

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DM7
In the Matter of the Determination)
of the Rights of the Various)
Claimants to the Waters of the)
WILLOW CREEK STREAM SYSTEM,)
Shasta County, California.)

ORDER: WR 86- 3
SOURCE: Willow Creek
COUNTY: Shasta

ORDER AMENDING ORDER OF DETERMINATION
AND DENYING PETITIONS FOR RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

The Board having entered its Order of Determination of the Rights of the Various Claimants to the Waters of the Willow Creek Stream System in Shasta County, California; three petitions for reconsideration of said order having been filed within the time allowed by statute; and the petitions for reconsideration having been duly considered; the Board finds as follows:

2.0 GROUNDS FOR RECONSIDERATION

Section 737.1 of Title 23 of the California Administrative Code provides that reconsideration of a Board decision or order may be requested for any of the following causes:

- a. A procedural irregularity which has prevented the petitioner from receiving a fair hearing;
- b. The decision is not supported by substantial evidence;

- c. There is relevant evidence available which in the exercise of reasonable diligence could not be produced at the hearing; or
- d. An error in law.

3.0 SUBSTANCE OF PETITIONS FOR RECONSIDERATION

3.1 Requests for Amendment of Order Provisions Regarding Watermaster Service

The Board received two letters requesting changes in the provisions of the Order of Determination which relate to possible use of watermaster service. The letters were submitted by Robert L. Gates and Marjorie S. Gates, and by Louis E. Colbert and Wilma C. Colbert. Both letters request deletion of the recommendations regarding possible establishment of watermaster service as set forth in paragraphs 29 and 30 of the Order of Determination. In addition, both letters request that a statement be added to the order to oppose appointment of a watermaster for the area involved in the statutory adjudication.

Neither letter was served on other parties to the adjudication, but Board staff since has provided copies to the other parties. The letters will be treated as petitions for reconsideration based on the grounds that the provisions of the order regarding watermaster services allegedly are not supported by substantial evidence. The Board's findings with respect to this subject are set forth in Section 4.0 below.

3.2

Petition to Include Statement Regarding Relative Priorities of Rights in Different Schedules and to Change Source Listing for Specified Appropriative Rights

The petition for reconsideration filed by Julius Gabriele requests the Board to include a statement in the Order of Determination which would clarify the relative priority of the riparian rights listed in Schedule 3 and the post-1914 appropriative rights listed in Schedule 5. The Board's findings on this subject are presented in Section 5.0 below. Petitioner Gabriele also requests that the sources of water shown in Schedule 5 be changed for petitioner's Application 25856 and for the Gates' permitted Application 25806. Petitioner contends that diversions by both parties are made from Willow Creek. With respect to the grounds for reconsideration as specified in Section 737.1 of Title 23 of the California Administrative Code, the petition will be treated as a request for reconsideration based upon lack of substantial evidence in support of the sources of water for the diversions listed in Schedule 5. This subject is addressed in Section 6.0 below.

4.0 PROVISIONS OF ORDER REGARDING WATERMASTER SERVICE

Paragraph 29 of the Order of Determination is the Board's finding that the court should reserve jurisdiction to appoint a watermaster as proposed by the parties, the Board, or the court acting on its own motion. Paragraph 30 sets forth the Board's recommendation to the court with respect to the specific means of resolving future disputes in the event a watermaster is appointed. Inclusion in the decree of the provisions recommended in paragraphs 29 and 30 would not

necessarily result in appointment of a watermaster at the present time. Rather, the recommended provisions simply provide a framework by which the court could proceed to prevent or resolve disputes through use of a watermaster should that be appropriate.

It should be recognized that the general reservation of jurisdiction set forth in paragraph 27 would enable the court to appoint a watermaster or take other appropriate steps to implement the decree. By specifically addressing the subject of watermaster service in paragraphs 29 and 30, however, the Order of Determination aims to minimize the need for future litigation and expense which could result if problems arise regarding compliance with the decree. This is consistent with the underlying purpose of the statutory adjudication process which is directed at securing a comprehensive determination of the water rights on a stream system and a workable means of ensuring that the water is distributed in accordance with those rights.

