

11/16/1990

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Declaration
of Fully Appropriated Stream
Systems in California.

)
) ORDER: WR 89-25
)
) SOURCES: Various Stream
Systems, Statewide

COUNTIES: All Counties except
Imperial, San Benito,
and San Francisco

ORDER ADOPTING DECLARATION OF
FULLY APPROPRIATED STREAM SYSTEMS
AND SPECIFYING CONDITIONS FOR
ACCEPTANCE OF APPLICATIONS AND REGISTRATIONS

11/16/1989

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BY THE BOARD:

1.0 INTRODUCTION

Following notice pursuant to Water Code Section 1207, the Board held a hearing on March 14, 1989, to determine whether to adopt a declaration that certain stream systems are fully appropriated (Water Code Section 1205(a)), thereby precluding acceptance of applications to appropriate unappropriated water from sources subject to such declaration. The stream systems under consideration by the Board for inclusion in the Declaration were identified in an attachment to the Notice of Public Hearing in this proceeding, dated December 22, 1988 (hereinafter, "the Hearing Notice

Attachment"). The Hearing Notice Attachment also specified, for each stream system under consideration, the season of unavailability of water for appropriation and the previous water right decision which determined that no water remains available for appropriation.

1.1 The proceeding included inquiry into the conditions, if any, that should be established in such declaration upon which applications to appropriate water should nevertheless be accepted. (Water Code Section 1206(b).)

1.2 Initiation of rights pursuant to the Water Rights Permitting Reform Act of 1988 (Water Code Section 1228 et seq.; hereinafter, "the Permitting Reform Act") is also made subject to this proceeding by operation of law. (Water Code Section 1228.2(b).) Accordingly, in this Order the Board has made certain findings and established certain conditions specifically relating to registration of small domestic use appropriations pursuant to the Permitting Reform Act.

1.3 Having taken official notice of previous water right decisions, and having considered the hearing presentations, the Board makes the following findings.

2.0

GENERAL FINDING

Except as found in succeeding paragraphs, the Board finds that the stream systems identified in the Hearing Notice Attachment are fully appropriated during the seasons specified therein. Reference is made to Exhibit A to this Order, entitled "Declaration of Fully Appropriated Stream Systems", and by this reference Exhibit A is incorporated into this Order as though fully set forth herein. Exhibit A consists of the stream systems identified in the Hearing Notice Attachment, except that Exhibit A incorporates findings (including findings related to seasons of unavailability of water for appropriation from specific stream systems) set forth in Section 3.0, below. When the Chief, Division of Water Rights, completes the action identified in Paragraph 2.1, next below, the result will be a compilation consisting of Exhibit A together with other appropriate conditions, authorized by Water Code Section 1206(b), as specified in succeeding paragraphs. For convenience, Exhibit A will hereinafter be referred to as "the Declaration".

2.1

The Chief, Division of Water Rights, should compile and maintain the Board's Declaration of Fully Appropriated Stream Systems, together with Conditions for Acceptance of Water Right Applications and Small Domestic Use

Registrations, all in accordance with the findings contained in this Order.

3.0 FINDINGS RELATED TO SPECIFIC STREAM SYSTEMS AND TO THE SEASONS OF UNAVAILABILITY OF WATER THEREIN

Based upon the water right decisions officially noticed; upon presentations and exhibits presented by interested persons at the hearing of March 14, 1989; upon information provided by staff and made part of the record of that hearing; and upon other matters officially noticed; the Board makes the following findings with respect to the stream systems under consideration.¹ The stream systems upon which findings are made are organized by county. Final paragraphs address issues which encompass more than one stream system.

3.1 Alpine County

3.1.1 Decision 54 (Bear River, tributary to Mokelumne River). Amador County and Amador County Water Agency suggested that Decision 54 did not determine a season of non-availability for the Bear River and that the season determined by that decision for the Mokelumne River is inconsistent with later decisions regarding the Mokelumne River. The Board finds that the point is

¹ The Declaration includes a number of typographical and technical corrections to the Hearing Notice Attachment, relating to certain decisions, stream systems, and seasons of unavailability of water. These corrections are specially identified in the Declaration. The Board finds that these corrections accurately express the relevant water right decision.

available for appropriation in any season from these sources. The Board agrees.

