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STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 16832)	Source: Unnamed stream
)	tributary to
by Ralph A. and Jeanette M. Taylor)	Mill Creek
		County: Fresno

Decision No. D 906

Decided: May 29, 1958

In attendance at the Investigation conducted by the staff
of the State Water Rights Board on August 22, 1957:

T. R. Taylor	Brother of Ralph A. Taylor Representing applicants
Henry Karrer	Consulting Engineer Representing Fresno Irrigation District and members of Kings River Water Association, protestants
J. J. Heacock	Senior Hydraulic Engineer Representing State Water Rights Board

DECISION

Application 16832 was filed January 17, 1956, for a permit
to appropriate 1.5 cubic feet per second by direct diversion, to be
diverted year-round, and 20 acre-feet per annum by storage, to be
collected from November 1 of each year to April 30 of the succeeding



year. The source is an unnamed stream tributary to Mill Creek, thence Kings River in Fresno County. Below its confluence with Mill Creek, Kings River divides into what are commonly called Kings River South and Kings River North. Kings River South contributes to the closed Tulare Lake Basin, and Kings River North is tributary to Suisun Bay via Fresno Slough and San Joaquin River. The point of diversion will be located at an earth storage and diversion dam located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 2, T14S, R26E, MDB&M*. According to the application, the dam will be 18 feet in height (stream bed to overflow level) and 140 feet long on top. The applicants claim ownership of the land at the point of diversion and of the land to be served. The water will be used for recreational purposes, for stockwater for 400 head of stock, and for the irrigation of 118 acres of pasture within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 2, T14S, R26E. Water will be applied to the land by means of a portable irrigation system. The irrigation season is to extend throughout the entire year.

Protests

Fresno Irrigation District, on behalf of itself and as trustee for the members of the Kings River Water Association, claims riparian rights, appropriative rights initiated prior to 1872, notices posted and use made prior to December 19, 1914, prescriptive rights, and appropriative rights initiated under pending Applications 360, 10979 and 11023; that the water users it represents divert from Kings River at 28 points between T13S, R24E, and the Tulare Lake Bed in -----

* All township references herein are to Mount Diablo Base and Meridian (MDB&M).

T20S, R20E; that use of water has been continuous and expanding since initiation of diversions in the year of 1867; and that approval of Application 16832 would interfere with such use.

By letter of July 16, 1956, protestant Fresno Irrigation District advised that it would have no objection to approval of Application 16832 provided that any permit issued pursuant thereto contains a clause limiting the diversion to those times when "(1) Mill Creek is flowing into the Kings River, and at the same time (2) excess Kings River water is flowing into and out of Fresno Slough By-pass Channel into the San Joaquin River."

Answers

The applicants did not submit a formal answer to the protest.

Field Investigation

The applicants and protestant, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided by Section 737 of the Board's rules, and a field investigation was conducted on August 22, 1957, by J. J. Heacock, an engineer of the Board. The applicants and protestant were represented at the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 16832 and all relevant information on file therewith, with particular reference to Report of Field Investigation on

Application 16832, dated September 18, 1957; Bulletin No. 38, State Division of Water Resources "Report of Kings River Water Master for the Period 1918-1930", dated 1931; annual reports of Kings River Water-master for the years 1931 through 1956, both inclusive; Bulletin No. 2, State Water Resources Board "Water Utilization and Requirements of California", dated 1955; United States Department of the Interior, Geological Survey, Water Supply Papers, Part 11, "Pacific Slope Basins in California"; and the various Geological Survey quadrangles of the areas under consideration.

Information Obtained by Field Investigation

According to the "Report of Field Investigation on Application 16832", dated September 18, 1957, the storage dam contemplated under the project was constructed by the applicants during the winter of 1955-56 under the supervision of the United States Department of Agriculture, Soil Conservation Service. The dam is located within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 2, T14S, R26E, on an unnamed stream about 0.75 mile upstream from its confluence with Mill Creek and about 15 miles upstream from the confluence of Mill Creek and Kings River. The dam has a height of about 18 feet and creates a reservoir capacity of about 12.5 acre-feet. There is no outlet pipe through the dam.

Relative to water supply, the report includes the following:

"The dam is constructed below the junction of two wet weather streams which have a combined watershed area of about one square mile of moderate to steeply sloping mountain side on the southwesterly slopes of McKenzie Ridge.

"Both channels were dry at the time of the investigation and Mr. Taylor said it required a storm depositing at least one inch of rain on the watershed before they started flowing and normally they were dry a few days after the last rains of the season. The reservoir filled and spilled in the early

spring of 1956, but did not fill during the 1956-57 season.

"The applicants have two or three small springs on several hundred acres of contiguous range land, but Mr. Taylor contends that without the reservoir, there is insufficient water for range cattle during the summer and fall months and without the stored water, the place has little value."

