons. Staff Exhibit 11, the "Final EIS Wastewater Treatment and Conveyance System, North Lake Tahoe-Truckee River Basin (TTSA)" was intended to refer to a complete document, which includes the supplement. Tahoe City Public Utility District's first comment merely clarifies what was intended. The court decision referred to by Tahoe City Public Utility District and the Notices of Appeal and Order referred to by the Tribe are quite relevant to Board action on the petitions and they are the type of document which may be officially noticed by the Board.

11. Permittee requested several times during the hearing held on this matter that the place of use under each permit include the entire permittee's service area and that the points of diversion on the tributary streams be transferred to Lake Tahoe, if necessary. (RT 9, 143) The present order does not address these requests because **they are** not properly before the Board. Chapter 10, Part 2, Division 2 of the Water Code, commencing with Water Code Section 1700, specifies a procedure to bring such requests before the Board.

The Due Diligence of the Permittee

12. Permittee has sufficient pumping and/or intake capacity on the various sources under the permits to put to beneficial use a greater amount of water than the face value of the permits. In addition, permittee has main **distribution** lines to all existing subdivisions within the permittee's service area except one, the Wood Vista subdivision. Presently, permittee is undertaking a construction program to upgrade the system to improve reliability, efficiency, and public safety aspects of the system. Since the subdivider is responsible to provide distribution systems in any future subdivision, the permittee has the physical ability, pumping equipment, financial means and distribution system

to put the water authorized for diversion by its existing permits to beneficial use. Accordingly, the permittee has been diligent in acquiring the means to put the said water to beneficial use. While permittee does lack customers for its water, this matter is not within the permittee's control.

13. Permittee represents in its petition that its construction program should be complete in 1980 and that the water under the permits will be used in the year 2000. Generally, the Board's policy is to grant extensions, if good cause is shown, consistent with the development and use schedule contemplated by the permittee, if the Board further determines that said development and use schedule, is reasonable and constitutes the exercise of due diligence. However, here there are several factors which persuade us that a shorter development and use schedule is appropriate. The pending lawsuit of the United States to establish a "Winters" doctrine reserved right for fishery purposes is a significant factor in the Ultimate determination of water right entitlements in the Tahoe Basin. Hopefully the present appeal will be resolved within the next two years. Following such a resolution, Congress should be able to definitively act on the Interstate Compact between the states of California and Nevada regarding use of water in the Tahoe Basin. (See Water Code Section 5976). Finally, additional time will be required for (1) update of the Board's 1969 Tahoe Water use study, (2) adoption of a new Tahoe policy, and (3) hearings on other extension requests. For these reasons the Board expects that more conclusive action may be taken on or before the expiration of two more years from December 1, 1978.

14. Good cause has been shown for an extension of time for each permit to complete construction and application of water to beneficial use under Permit 679 (Application 1379), Permit 13525 (Application 17139), Permit 15582 (Application 17149), Permit 15581 (Application 17235) and Permit 12049 (Application 18414). Said extension shall be granted to December 1, 1980.

15. The Board further concludes that provisions of Permit 679 need to be designated permit term numbers for easy reference and that all the permits need to be updated to include standard terms and conditions.

NOW THEREFORE, IT IS ORDERED THAT:

1. Permit Term 3 of Permit 13525 (Application 17139), Permit Term 9 of Permit 15582 (Application 17149), Permit Term 9 of Permit 15581 (Application 17235), and Permit Term 5 of Permit 12049 (Application 18414) is amended to read as follows:

"Complete application of the water to the proposed use shall be made on or before December 1, 1980."

2. The provisions of Permit No. 679 (Application 1379) shall be designated permit term numbers as follows:

a. The following provision of Permit No. 679 shall be designated permit term number one:

"Actual construction work shall begin on or before April 1, 1920 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked."

b. The following provision of Permit No. 679 shall be designated permit term number two:

"The amount of water appropriated shall be limited to the amount which can be applied to beneficial use' and shall not exceed two thirds (2/3) of one cubic foot per second, or its equivalent in case of rotation."

c. The following portion of this New Development Schedule provision of Permit No. 679 as amended shall be designated permit term number three:

"Said construction work shall be completed on or before December 1, 1970."

d. The following portion of the New **Development** Schedule provision of Permit No. 679 approved by Order dated February 26, 1973 shall be amended and designated permit term number four:

"Complete application of the water to the proposed use shall be made on or before December 1, 1980."

3. Permit Term 7 of Permit 12049 (Application 18414) , Permit Term 5 of Permit 13525 (Application 17139), Permit Term 11 of Permit 15582 (Application 17149), and Permit Term 11 of Permit 15581 (Application 17235) are amended and a new Permit Term 5 of Permit 679 (Application 1379) is added as follows:

Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in his permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

4'. A new Permit Term 6 of Permit 679 (Application 1379) and a new Permit Term 8 of Permit 12049 (Application 18414) are added as follows:

Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

5. A new Permit Term 7 of Permit 679 (Application 1379) is added as follows:

The amount authorized for appropriation may be reduced in the license if investigation warrants.