3.8 Kern County

3.8.1 Decision 1196 (Kern River System). The Kern River Water Users urged the Board to find that no water is available for appropriation in any season from this source. The Kern Property Corporation urged that Decision 1196 could not be interpreted as a determination that no water remains available for appropriation in the Kern River System. The difficulty arises from the phrasing of Finding paragraph 8 of Decision 1196:

"8. There has been no showing that there is unappropriated water available to supply the applicants."

The Board's finding of an absence of a showing of availability of unappropriated water is not the same thing as a determination by the Board that no water is available for appropriation. However, in Finding paragraph 7 of Decision 1196 the Board stated:

"7. A comparison of the quantities of water used in the First Point, Second Point, and Lower River Service Areas for the period 1894-1963, with the quantities of water flowing past the first point of measurement, adjusted to eliminate the effect of Isabella Reservoir, shows that there is no water surplus to the established uses of the applicants, protestants, and

other users in these areas. This conclusion is further supported by the fact that ground water levels within the service areas are declining, and agencies within the area have entered into or are negotiating contracts to purchase additional water from the U. S. Bureau of Reclamation and from water facilities now under construction by the State of California." (Emphasis added.)

If there exists any ambiguity as to whether Decision 1196 determined that no water remains available for appropriation in the Kern River System, the Board is aided by the administrative record upon which the decision is based. That record contains ample substantial evidence to support a finding that no water remains available for appropriation. The record also contains an engineering staff analysis prepared by a senior staff engineer. After reviewing the record of the hearing on the applications with which Decision 1196 was concerned, the engineer concluded:

"The water of the Kern River is fully appropriated and apportioned under existing agreements and court decrees and no unappropriated water is available for use under the applications being considered."

Accordingly, the Board finds that Decision 1196 does determine that no water remains available for appropriation in the Kern River System.

required by Water Code Section 1228.2(d) to determine whether a stream system should be added to the Declaration.

13.0 RECONSIDERATION OF THIS ORDER

Provision should be made for reconsideration of this Order, either upon petition of an interested party or upon the Board's own motion.

ORDER

Based upon the foregoing Findings, it is hereby ORDERED that:

1. Exhibit A is hereby adopted as the Board's Declaration of Fully Appropriated Stream Systems.
2. The Chief, Division of Water Rights, shall compile and maintain the Board's Declaration of Fully Appropriated Stream Systems, together with Conditions for Acceptance of Water Right Applications and Small Domestic Use Registrations, in accordance with the findings in this Order.
3. The Chief, Division of Water Rights, shall review all applications, except "state filings", to appropriate unappropriated water pending before the Board. Applications determined by the Chief to be consistent with the conditions

of the Declaration shall be processed normally. In the case of all applications determined by the Chief to be inconsistent in any material respect with the conditions of the Declaration, the Chief shall provide notice and take the actions set forth in Section 7.0 of this Order.

4. The Chief, Division of Water Rights, shall report to the Board pursuant to Water Code Section 1128.2(c). The report shall include a description of the availability of unappropriated water in stream systems which may become fully appropriated within the next reporting period. The report shall include stream systems recommended by the Chief to be declared fully appropriated so that the Board may determine whether Water Code Section 1128.2(d) should be implemented.
5. The Chief shall propose administrative rules for adoption by the Board. The proposed rules shall prescribe procedures whereby interested persons may (a) petition the Board for revocation or revision of the Declaration, and (b) participate in the hearing required by Water Code Section 1228.2(d) to determine whether a stream system should be added to the Declaration.

6. Water Code Sections 1357, 1358, and 1359, relating to reconsideration and amendment of decisions and orders, shall apply to the instant Order.

CERTIFICATION


The undersigned, Administrative Assistant to the 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 November 16, 1989.

AYE: W. Don Maughan
 Darlene E. Ruiz
 Edwin H. Finster
 Eliseo M. Samaniego
 Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant
to the Board