Relative to use of water the report includes the following statement:

"Diversion for irrigation was proposed to be made with a portable pump but Mr. Taylor stated in view of the water supply, that the plan for irrigation had about been abandoned. Stockwatering and recreational uses are at the reservoir. Most of the proposed area to be irrigated drains into the unnamed source stream below the dam and all of the area is tributary to Mill Creek."

Discussion of Other Information

As hereinabove indicated, the source under consideration is tributary to Mill Creek thence Kings River. Kings River is tributary to Tulare Lake via Kings River South and to the San Joaquin River via Kings River North and Fresno Slough.

A stream gaging station was installed on Mill Creek near its mouth on November 16, 1938, by the Kings River Watermaster and flows are reported in the annual Kings River Watermaster Reports for the years 1939 through 1957, inclusive. The watershed area above this gage comprises about 104 square miles.

The flow of Kings River is measured at gaging station, "Kings River at Piedra". This gage, which is maintained by the USGS in cooperation with the Kings River Watermaster is located about 2 miles downstream from the confluence of Mill Creek and Kings River and about 4 miles downstream from Pine Flat Dam on Kings River. The drainage area above the "at Piedra" gage is 1,694 square miles. According to the Kings River Watermaster Report for 1956 the average

annual runoff at this gage (corrected for storage) has been about 1,660,000 acre-feet for the 62-year period, 1896-1957. According to USGS, the flow has been regulated by Pine Flat Reservoir since December 4, 1951.

No attempt has been made here to determine the quantity of Kings River water diverted to Tulare Lake Basin. However, in view of the ground-water overdrafts as stated in Bulletin 2 and the importation of water to the area from the Friant-Kern Canal, it may be assumed that all Kings River water diverted southward toward Tulare Lake Basin is beneficially used.

As hereinbefore stated, Kings River water is also conveyed northward through Kings River North. Water is diverted at numerous points along this northward reach of the river. In its lower reach, Kings River North has historically divided into two channels, namely, Fresno Slough and Fresno Slough By-Pass which subsequently converge and form a single stream contributing to the San Joaquin River at Mendota Pool.

The flow arriving at the San Joaquin River at Mendota Pool via Fresno Slough and Fresno Slough By-Pass may be assumed to be surplus or unappropriated water as far as the protestant is concerned. The protestant's offer to withdraw its protest if diversion is limited to the times such waters occur supports this assumption.

According to Bulletin 38, the Kings River Watermaster installed water-stage recorders within Section 35, T15S, R16E, on April 27, 1927, on Fresno Slough and within Section 1, T15S, R16E, on Fresno Slough By-Pass on April 27, 1927. The flows arriving at these stations, according to Bulletin 38 and the annual Kings River Watermaster Reports for the years 1931 through 1957, both inclusive, are as shown in Table I.

TABLE I

Combined Flow of Fresno Slough and Fresno Slough By-Pass
Acre-Feet

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1927				364	47,997	49,023	135				2,893	
1928					No Flow During Year							
1929					"	"	"	"				
1930					"	"	"	"				
1931					"	"	"	"				
1932		347			8,581	3,768	618					
1933					No Flow During Year							
1934					"	"	"	"				
1935					3,580	13,668						
1936		6,900		1,768	39,101	2,249						
1937		73,319	27,275	30,858	120,434	103,574						46,372
1938	18,800	89,961	166,390	109,207	185,853	218,117	26,878					
1939					No Flow During Year							
1940	5,000	25,047	36,046	2,277	93,159	17,404						15,345
1941	43,609	79,645	96,169	70,924	151,351	159,222	18,770					18,474
1942	49,936	43,184		4,514	51,896	131,591	8,831					4,564
1943	37,216	47,579	101,441	83,200	88,706	34,585						
1944			5,275		13,961	8,589					942	
1945		66,958	12,880	11,755	80,588	85,787	6,079				13,494	30,435
1946	17,887			5,368	18,368	1,893					8,168	11,375
1947	5,645				1,408							
1948					2,162							
1949					400							
1950					1,845	168					28,643	43,760
1951	306				887	35						
1952	35,800	6,110	22,400	20,050	170,800	150,400	30,900	8.3				
1953	3,455											
1954					No Flow During Year							
1955							3,455	14,960	13,012			210
1956	468	57,672	478									
1957					No Flow During Year							

Records of the flow at "James by-pass near San Joaquin" are presented in the Geological Survey Water Supply Papers for the period, October, 1947, through September, 1954. It appears that "James by-pass near San Joaquin" is the same station as that of Kings River Watermaster at Fresno Slough By-Pass.