The petitioners argue that regulation of water diversions by a watermaster would never be necessary. The evidence presented at the hearing regarding past water shortages for users in the lower end of the stream system, however, is sufficient to justify inclusion of the present provisions regarding possible watermaster service. Therefore, the Order of Determination will not be revised to delete the existing paragraphs 29 and 30, nor will the Board include the proposed finding that watermaster service is unnecessary.

5.0 RELATIVE PRIORITY OF RIGHTS SPECIFIED IN SCHEDULES 3 THROUGH 5 OF THE ORDER OF DETERMINATION

The allotments of water listed in Schedules 3 and 4 of the Order of Determination are based on the riparian rights of the various claimants. The rights listed in Schedule 5 are based on post-1914 appropriative rights approved by this Board or its predecessor agencies. Diversion and use of water under riparian rights takes priority over diversion and use under post-1914 appropriative rights. In this instance, all of the appropriative rights shown are for diversion to storage during the late fall and winter months when water is relatively more abundant and there is likely to be sufficient water to serve all rights. Nevertheless, inclusion of a statement regarding the relative priority of the riparian rights and the post-1914 appropriative rights may help avoid confusion at some future time. Paragraph 24 of the Order of Determination should be amended to include a statement regarding the relative priority of the rights listed in Schedules 3, 4 and 5.

6.0 CORRECTIONS OF WATER SOURCES FOR DIVERSION OF WATER UNDER RIGHTS SHOWN IN SCHEDULE 5

Permit 18103 (Application 25806) held by Robert L. and Marjorie S. Gates authorizes diversion of water from Willow Creek and two unnamed streams tributary to Willow Creek. Similarly, Application 25856 filed by Julius Gabriele lists Willow Creek and an unnamed stream tributary to Willow Creek as the sources of water for Mr. Gabriele's project. The sources of water listed in Schedule 5 under Permit 18103 and Application 25856 of the Order of Determination should be amended to conform with the sources shown in the respective permit and

application. In addition, footnote 2 of Schedule 5 of the Order of Determination should be amended to include a statement that the right to divert water to storage under Application 25856 is contingent upon issuance of a permit by the Board.

7.0 CONCLUSION

With the exception of the minor changes and corrections described above, the Board concludes there is no cause for reconsidering the Order of Determination entered on November 21, 1985.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Paragraph 24 of the Order of Determination is amended to include the following additional sentence as the last sentence in the paragraph:

"The riparian rights specified in Schedules 3 and 4 have priority over the post-1914 appropriative rights listed in Schedule 5. No diversion of water is permitted under the rights listed in Schedule 5 at any time it will interfere with diversion of water under the rights specified in Schedules 3 and 4."
2. Schedule 5 of the Order of Determination is amended to show "Willow Creek and two unnamed streams" as the sources of water for diversion under permitted Application 25806 (Gates) and to show "Willow Creek and an unnamed stream" as the sources of water for diversion under Application 25856 (Gabriele).

3. Footnote 2 of Schedule 5 is amended to read as follows:

"Application 25856 of Julius and Linda Gabriele also requests 4,000 gallons per day year round for domestic use, 375 gallons per day year round for stockwater use and 0.334 cubic foot per second from April 1 to October 15 for irrigation. The Gabriele's direct diversion of water is also covered under riparian rights. The right to divert water to storage under Application 25856 is contingent upon issuance of a permit by the State Water Resources Control Board."

4. Except as specified herein, the petitions for reconsideration filed by Robert L. Gates and Marjorie S. Gates, Louis E. Colbert and Wilma C. Colbert, and Julius Gabriele are denied.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on

AYE: Darlene E. Ruiz
E. H. Finster
Eliseo Samaniego
Danny Walsh

NO: None

ABSENT: Raymond V. Stone

ABSTAIN: None


Raymond Walsh
Interim Executive Director