6. **Permit Term 1** of Permit 13525 (Application 17139) shall be amended to read as follows:

The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed 2.5 cubic feet per second to be diverted from June 1 to September 30 of each year.

7. Permit Term 7 of Permit 13525 (Application 17139), Permit Term 13 of Permit 15582 (Application 17149) and Permit Term 13 of Permit 15581 (Application 17235) are deleted.

8. A new Permit Term 8 of Permit 679 (Application 1379), a new Permit Term 9 of Permit 12049 (Application 18414), a new Permit Term 7 of Permit 13525 (Application 17139), a new Permit Term 13 of Permit 15582 (Application 17149), and a new Permit Term 13 of Permit 15581 (Application 17235) are added as follows:

Permittee shall install and properly maintain water meters or other appropriate measuring devices satisfactory to the State Water Resources Control Board which are capable of measuring and recording the amount(s) of water being diverted from each source of supply for beneficial use and the amount(s) of water delivered for beneficial use in the State of Nevada and furnish monthly records of measurements to the Board in the annual progress report(s) by permittee.

9. A new Permit Term 9 of Permit 679 (Application 1379), a new Permit Term 10 of Permit 12049 (Application 18414), a new Permit Term 8 of Permit 13525 (Application 17139), a new Permit Term 14 of Permit 15582 (Application 17149), and a new Permit Term 14 of Permit 15581 (Application 17235) are added as follows:

This permit is subject to the continuing authority of the State Water Resources Control Board in accordance with policy for the administration of water rights in the Lake Tahoe Basin to reduce the amount(s) of water named in the permit(s) upon a finding by the Board that the amount(s) listed in the permit(s) are in excess of that reasonably needed for the authorized uses. Water requirements will be estimated using land use densities in the permitted place of use as authorized by local ordinances or as they may be modified by the final order of the Tahoe Regional Planning Agency. No further action will be taken by the Board without prior notice to the permittee and an opportunity for hearing.

10. A new Permit Term 10 of Permit 679 (Application 1379), a new Permit Term 11 of Permit 12049 (Application 18414), a new Permit Term 9 of Permit 13525 (Application 17139), a new Permit Term 15 of Permit 15582 (Application 17149), and a new Permit Term 15 of Permit 15581 (Application 17235) are added as follows:

No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, Lahontan Region, pursuant to Water Code Section 13260, and the regional board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that water discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the regional board or State Board are being met.

No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a regional board or the State Board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260:

- (1) the regional board issues a waiver pursuant to Section 13269, or
- (2) the regional board fails to act within 120 days of the filing of the report.

No report of waste discharge pursuant to Section 13260 of the Water Code shall be required for percolation to the groundwater of water resulting from the irrigation of crops.

11. A new Permit Term 11 of Permit 679 (Application 1379), a new Permit Term 12 of Permit 12049 (Application 18414), a new Permit Term 10 of Permit 13525 (Application 17139), a new Permit Term 16 of Permit 15582 (Application 17149), and a new Permit Term 16 of Permit 15581 (Application 17235) are added as follows:

The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are

in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of 'waste discharges.

12. A new Permit Term 12 of Permit 679 (Application 1379), a new Permit Term 13 of Permit 12049 (Application 18414), a new Permit Term 11 of Permit 13525 (Application 18414), a new Permit Term 17 of Permit 15582 (Application 17149), and a new Permit Term 17 of Permit 15581 (Application 17235) are added as follows:

a. The total annual diversion and use allowed under each permit shall not exceed the following:

Permit 679, Application 1379	280 acre-feet
Permit 13525, Application 17139	See Subdivision "b" of this term.
Permit 15582, Application 17149	See Subdivision "b" of this term.
Permit 15581, Application 17235	See Subdivision "b" of this term.
Permit 12049, Application 18414	49.7 acre-feet

b. Decision 1056 adopted February 15, 1962 states:

"The total amount of water to be appropriated by direct diversion under Applications 17149 and 17235 and under rights, if any, acquired from Brockway Water Company (Oakwood Investment Company) shall not exceed 240 acre-feet in any calendar month or 1,900 acre-feet in any year."

Permittee has acquired Permit 13525 (Application 17139) from the Oakwood Investment Company.

13. A new Permit Term 13 of Permit 679 (Application 1379) is added as follows:

Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

14. Order No. WR 73-10 shall remain in effect except as said Order amended Permit Term 3 of Permit 13525 (Application 17139), Permit Term 9 of Permit 15582 (Application 17149), and Permit Term 9 of Permit 15581 (Application 17235).

15. The amendments to Permit 679 (Application 1379) by Orders dated February 26, 1973 and May 22, 1968 and the amendments to Permit 12049 (Application 18414) by the Order dated April 26, 1973 are hereby deleted because the permit terms added above incorporated said amendments.

Dated: April 19, 1979

WE CONCUR:

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

/s/ WILLIAM J. MILLER
William J. Miller, Member

/s/ L. L. MITCHELL
L. L. Mitchell, Member