The following differences are noted between the two records for the USGS period of record October, 1947, through September, 1954:

	<u>Kings River Watermaster acre-feet</u>	<u>USGS acre-feet</u>
May, 1948	2,162	2,560
June, 1948	0	40
September, 1948	0	1.2
May, 1949	400	444
June, 1949	0	1.2
May, 1950	1,845	1,850
June, 1950	168	169
January, 1953	3,455	3,850
May, 1953	0	59

Since the discrepancies are not too significant, the records of flow through Fresno Slough By-Pass as given in the Kings River Watermaster reports will be used for the purpose of this analysis, inasmuch as they extend over a longer period than those of the USGS.

The combined flows shown for Fresno Slough and Fresno Slough By-Pass until 1934 when Fresno Slough was blocked off, and for 1934 to date through Fresno Slough By-Pass in the Watermaster reports represent substantially all of the flow of Kings River arriving at Mendota Pool.

If the above-mentioned flow is to be taken as the measure of water in excess of the requirements of the protestant, it would appear that any water arriving at the applicants' proposed point of diversion during such time as water is flowing into Fresno Slough is subject to appropriation.

By taking notice of recorded Mill Creek flows, of the general geographical and climatological conditions of the applicants' area, and of Mr. Taylor's statements to the investigating engineer, it appears that generally there will be no flow arriving at the applicants' point of diversion except during the November 1 through April 30 season. In unusually wet years, the period could be extended to include the months of October and May but availability of water during these latter two months would be so limited as to be of little practical significance to the applicants.

The record shows that in years of less than normal precipitation such as 1956-57 the applicants' reservoir did not fill. This indicates that, in effect, the applicants' appropriation to storage will be automatically cut down if not cut off during dry seasons.

During the November 1-April 30 proposed season of diversion to storage under Application 16832 for the 6-year period after construction of Pine Flat Dam, rainfall data indicate that 5 of the 6 years were below normal. During this period water was flowing at Fresno Slough By-Pass gaging station and at Mill Creek at least 1 month during 3 of the 6 years (see Table II). Although storage of water is conceivable under such erratic conditions, direct diversion cannot be considered a reasonable means of putting such water as may be unappropriated to a beneficial use.

TABLE II

Flows of Mill Creek Near Mouth and Fresno Slough By-Pass
December, 1951-April, 1957
in acre-feet

Year	November		December		January		February		March		April	
	Fresno Slough By-Pass	Mill Creek	Fresno Slough By-Pass	Mill Creek	Fresno Slough By-Pass	Mill Creek	Fresno Slough By-Pass	Mill Creek	Fresno Slough By-Pass	Mill Creek	Fresno Slough By-Pass	Mill Creek
1951-2				8,098	35,800	25,641	6,110	13,751	22,400	28,205	20,050	9,540
1952-3	-	2,376	-	2,376	3,455	2,517	-	956	-	1,105	-	1,144
1953-4	-	-	-	-	-	752	-	2,917	-	4,522	-	2,451
1954-5	-	-	-	194	-	4,489	*	3,896	-	1,583	-	835
1955-6	-	22,628	210	22,628	468	13,978	57,672	5,778	29,384	3,132	-	2,874
1956-7	-	12	-	256	-	547	-	946	-	1,375	-	904

* Pine Flat Dam closed February 12, 1954, flow partially regulated by Dam prior to that date.

Fresno Slough By-Pass 175,549 acre-feet total
Average per year 29,258 acre-feet

Conclusions

The record shows that 175,549 acre-feet, an average of 29,258 acre-feet per year, flowed by the Fresno Slough By-Pass during the proposed season November 1 to April 30 since flow was regulated by Pine Flat Dam. During the same period, water was flowing at Mill Creek and Fresno Slough By-Pass for at least one month during the proposed diversion season in 3 of the 6 years of record.

It is also shown, due to the sporadic nature of occurrence, unappropriated water is not available for sufficient periods of time to make practical direct diversion as proposed in Application 16832.

The record indicates, and the Board finds, that unappropriated water exists at times in substantial quantities in the source from which the applicant seeks to appropriate, that the intended uses under Application 16832 are beneficial, that the application should be approved insofar as it relates to diversion to storage but that the proposed direct diversion of 1.5 cubic feet per second should be denied.

ORDER

Application 16832 for a permit to appropriate unappropriated water having been filed, a protest having been submitted, an investigation having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16832 be, and the same is hereby approved in part, and it is ordered that a permit be issued to the applicants subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 20 acre-feet per annum by storage to be collected from about November 1 of each year to about April 30 of the succeeding year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Construction work shall be completed on or before December 1, 1960.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

5. 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.

6. 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.

IT IS FURTHER ORDERED that insofar as Application 16832 refers to direct diversion of 1.5 cubic feet per second from January 1 to December 31, the same is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 29th day of May , 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member