

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 21532)
of Johnson Stock Company, an Oregon)
Corporation, to Appropriate from)
Unnamed Streams in Modoc County)

Decision D 1268

DECISION APPROVING APPLICATION

Application 21532 of Johnson Stock Company having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on February 16, 1966, conducted by Board Member W. A. Alexander; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 21532 is for a permit to appropriate a total of 9.7 acre-feet per annum by storage in five reservoirs from October 15 of each year to April 15 of the succeeding year for stockwatering, fire protection, and recreational purposes from unnamed streams in Modoc County. The points of diversion are to be located in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 28, T47N, R6E; NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 4, T46N, R6E; SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 3, T46N, R6E; and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 33, T47N, R6E, all MDB&M.

2. One of the unnamed streams heads at an elevation of approximately 4,000 feet and flows in a general southwesterly direction; another of the unnamed streams heads at an elevation of approximately 4,800 feet and flows in a general northwesterly direction. These two streams join near the westerly boundary of Section 34, T47N, R6E, MDB&M, and flow as a single unnamed stream in a general southwesterly direction to Tule Lake Swamp.

3. The five reservoirs are principally used for the watering of between 800 and 1,000 cattle. The application designates them as Nos. 24, 26, 30, 32, and 38. Except for Reservoir No. 32, they have been constructed and have filled with water in most years.

4. Reservoir No. 24 has a capacity of approximately 0.7 acre-foot, and Reservoir No. 26 has a capacity of 1.5 acre-feet. These small reservoirs are a considerable distance from the unnamed streams, and the streams on which they are located lose their identity a short distance below the reservoirs. The proposed storage in these reservoirs will have no effect on users of water from the unnamed streams.

5. Reservoir No. 32, which will have a capacity of approximately 2.0 acre-feet, is to be constructed on the applicant's land adjacent to an existing reservoir on the unnamed stream that flows in a general northwesterly direction. The existing reservoir is approximately one and a half miles

above the junction of the unnamed streams and is within the Modoc National Forest. The applicant has entered into an agreement with the U. S. Forest Service for an exchange of land. Under this agreement the applicant has a right to share in water stored in the existing reservoir.

Tentative plans are to run a pipe from the bottom of the Forest Service reservoir to Reservoir No. 32. If, by fencing or by some other means, the water stored in the Forest Service reservoir can be shared by the applicant and Forest Service grazing permittees and the stock kept separated, Reservoir No. 32 will not be built.

The appropriation of water by the applicant at Reservoir No. 32 is objected to by protestants Robert A. and Elizabeth D. Byrne. When their protest was filed they held a permit for the grazing of stock and used water from the Forest Service reservoir. In past years there has not been sufficient water to meet the needs of their stock. At the time of the hearing their grazing permit had expired. They pursued their objection to Application 21532 as it relates to Reservoir No. 32 on the assumption that they may again receive a grazing permit in the same area. They question the authority of representatives of the U. S. Forest Service to enter into an agreement whereby water that is considered reserved to the Federal Government as necessary for use on reserved federal lands

can be used by a private individual on private lands to the detriment of a Forest Service permittee. Whatever rights these protestants may have in the future will be through the Forest Service as holders of a grazing permit. The Forest Service not only has no objection to Application 21532 as it relates to Reservoir No. 32, but is cooperating in the construction of the reservoir. This controversy between a possible future Forest Service permittee and the Forest Service is not within the Board's jurisdiction.

Protestants Michael H. and Mary L. Fayne withdrew their protest, which also was directed to the construction of Reservoir No. 32, in consideration of the applicant's withdrawal of its protest to their Application 21820 (RT 4).

6. Reservoir No. 30 is on the main unnamed stream approximately one mile above protestants Dan and Janie McAuliffe, and Reservoir No. 38 is located approximately a mile and a half farther upstream. Reservoir No. 30 is the only reservoir covered by Application 21532 that involves a dam; the others are formed by excavations. It has a capacity of approximately 2.5 acre-feet. Reservoir No. 38 has a capacity of approximately 3.0 acre-feet. Protestants McAuliffe use water principally for the watering of sheep directly from the stream, with some use for flooding and subirrigation of pasture. They are apprehensive that in dry years the applicant's

Reservoirs Nos. 30 and 38 may interfere with their uses under claimed riparian and pre-1914 rights. In almost every year, water surplus to the McAuliffes' needs flows past their property to waste in the Tule Lake Swamp. This water is available to the applicant (RT 39).

7. Unappropriated water is available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

8. The intended use is beneficial.

9. In order to protect protestants McAuliffe, the permit should contain a term providing for the release or bypass of water from Reservoirs Nos. 30 and 38 to the extent necessary to satisfy downstream prior rights.

From the foregoing findings, the Board concludes that Application 21532 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

ORDER

IT IS HEREBY ORDERED that Application 21532 be, and it is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.7 acre-foot at Reservoir No. 24, 1.5 acre-feet at Reservoir No. 26, 2.5 acre-feet at Reservoir No. 30, 2.0 acre-feet at Reservoir No. 32, and 3.0 acre-feet at Reservoir No. 38, for a total of 9.7 acre-feet per annum by storage to be collected from about October 15 of each year to about April 15 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. After the initial filling of the storage reservoirs, permittee's right under this permit extends only to water necessary to keep the reservoirs full by replacing water beneficially used or water lost by evaporation or seepage, and to refill if emptied for necessary maintenance or repair.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Actual construction work at Reservoir No. 32 shall begin on or before December 1, 1967 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked in part.

5. Construction work shall be completed on or before December 1, 1969.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

7. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

8. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights 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.

9. Permittee shall allow representatives of the State Water Rights 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.

10. Water entering or collected in Reservoirs Nos. 30 and 38, as designated in Application 21532, during and after

the current storage season shall be released into the downstream channel to the extent necessary to satisfy downstream prior rights and to the extent that appropriation of water is not authorized under this permit. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the natural stream channel, or provide other means satisfactory to the State Water Rights Board to comply with this paragraph.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California.

Dated: MAR 29 1967

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

/s/ Ralph J. McGill, Member
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member