STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 15931, 16204, 16649, 16660, 16672, 16690, 16696, 16706, 16717, 16718, 16748, 16810, 16817, 16824, 16860, 16892, 17107, 17507, 17532, 18326, and 18615 to Appropriate Unappropriated Water from the Tule River System in Tulare County

Decision D 1018

Adopted June 30, 1961

DECISION DENYING APPLICATIONS

This decision concerns 21 applications for permits to appropriate water from various streams in the Upper Tule River watershed in Tulare County. The essential features of the applications are set forth in Table I.

Protests and Hearing

The subject applications were completed and advertised in accordance with the provisions of the Water Code and applicable rules and regulations. Protests against their approval having been received, after due notice, a public hearing was held in Visalia, California, on September 17, 1959, and in Porterville, California, on November 3, 4, and 5, 1959; April 19, 20, 21, 22, and December 13, 1960. Kent Silverthorne, Chairman of the State Water Rights Board (hereinafter referred to as "the Board"), presided over all sessions of the hearing.

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TABLE I

Substance of Applications 15931, 16204, 16649,
16660, 16672, 16690, 16696, 16706, 16717, 16718, 16748, 16810
16817, 16824, 16860, 16892, 17107, 17507, 17532, 18326, 18615
to Appropriate Water from Tule River Stream System above Success Dam

Application No.	Applicant	Source	Amount (1)	Purpose (2)
15931	Clemmie Gill	Hickman Creek	750 afa	I
16204	R. R. Killian	2 unnamed streams	30 afa	D,I,S
16649	W. A. Witt	unnamed creek	30 afa	I
16660	John and Laura Dilts	3 unnamed springs and 3 unnamed streams	27 afa	S
16672	A. O. Griswold	3 unnamed streams	8 afa	I,S
16690	Harry C. Scruggs	unnamed stream	20 afa	I,S
16696	N. L. and C. M. Norris	unnamed drain	47 afa	I,S
16706	Bryan Jones	unnamed creek	16 afa	I,S
16717	Ward Hodges	Campbell Creek	9 afa	I
16718	W. L. Bailey	Marshall Creek	1610 gpd	D
16748	John F. Fees	unnamed stream	1 afa	S
16810	South Tule Independent Ditch Company	South Fork Tule River	1400 afa	I

TABLE I
(continued)

Application No.	Applicant	Source	Amount (1)	Purpose (2)
16817	Hugh T. Gordon	unnamed stream	47.5 afa	I
16824	John and Laura Dilts	3 unnamed streams	9 afa	S
16860	Stewart - Ford Ranch	unnamed stream	16 afa	I
16892	R. and W. D. Freeborn	Marshall Creek	1610 gpd	D
17107	Bryan Jones	unnamed stream	3 afa	S
17507	Anna O'Conner Harrington	unnamed stream	4 afa	D,R
17532	M. R. Kincaid	2 unnamed ravines	19 afa	D
18326	C. N. and G. C. Hirtle	unnamed stream and unnamed spring	9 afa	I,R
18615	V. W. and R. B. McGinnis	2 unnamed streams	37 afa	I

(1) afa - acre-feet per annum, gpd - gallons per day
(2) I - Irrigation, D - Domestic, S - Stockwatering, R - Recreational

The Issues

The protestants object to the applications in general on the contention that all available waters of the Tule River are used beneficially under existing rights and that no unappropriated water exists in the river. The applicants contend in general that they are seeking to appropriate flood waters; that the water they seek to appropriate originates on applicants' lands; that the benefits of Success Reservoir* should accrue to landowners upstream from Success Dam as well as those downstream; and that in many instances applicants have cleared their lands of brush and phreatophytes, thereby increasing the runoff.

Description of Watershed and Service Area

Tule River drains a somewhat rectangular area on the lower western slope of the Sierra Nevada lying south of the Kaweah River watershed, west of the Upper Kern River watershed, and north of the Deer Creek watershed. The headwaters originate at an elevation of about 10,000 feet near Sheep Mountain. The main stream is formed by the junction of the North and Middle Forks near Springville, about 10 miles northeast of its point of emergence from the foothills at Porterville. The South Fork joins the main stream near Success Dam about six miles east of Porterville and about one mile east

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* Success Dam and Reservoir is a flood control project of the United States Corps of Engineers located on Tule River approximately five miles east of Porterville. The subject applications all seek appropriations from the Tule River System above Success Dam. All of the protestants are located below Success Dam.

of Success Dam at about elevation 560 feet. The drainage area above the confluence is about 390 square miles. The Tule River continues westerly from Porterville about 30 miles to Tulare Lake.

The area served by water of the Tule River below Success Dam is in excess of 400,000 acres, almost half of which consists of Tulare Lake Basin (Reporter's Transcript, page 659). The part of the service area upstream from the lake is almost entirely occupied by irrigation districts.

Tulare Lake is a large basin area supplied by the waters of the Kings, Kaweah, Tule, and Kern Rivers, as well as other smaller streams (RT p. 647). The lowest elevation of Tulare Lake is 179 feet. Its outlet is at elevation 207 feet, and the lake bed includes nearly 200,000 acres of land, most of which has been drained and reclaimed by reclamation districts. Twelve sections surrounded by levees in the center of the lake remain as the heart of the area to which occasional recent floods have been channeled.

