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Governor



STATE OF CALIFORNIA

## State Water Rights Board

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R. H. MATHER  
ASSISTANT TO THE BOARD

October 9, 1957

TO: APPLICANTS, PROTESTANTS,  
AND OTHER INTERESTED PARTIES

Enclosed is a copy of Decision No. 873 of the State Water Rights Board issued on September 30, 1957, in connection with Application 16393 of Gustine Land and Cattle Company and Application 16909 of Grassland Water District.

It is the conclusion of the Board that there is unappropriated water in the sources designated in the applications available to supply applicants and that the applications should be approved and permits issued subject to the terms and conditions set forth on pages 17, 18, 19 and 20 of the decision.

Very truly yours,

STATE WATER RIGHTS BOARD

By

*Leslie C. Jopson*  
Leslie C. Jopson  
Chief Engineer

Enc.

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

IN THE MATTER OF APPLICATIONS )  
16393 BY GUSTINE LAND AND )  
CATTLE CO. and 16909 BY )  
GRASSLAND WATER DISTRICT )

Decision No. 873

Decided: September 30, 1957

Appearances at Hearing Conducted at Merced on February 21, 1957, by John B. Evans, Member, and on March 11, 12, 13 and 14, 1957, by Henry Holsinger, Chairman, John B. Evans, Member, and W. P. Rowe, Member, State Water Rights Board:

For Applicants:

Gustine Land and Cattle Co.  
(Application 16393)

George G. Murry, Attorney

Grassland Water District  
(Application 16909)

Roy Lower, Attorney

For the Protestants:

United States of America  
Bureau of Reclamation

John K. Bennett  
Assistant Regional Solicitor,  
Department of the Interior

H. Moffat Company

W. E. Craven, Attorney

Salinas Land and Cattle Co.

Roy Lower, Attorney

Central California Irrigation  
District

James A. Cobey, Attorney  
W. E. Craven, Attorney

DECISION

Substance of the Applications

Application 16393, filed May 24, 1955, initiates an appropriation of 22 cubic feet per second to be diverted between April 1 and November 30 of each year from Los Banos Creek, a tributary to the San Joaquin River, for the irrigation of 1,697 acres owned by the Gustine Land & Cattle Co. and stockwatering purposes thereon. Water is to be regulated in the channel of Los Banos Creek by a concrete dam 6 feet high by 20 feet long located within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 14, T8S, R9E, and will be diverted by gravity at upstream points located within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 23 and the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 23 and by pumping within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 25, all in said township.

Application 16909, filed February 27, 1956, initiates an appropriation of 15 cubic feet per second between June 1 and December 31 of each year from either Las Garzas Creek or Los Banos Creek for the irrigation of 4,000 acres and stockwatering purposes within the boundaries of the Grassland Water District. Diversion from Las Garzas Creek will be effected by a gravity system consisting of a concrete dam located within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 26, T8S, R9E, and approximately two miles of ditch. Diversion from Los Banos Creek will be effected along the reach thereof between the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 14, and the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 11, all in T8S, R9E.

### Protests and Answers

In their protests submitted against Application 16393, Central California Irrigation District and Grassland Water District claim that the channels of Las Garzas Creek and Los Banos Creek have been used to transport waters diverted from San Joaquin River and Fresno Slough to land lying along said creek below the Main Canal; that diversions under said application will interfere with the exercise of said right; and that approval of said application will confiscate waters belonging to them. Other protestants allege that diversion under the application would encroach upon their existing uses of water from Los Banos Creek.

Gustine Land and Cattle Company in its protest against Application 16909 claims that water flowing in Las Garzas Creek is already assigned to it under contract with the Gustine Drainage District and contracts with Miller and Lux, predecessors of Central California Irrigation District.

The Bureau of Reclamation in its protests against Applications 16393 and 16909 states that the water sought to be appropriated is water developed by the construction of the San Luis Wasteway and water released from the Delta-Mendota Canal for delivery to the Grassland Water District and the State of California, acting through the Director of the Department of Fish and Game, and is water potentially deliverable to others.

Other protestants claim rights based upon riparian ownership to the use of water in Los Banos Creek for the irrigation of several thousands of acres and for stockwatering purposes.

