

## DECISION

### Substance of the Application

The application seeks a permit to appropriate 5,000 gallons per day from Mill Creek tributary to Kings River in Fresno County from about June 1 to about December 15 of each year for stockwatering purposes. Water is to be diverted within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 3, T14S, R26E, MDB&M. Diversion is to be effected by pumping from the unobstructed channel. The place of use is also within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of said Section 3.

### Protest and Answer

A protest against the approval of Application 16850 was submitted by the Fresno Irrigation District for itself and as trustee for the members of the Kings River Water Association, based upon alleged riparian rights; appropriative rights initiated by use prior to 1872, by posted notices and use made prior to December 19, 1914, and by pending Applications 360, 10979 and 11023; and prescriptive rights. It is alleged that the proposed appropriation will deplete the flow of the Kings River which has no unappropriated water and, therefore, encroach upon vested rights of the protestants. It is asserted that beneficial use of water for irrigation purposes by the protestants began in 1860 and that such use has been continuous. The protestants claim to have 35 points of diversion on the Kings River or its branches. The protest also contains the following statement:

"While this application for 5,000 g.p.d. is subject to vested rights and as to quantity may not appreciably diminish the flow of Kings River available for protestants' rights, the application, if granted, will interfere with the prior rights of the protestants."

In reply to the protest the applicant claims that during the proposed diversion season Mill Creek rarely discharges into Kings River and that during the months of October, November, and December, a portion of the proposed diversion season, the protestants do not use the flow of Kings River for beneficial purposes. The applicant further claims that the protest indicates that there is unappropriated water in Mill Creek because protestants claim their use has been open, continuous, and expanding and, if expanding, it must be expanded with unappropriated water. The applicant also, "questions the rights of any protestant to appear as trustee for any other person without alleging the authority by which the protestant answers that relationship."

#### Field Investigation

The applicant and protestants, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of formal hearing as provided for under Section 737 of the Board's rules. Notice of investigation was given to applicant and protestants by certified mail, and a field investigation was conducted on March 6, 1958, by A. N. Webb and D. E. Kienlen, engineers of the Board. The applicant was present, and the protestants were represented during the investigation.

### Records Relied Upon

The records relied upon in support of this decision are Application 16850 and all relevant information on file therewith, with particular reference to the report of field investigation made on March 6, 1958, by the above-named engineers on the staff of the Board; Bulletin No. 38, State Division of Water Resources, "Report of Kings River Water Master for the period 1918-1930", dated 1931; annual reports of the Kings River Watermaster for the years 1931 through 1956, both inclusive; United States Department of the Interior, Geological Survey, Water Supply Papers, Part 11, "Pacific Slope Basins in California"; Bulletin No. 2, State Water Resources Board, "Water Utilization and Requirements for California", dated 1955; and the various United States Geological Survey quadrangles of the areas involved.

### Description of Watershed

The source of water is Mill Creek which rises in the SE $\frac{1}{4}$  of Section 7, T14S, R28E, MDB&M, at an elevation of about 6,000 feet and flows westerly about 8 miles, then in a north-westerly direction for about 18 miles to where it discharges into the Kings River within the NW $\frac{1}{4}$  of Section 10, T13S, R24E, MDB&M, at an elevation of approximately 550 feet. There is a gaging station, "Mill Creek near Mouth", maintained by the Kings River Watermaster which measures the flow of Mill Creek a short distance above its confluence with Kings River. The drainage area above this gage is 104 square miles. The applicant's point of diversion is located approximately 16 miles upstream from the mouth of Mill Creek, and there are about 40 square

miles of fairly steep foothills with a moderate to heavy covering of brush and trees comprising the contributory watershed above this point.

The confluence of Mill Creek with Kings River is located below Pine Flat Reservoir on Kings River and about 2 miles upstream from the United States Geological Survey (USGS) Gaging Station on Kings River known as, "Kings River at Piedra". There are 1,694 square miles of drainage area above this gage. The protestants' first point of diversion is located on Kings River about 3.5 miles downstream from the gaging station at Piedra. Over 25 miles below its confluence with Mill Creek, the Kings River divides into what are commonly called Kings River South and Kings River North. Kings River South discharges into closed Tulare Lake Basin. Kings River North is tributary to Suisun Bay via Fresno Slough, Fresno Slough By-Pass and San Joaquin River.

#### Water Supply

The flow of water in Mill Creek according to the gage, "Mill Creek near Mouth", practically ceases during July and for the period of record available (1938-1956) no flow is shown during the months of August and September. The records also show that flow occurred during October only in 1956 (see Table 1). According to the aforementioned report of field investigation there is no surface flow in Mill Creek during a portion of the proposed diversion season (June 1 to December 15) and during this period water is pumped from pools in the stream channel. In the later part of the summer, it even becomes necessary for the applicant to dig trenches in the sandy channel bottom in order to obtain water.

