

elect to be covered by Social Security, such coverage would be extended to them as a benefit in addition to any benefits payable by the County Fund. Such employees would be required, however, to pay the Social Security tax in addition to the full contribution to the County Fund since there is no offset arrangement as provided for members of the *integrated* State retirement programs such as the Public Employees' Retirement System, N.J.S.A. 43:15A-59.

Accordingly it is our opinion and you are so advised that the Governor may authorize a referendum among the Hoboken members of the Hudson County Fund and that such referendum should be conducted pursuant to the provisions of N.J.S.A. 43:22-12 and 42 U.S.C.A. 418 §(d) (3) and that if the Hoboken members elect to be covered by Social Security, such election will not terminate the Hudson County Fund either in whole or in part nor bring the Hoboken employees into the Public Employees' Retirement System.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DONALD M. ALTMAN
Legal Assistant

DMA:ccm

MAY 17, 1957

WATER POLICY AND SUPPLY COUNCIL
Division of Water Policy and Supply
Department of Conservation and Economic Development
520 East State Street
Trenton, New Jersey

MEMORANDUM OPINION—P-17

GENTLEMEN :

You have requested our opinion as to whether diversions from the Delaware and Raritan Canal within the Delaware River watershed should be charged against the 100 m.g.d. which the State of New Jersey may withdraw from the Delaware River pursuant to the recent United State Supreme Court decree.

In our opinion the answer is no.

The question arises because the canal conveys water from the Delaware River to the Raritan River, crossing from one watershed to the other in the vicinity south of Princeton, so that water may be withdrawn from the canal and thereafter discharged in either watershed.

Diversions *outside* the Delaware River watershed are limited to one hundred million gallons per day by the decree of the United States Supreme Court in *New Jersey v. New York, et al.*, 347 U.S. 995 (1954); but we can find in the decree no quantitative limitation on the amount that may be taken from the river through the canal for use *within* the Delaware watershed.

Section V of the decree authorizes the State of New Jersey, upon the occurrence of certain conditions, to "divert outside the Delaware River watershed, from the

Delaware River or its tributaries in New Jersey, without compensating releases the equivalent of 100 m.g.d." The decree goes on to provide that until New Jersey builds and utilizes one or more reservoirs to store waters of the Delaware River or its tributaries "for the purpose of diverting the same to another watershed", the State may divert an average of not more than 100 m.g.d., with the diversion on any day not to exceed 120 million gallons; and that regardless of whether the State builds such reservoirs, its total diversion "for use outside of the Delaware River watershed" shall not exceed an average of 100 m.g.d. during any calendar years without compensating releases. Section VI of the decree provides as follows :

"VI. EXISTING USES NOT AFFECTED BY AMENDED DECREE. The parties to this proceeding shall have the right to continue all existing uses of the waters of the Delaware River and its tributaries, not involving a diversion outside the Delaware River watershed, in the manner and at the locations presently exercised by municipalities or other governmental agencies, industries or persons in the Delaware River watershed in the States of New York, New Jersey and Delaware and the Commonwealth of Pennsylvania."

The section just quoted means, in our opinion, that New Jersey may continue to take water from the River through the Canal which is not diverted outside the Delaware River watershed, and which is taken in the manner and at the location used as of the date of the decree (June 7, 1954), and that the water so taken is not chargeable against the 100 m.g.d. allowed to be diverted to another watershed. As we interpret the decree, it does not prevent the State from taking into the Canal any quantity of water for use in accordance with Section VI of the decree, in addition to the 100 m.g.d. which can be diverted outside the Delaware River watershed under Section V. The Court's decision in the original case (283 U.S. 805) substituted the doctrine of equitable apportionment for the common law rule requiring undiminished flow; and no limit was placed on the quantity of water which could be diverted within the watershed because it has hitherto been unnecessary to do so. The Court has retained jurisdiction over the River water so that it may reallocate the same or impose further conditions at any time that the equities of the interested parties make it appropriate.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

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