The Gustine Land and Cattle Company in answer to the protests denies that the approval of its application will interfere with riparian rights; alleges that sufficient surplus water is available to meet its needs; asserts that water sought to be appropriated flowed in Los Banos Creek prior to the construction of the San Luis Wasteway and Delta-Mendota Canal; and states that it does not propose to divert waters during such times as Los Banos Creek is being used to conduct waters purchased from the Bureau of Reclamation by Grassland Water District and/or the State of California.

Grassland Water District answers the protest of Gustine Land and Cattle Company by claiming that the company does not have a contractual interest and title to the waters of Las Garzas Creek but that the district has the right to transport water by means of existing streams and water courses.

Hearing Held in Accordance with the Water Code

Applications 16393 and 16909 were completed in accordance with the provisions of the Water Code and applicable administrative rules and regulations of the State Water Rights Board (hereinafter referred to as the

"Board") and were set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, before the Board to commence on Thursday, February 21, 1957, at 9:30 o'clock a.m., in Merced, California. Of the hearing the applicants and protestants were duly notified. The hearing extended through February 21 and March 11, 12, 13 and 14, 1957. The applications were consolidated for hearing with Applications 15627, 15628, 15891, 15958, 16083, 16329 and 16604.

#### Hearing Testimony

Charles W. Bates, manager of the Central California Irrigation District, testified that (R.T. page 58, line 23) for the past two years Central California Irrigation District has entered into contracts with Grassland Water District to distribute water purchased by the latter district from the Bureau of Reclamation. He testified (R.T. page 59, line 7) that one point such water is distributed to the Grassland Water District is where Las Garzas Creek crosses the Main Canal (identified as Point B-1 on Grassland Exhibit No. 2); that (R.T. page 59, line 19) by manipulation of the weir on the canal water can be diverted either down Las Garzas Creek or down the Main Canal; that (R.T. page 60, line 2) normally during the irrigation season the flow of Las Garzas Creek is intercepted by the Main Canal, except for seepage losses and some water deliberately diverted into Las Garzas Creek for use on one small parcel of land; that (R.T. page 60,

line 22) during the irrigation season any waters in Las Garzas Creek west of the Main Canal would be intercepted and transported to the north. Mr. Bates further testified that (R.T. page 61, line 19) deliveries of water for the benefit of the Grasslands for flooding duck ponds are not made until after September 1 at the earliest; that (R.T. page 62, line 13) in the operation of the canal there is a certain amount of operational spill into Las Garzas Creek; that (R.T. page 63, line 3) during the spring months the canal is operated at its maximum capacity which is sometimes augmented by spring rains requiring operational spill into Las Garzas Creek in order not to overload the canal.

Mr. Bates further testified that (R.T. page 124, line 10) during the years 1951 through 1956 Central California Irrigation District delivered water to Las Garzas Creek which was purchased by Grassland Water District from the Bureau of Reclamation. The dates deliveries began and ended are tabulated as follows:

<u>Year</u>	<u>Deliveries Begin</u>	<u>Deliveries End</u>
1951	October 6	November 6
1952	October 1	October 25
1953	September 26	November 5
1954	September 20	October 14
1955	September 17	October 16
1955	November 3	November 10
1956	September 21	October 30

He also stated that (R.T. page 124, line 23) the stream flow in Las Garzas Creek at the Bureau of Reclamation gaging station at times other than between the above dates is due to a certain

amount of leakage from Central California Irrigation District's Main Canal, ranging from 15 to 30 cubic feet per second, which either represents operational spill of the district or deliveries made two to four days per month to 129 acres bordering Las Garzas Creek. He indicated that (R.T. page 125, line 12) Las Garzas Creek is used for regulatory waste because water can be beneficially used in the area and for this reason the district spills into Las Garzas Creek rather than into other creeks.

Floyd L. Huddleston, a licensed land surveyor employed by Miller and Lux engineering department as chief of party, testified that (R.T. page 68, line 25) he prepared the map filed in support of Grassland Water District's Application 16909 from other maps, namely, (R.T. page 73, line 3) from maps published by the United States Geological Survey and maps on file with Grassland Water District; that he did not field check the map filed in support of Application 16909. Mr. Huddleston further testified that (R.T. page 81, line 21) a gaging station has been maintained by the Bureau of Reclamation on Las Garzas Creek within the westerly right of way boundary of Hunt Road (Point H-5 Grassland Exhibit No. 3) and that (R.T. page 83, line 3) he obtained from the Bureau stream flow records of Las Garzas Creek (Grassland Exhibits 5 through 9) for the calendar years 1952 through 1956.