Table 1  
Flow in Mill Creek near Mouth  
Acre-Feet

Year	Jun.	Jul.	Aug	Sept.	Oct.	Nov.	Dec.
1938						152*	838
1939							
1940	103						5588
1941	1099	48					546
1942	832	20					660
1943	600	53					
1944	341					768	638
1945	293					2	1948
1946	59					1651	2772
1947							
1948	109						
1949	16						
1950	6					5100	3907
1951	38						8098
1952	2538	442					2376
1953	533						
1954	4						194
1955	8						22628
1956	387	33			424		2788

\*Gage installed November 6, 1938

### Applicant's Project

The report of field investigation indicates that the applicant's diversion system consists of a pump placed each season to divert water directly from the stream channel. Water is conveyed in a 1-inch pipeline to an 8,000 gallon concrete regulatory tank. The present use is for watering 8,000 turkeys and 12 cattle, but applicant may eventually water 12,000 turkeys. Mill Creek traverses a portion of the applicant's property where the water is beneficially used. Mr. C. H. Baker, a resident of the immediate area for over 80 years, stated to the investigating engineers that water has been used on the applicant's property for stockwatering purposes since prior to 1914. It, therefore, seems reasonable to assume that a riparian right as well as a prior appropriative right to the use of the water in question attaches to the property.

### Use by Protestants

The Kings River Water Association includes 22 units or groups of units within Fresno and Kings Counties that procure the major portion of their water supply for irrigation purposes from the Kings River. In addition to 26 main diversion canals on the Kings River and its various branches, the Association has many other small canals and diversion pumps.

The Watermaster's Report for 1956 of the Kings River Water Association, the last available, gives the headgate diversions for each unit and annual per cent of deliveries. It shows the total diversion from Kings River, Kings River South and Kings River North for 1956 as 2,296,559 acre-feet,

including 87,524 acre-feet through Fresno Slough By-Pass. Total river losses were 103,162 acre-feet.

#### Discussion

As indicated above, Mill Creek is tributary to Kings River which is tributary to Tulare Lake via Kings River South and to San Joaquin River via Kings River North and Fresno Slough.

The quantity of Kings River water diverted to Tulare Lake Basin has not been determined. However, in view of the ground water overdrafts as stated in Bulletin No. 2, "Water Utilization and Requirements for California", 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.

Kings River North has numerous points of diversion along its northwestward course. 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. Any flow being discharged into the San Joaquin River at the Mendota Pool via Fresno Slough and Fresno Slough By-Pass may be assumed to be surplus or unappropriated water as far as the protestants are concerned.

According to Bulletin 38, "Report of Kings River Water Master for the Period 1918 to 1930", on April 27, 1927, the Kings River Watermaster installed water stage recorders within Section 35, T15S, R16E, MDB&M, on Fresno Slough and within Section 1, T15S, R16E, MDB&M, on Fresno Slough By-Pass. The combined

flows arriving at these stations from 1927 to 1933, inclusive, when Fresno Slough was blocked off, and for 1934 through 1957, inclusive, at the station on Fresno Slough By-Pass, as set forth in Bulletin 38 and the annual Kings River Watermaster Reports are shown in Table 2. The flow of water passing these two stations represents substantially all of the flow of Kings River arriving at Mendota Pool.



Table 2

Flow in Fresno Slough By-Pass\*  
Gaging Station within Section 1, T15S, R16E, MDB&M  
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				
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							

\* For the years 1927 through 1933, both inclusive, the table shows the combined flows of Fresno Slough and Fresno Slough By-Pass.

If the flow arriving at Mendota Pool is to be taken as the measure of surplus or unappropriated water, it would appear that during such time as water is flowing past the gage on Fresno Slough By-Pass any water arriving at the applicant's point of diversion is subject to appropriation. The following tabulation shows the percentage of time for the 31 years of record (1927-1957) shown in Table 2 that water discharged into the Mendota Pool during the proposed diversion season under Application 16850.

<u>Month</u>	<u>% of Time</u>
June	53.3
July	26.6
August	6.7
September	3.3
October	0
November	16.7
December	22.6

The above represents the time there would have been unappropriated water available to the applicant which, except for the month of June, is about 25% of the time or less. An examination of the daily discharges arriving at Mendota Pool shows that even this discharge occurs by relatively high flows of short duration. Such an erratic water supply could not be utilized by means of direct diversion.

As previously stated Mill Creek actually ceases to flow at the applicant's point of diversion about mid-summer, and the applicant must dig trenches in the sandy stream bed to secure water from subsurface supplies. The applicant contends that this subsurface flow does not contribute to the Kings River. However, since Mill Creek is confined to a fairly deep valley between granitic foothills with a relatively thin soil mantle, it is more than likely that Mill Creek underflow does contribute to the flow of Kings River.

Conclusions

The records show and the Board finds that the occurrence of unappropriated water in Mill Creek is too infrequent and sporadic in nature to be appropriated by direct diversion as proposed by Application 16850. Therefore, the application should be denied.

Denial of the application will not, of course, prejudice such riparian and prior appropriative rights as applicant may have to use water for the purpose for which the application was filed.

ORDER

Application 16850 for a permit to appropriate unappropriated water having been filed, a protest against its approval 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 16850 be, and 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 Fresno, California, on this 30th day of July, 1958.

/s/ Henry Holsinger  
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Henry Holsinger, Chairman

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

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

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the Matter of Application 16850 )	Source: Mill Creek
of Ralph P. Anderson )	County: Fresno

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Decision No. D 911

Decided: July 30, 1958

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In attendance at the investigation conducted by the staff of the State Water Rights Board on March 6, 1958:

Ralph P. Anderson	Applicant
Robert E. Moock	Attorney for the applicant
Henry Karrer, Consulting Engineer	Representing the protestants Fresno Irrigation District, et al.
C. H. Baker	Interested party
T. R. Taylor	Interested party
Rodney Hall	Interested party
Delbert Hall	Interested party
Arthur N. Webb, Assistant Hydraulic Engineer )	Representing the State Water Rights Board
D. E. Kienlen, Assistant Hydraulic Engineer )	

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