William Pfitzer, a director of Gustine Drainage District, testified that (R.T. page 91, line 18) the district has three wells which discharge into Las Garzas Creek, one of which (R.T. page 92, line 2) is located above Hunt Road and the other two are located below the road; and that (R.T. page 93, line 17) these wells are operated to lower the ground-water table underlying the drainage district. In his testimony, Mr. Pfitzer further stated that (R.T. page 94, line 4) the Gustine Land and Cattle Company paid the drainage district \$200 for the construction of a pipeline from the drainage district's Well No. 18 to Las Garzas Creek and the drainage district agreed that (R.T. page 94, line 21) the Gustine Land and Cattle Company could have the water discharged from the wells into Las Garzas Creek; that (R.T. page 94, line 24) this agreement has been in effect since 1940; and that water has been pumped through these facilities, constructed under the terms of an oral agreement, and discharged into Las Garzas Creek.

Leroy Guaglianoni testified that (R.T. page 106, line 15) he is a ditch tender employed by Central California Irrigation District to distribute water in the Las Garzas Creek and Los Banos Creek areas. He further testified that (R.T. page 114, line 13) he first distributed water in this area in 1955; and that (R.T. page 114, line 9) generally, water is distributed to this area beginning in October of each year prior to the opening of duck season.

Roy Lower, manager and secretary of Grassland Water District, testified that (R.T. page 147, line 9) the reason Grassland Water District filed its Application 16909 was to acquire rights to the waters existing in Los Banos Creek during the summer months for use by all the individual landowners within the service area designated in its application which would, in part, (R.T. page 148, line 15) be a joint use under Application 16393 and 16909.

George W. Fink, president of Gustine Land and Cattle Company, testified that (R.T. page 150, line 4) he has been acquainted with the property holdings of the company since 1910; that (R.T. page 151, line 3) Gustine Land and Cattle Company acquired the land designated on Grassland Water District Exhibit 4a in 1926; that (R.T. page 151, line 17) ever since that time water has been diverted by the company from Las Garzas Creek from the spring until the opening of duck season for the irrigation of grass; and that (R.T. page 153, line 27) the Gustine Land and Cattle Company has been diverting water from Los Banos Creek just as long as it has diverted from Las Garzas Creek. Mr. Fink indicated that (R.T. page 163, line 14) he is quite willing that any permit issued pursuant to Application 16393 be so conditioned that the rights acquired thereunder will in no way affect the rights of Central California Irrigation District from using Las Garzas Creek and Los Banos Creek as conduits for waters the district may sell to its customers, and from using both creeks for operational spill. As to the locations of the three wells of Gustine

Drainage District, Mr. Fink testified that (R.T. page 172, line 21) two are located upstream and one is located downstream from the Bureau of Reclamation gaging station on Las Garzas Creek at Hunt Road. He testified that (R.T. page 174, line 20) the Gustine Land and Cattle Company has been using all the water produced by these wells, each well having a capacity of about 1600 gallons per minute, for irrigation and stockwatering purposes; that (R.T. page 186, line 2) these pumps sometimes operate steadily for two to four months during March through August.

Mr. Fink further testified that (R.T. page 203, line 10) the only use H. Moffat made of the waters on its lands (shown on Gustine Exhibit No. 2) was for stockwatering purposes; that (R.T. page 204, line 18 and page 205, line 10) the points of diversion on Los Banos Creek of Gustine Land and Cattle Company are downstream from points of diversion of H. Moffat Company and Salinas Land and Cattle Company; and that (R.T. page 220, line 11) points of diversion shown on the map in support of Application 16909 of Grassland Water District are in error. He also testified that (R.T. page 498, line 11) during the period 1916 through 1956 he has never seen water flowing from Los Banos Creek into the San Joaquin River except during flood stages.

Walter Christenson, a director of Salinas Land and Cattle Company, testified that (R.T. page 226, line 11) prior to the time water was purchased from the Bureau of Reclamation the company received water released by Miller and Lux in

San Luis Creek and Los Banos Creek during October and November, and that diversions were also made in the spring months when the old Grassland area was flooded. He stated that (R.T. page 229, line 9) the points of diversion of Salinas Land and Cattle Company are upstream from the points of diversion of Gustine Land and Cattle Company. He further stated that (R.T. page 230, line 23) since the San Luis Wasteway has been constructed, water is running in it practically all the time.

Leland K. Hill, civil engineer employed by the United States Bureau of Reclamation, testified (R.T. pages 426 through 466) as to the water requirements in the Sacramento-San Joaquin Delta and for the operation by the United States of the Central Valley Project. Mr. Hill testified that (R.T. page 465, line 23) the data given in USBR Exhibit 35 indicates that excess water occurred in the Delta during the seven months' irrigation season of the 31-year study period in only 61 months of the 217 months, and excess water did not occur in 8 of the 31 years.

Gleason L. Renoud, civil engineer employed by the United States Bureau of Reclamation, testified that (R.T. page 469, line 11) the prior rights under permits and licenses to appropriate from Los Banos Creek exceed the stream flow in the creek. He stated that (R.T. page 471, line 15) the Bureau of Reclamation has maintained stream flow records on Las Garzas Creek from 1947 to date for the purpose of measuring deliveries made to Grassland Water Association and Grassland Water District (See Grassland Exhibits 5 through 9); and that (R.T. page 472,

line 3) the Bureau has also maintained a gaging station on Los Banos Creek below Main Canal from April, 1947 through December, 1954. He stated that (R.T. 472) a summary of the mean monthly flow at their stations on Las Garzas Creek is set forth in USBR Exhibit 42, and of Los Banos Creek in USBR Exhibit 43; that (R.T. page 490, line 23) a number of farm drains empty into Las Garzas Creek and Los Banos Creek downstream from the gaging stations so that the quantities of water entering the lands of Gustine Land and Cattle Company during the irrigation season could be greater than the measured flows. Mr. Renoud further testified that (R.T. page 472, line 11) since 1944 the Grassland Water District and its predecessor, the Grassland Water Association, have purchased water from the Central Valley Project which has been delivered through the canals of Central California Irrigation District thence down Las Garzas Creek and Los Banos Creek for the period 1947 through 1954; and that a summary of these deliveries is set forth in USBR Exhibit 44. He stated that (R.T. page 472, line 21) after deducting Grassland deliveries given in USBR Exhibit 44 from the total flow of Los Banos and Las Garzas Creeks given in USBR Exhibits 42 and 43, there is occasionally unregulated flow in Los Banos and Las Garzas Creeks below the Main Canal from April through October.

#### Discussion

The testimony and exhibits presented at the hearing in connection with Applications 16393 and 16909 establish that the channels of Las Garzas Creek and Los Banos Creek are used

occasionally during the irrigation season for the transportation of water by Central California Irrigation District which has been purchased from the Bureau of Reclamation. However, deliveries of water through said creeks normally do not begin until the latter part of September prior to the opening of the duck season. These waters are used to flood ponds for the purpose of attracting ducks.

During the regular irrigation season Las Garzas Creek and Los Banos Creek are seldom used to convey purchased water. The principal source of water supply during the irrigation season is operational spill from Main Canal into Las Garzas Creek, drainage from three wells operated by Gustine Drainage District and return flow from other land irrigated above the applicants' lands on Los Banos Creek. In view of the testimony that this water does not reach the San Joaquin River during the irrigation season (R.T. page 498, line 11) and that diversions under prior rights are upstream from the points of diversion designated in Applications 16393 and 16909, it is not apparent that issuance of permits on those applications would encroach upon any of these rights, or the alleged rights pertaining to Delta lands and of the Bureau of Reclamation to divert from the Delta.

In view of the foregoing, unappropriated water appears to exist at times in Las Garzas Creek and Los Banos Creek during the irrigation season. Whether or not there is sufficient unappropriated water in Los Banos Creek to meet the full amounts sought under both Applications 16393

and 16909 is questionable. However, in view of the fact that the service areas under both applications are in part the same, the total amount of water required to irrigate the areas described in both applications will be considerably less than the total amounts sought under both applications.

According to Bulletin No. 2 of the State Water Resources Board (staff Exhibit 2), pages 170 and 179, consumptive use of water for irrigation of pasture and alfalfa in the Delta-Mendota and Los Banos areas is 3 acre-feet per acre per year, and present irrigation efficiency averages 47.5 per cent. Therefore, a reasonable duty of water applied to the land is 6 acre-feet per acre per year. Permits issued to applicants should provide that the amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed the amount specified in the applications nor exceed for irrigation purposes a total annual diversion of 6 acre-feet per acre of the lands irrigated and described in the applications as constituting the place of use, which amount shall be inclusive of any water applied to the irrigation of said lands whether purchased, appropriated, or otherwise acquired.

Application 16393 having been filed prior to Application 16909, a permit pursuant to the latter application should be issued upon condition that only water in excess of that diverted under the permit issued pursuant to Application 16393 shall be subject to appropriation thereunder.

Central California Irrigation District claims and applicants have agreed that water introduced into the channels

of Las Garzas and Los Banos Creeks from facilities of the Central California Irrigation District for the purpose of serving customers of the district shall not be deemed water subject to appropriation and applicants have agreed not to divert water from said creeks when the district is serving any customer therefrom below applicants' points of diversion except by permission of the district (See Gustine Exhibit 3 and C.C.I.D. Exhibit 3). A clause should therefore be included in the permits prohibiting diversions under the permits of water from Los Banos Creek or Las Garzas Creek during the times Central California Irrigation District is serving any customer from the channel of either of said creeks below or at permittee's points of diversion except by permission of said district.

In view of the changes that have been made in the location of the channel of Los Banos Creek by the Gustine Land and Cattle Company, particularly in Sections 14 and 23, T8S, R9E, the Grassland Water District should be required, within 60 days from the date of issuance of permit, to file a petition for such change in points of diversion, supported by the necessary maps, as is required in order to accurately describe the points at which water will be diverted.

The water which the applicants propose to divert under their respective applications appears to be derived from drainage water from upstream irrigated land or from operational spill, and issuance of permits will, of course, afford no assurance that the supply will continue to be available as in the past.



### Summary and Conclusions

The Board finds that there is unappropriated water in the sources designated in Application 16393 of Gustine Land and Cattle Company and Application 16909 of Grassland Water District available to supply applicants, which water may be appropriated to a substantial extent in the manner proposed in the applications without injury to any other lawful user of water, that the intended uses are beneficial and that said applications should be approved and permits issued to applicants subject to the usual terms and conditions and to those additional terms and conditions indicated in this decision.

### O R D E R

Applications 16393 by Gustine Land and Cattle Company and 16909 by Grassland Water District for permits to appropriate unappropriated water having been filed with the former Division of Water Resources, protests having been filed, jurisdiction of the administration of water rights including the subject applications having been subsequently transferred to the State Water Rights Board and a public hearing having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16393 be, and the same is, hereby approved, and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 22 cubic feet per second to be diverted from about April 1 to about November 30 of each year, nor shall said amount exceed for irrigation purposes a total annual diversion of 6 acre-feet per acre of the lands irrigated and described in the application as constituting the place of use, which amount shall be inclusive of any water applied to the irrigation of said lands whether purchased, appropriated, or otherwise acquired.

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

3. Construction work shall begin on or before June 1, 1958 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, the permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1959.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1960.

6. 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.

7. All rights and privileges under the 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 interests of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water, and to prevent unreasonable interference with vested rights.

8. No diversion of water under this permit shall be made during the times Central California Irrigation District is serving any customer from the channel of Los Banos Creek or Las Garzas Creek below or at permittee's points of diversion except by permission of said district.

IT IS FURTHER ORDERED that Application 16909 be, and the same is, hereby approved and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 15 cubic feet per second to be diverted from about June 1 to about December 31 of each year, nor shall said amount exceed for irrigation purposes a total annual diversion of 6 acre-feet per acre of the lands irrigated and described in the application as constituting the place of use, which amount shall be inclusive of any water applied to the irrigation of said lands whether purchased, appropriated, or otherwise acquired.

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

3. Construction work shall begin on or before June 1, 1958 and shall thereafter be prosecuted with reasonable,

diligence, and if not so commenced and prosecuted, the permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1959.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1960.

6. 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.

7. 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 interests of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water, and to prevent unreasonable interference with vested rights.

8. No diversion of water under this permit shall be made during the times Central California Irrigation District is serving any customer from the channel of Los Banos Creek or Las Garzas Creek below or at permittee's points of diversion except by permission of said district.

9. Only water in excess of that diverted under the permit issued pursuant to Application 16393 shall be subject to appropriation under this permit.

10. Permittee shall, within 60 days from date of issuance of this permit, file a petition for such change in

points of diversion, supported by the necessary maps, as is required in order to accurately describe the points at which water will be diverted under this permit.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 30th day of September, 1957.

/s/ Henry Holsinger  
Henry Holsinger, Chairman

John B. Evans, Member

/s/ W. P. Rowe  
W. P. Rowe, Member