Water Supply

Records of the runoff of Tule River have been collected by several agencies at various locations on the stream system and have been published by the United States Geological Survey in its Water Supply Papers (Staff Exh. 5) and the State of California in the Reports of Sacramento-San Joaquin Water Supervision (Staff Exhs. 7-7c). Runoff of the Tule River from its upper watershed is measured at a gaging station designated "Tule River near Porterville". This gaging station is located one mile upstream from the confluence with South Fork. Table II herein reflects the monthly runoff of the Tule River at the gage "near Porterville" for the period October 1948

TABLE II

Tule River near Porterville, California
October 1948 - September 1958
(acre-feet)

Year	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
1948-49	69	436	1570	2740	2960	6930	12400	9120	2010	87	17	8.5
50	25	1230	1870	4150	11290	6460	11880	7690	2500	95	13	4.8
51	375	33170	24200	10180	8100	12250	9010	10100	3030	791	38	45
52	342	1070	14560	25640	16330	34620	39710	45010	23050	7130	2600	1440
53	1340	3050	7210	14990	6460	7170	12380	12700	8550	1780	369	292
54	712	1880	2990	5630	8500	13620	20420	13170	3920	655	87	79
1954-55	365	1030	3600	6540	9670	6820	6490	10650	4060	396	24	6
56	68	1220	40740	32970	17250	12140	17320	24090	8730	2140	61.8	391
57	1320	1610	2030	3300	5540	6780	6110	18980	6740	763	117	172
1957-58	1140	2140	4850	7490	13520	32050	45570	37970	17140	5300	1600	1180
Monthly Mean	576	4744	10362	11363	9962	13884	18129	18948	7973	1914	548	362

Mean annual runoff = 98765

through September 1958 (Staff Exh. 5). The runoff from the South Fork watershed is recorded at a gaging station designated "South Fork Tule River near Success" which is located five miles upstream from the confluence with the main stem. Recorded runoff at this station is included herein as Table III for the periods October 1948 to November 1954 and February 1956 to September 1958 (Staff Exh. 5). The combined drainage area of these two gaging stations comprises about 95 per cent of the Tule River watershed above Success Dam.

One other gaging station on the Tule River, designated "at Turnbull", records the flow of the Tule River passing the boundaries of the Lower Tule River Irrigation District, as well as water from the Kaweah River via Elk Bayou and the Kings River via Homeland Canal at times. Lower Tule River I. D. Exhibit 16 sets forth the estimated and computed quantities of Tule River water passing the Turnbull gage and entering the Tulare Lake Basin for the period 1902 through 1958 on a water-year basis. These quantities are listed in Table IV (RT pp. 588-596).

Lower Tule River I. D. Exhibit 10 shows most of the ground-water replenishment area of the Tule River from Success Dam to Turnbull. This exhibit also shows the lines of equal lowering of the water table from 1921 to 1949. During this period the water table lowered an average of about 60 feet, indicating that approximately 600,000 acre-feet more water was used than was available from the natural supply of the Tule River (RT pp.515-518).

To offset the deficient supply of water in the service area of the Tule River, importation of Central Valley Project water through the Friant-Kern Canal was begun in 1950. The quantities of water imported have ranged

TABLE III

South Fork Tule River near Success
October 1948 - September 1958
(acre-feet)

Year	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
1948-49	0.0	21	259	534	798	2630	3450	2120	476	13	0.0	0.0
50	0.0	237	329	1060	3120	1900	2430	1140	261	0.0	0.0	0.0
51	41	8220	4800	3350	2730	4280	2980	2850	762	114	0.0	0.0
52	105	406	4120	8410	5440	17190	15090	13300	5580	1980	855	420
53	324	866	1810	6300	1960	2660	3740	3350	1670	477	114	55
54	162	468	728	1780	2300	3920	5990	2890	1070	177	32	34
1954-55	67	444	*	*	*	*	*	*	*	*	*	*
56	*	*	*	*	5050	3630	5000	5400	1960	511	70	74
57	341	372	485	774	1430	1940	1430	4490	1330	159	0.4	0.0
1957-58	218	485	1150	2050	4060	12920	19450	10200	4430	1390	376	226
Monthly Mean	140	1280	1710	3032	2988	5674	6618	5082	1949	536	161	90

Mean annual runoff = 29260 acre-feet

* No record

TABLE IV

Estimated and Computed Flow of Tule River
at Turnbull 1902-03 to 1957-58
(1000 acre-feet)

Water Year	Flow	Water Year	Flow	Water Year	Flow
1902-03	0.0	1924-25	0.0	1944-45	22.1
04	0.0	26	0.0	46	4.3
		27	6.0	47	0.0
1904-05	0.0	28	0.0	48	0.0
06	118.0	29	0.0	49	0.0
07	42.0				
08	3.0	1929-30	0.0	1949-50	0.0
09	124.0	31	0.0	51	6.4
		32	8.0	52	70.7
1909-10	3.0	33	0.0	53	7.1
11	17.0	34	0.0	54	0.0
12	0.0				
13	0.0	1934-35	0.0	1954-55	0.1
14	15.0	36	10.0	56	31.9
		37	6.0	57	0.7
1914-15	10.0	38	68.0	58	34.8
16	70.0	39	0.0		
17	33.0				
18	0.0	1939-40	18.0	Total	944.1
19	0.0	41	70.0		
		42	5.0	Mean	16.9
1919-20	0.0	43	134.0		
21	0.0	44	0.0		
22	6.0				
23	0.0				
24	0.0				

from 93,108 acre-feet in 1950 to 396,155 acre-feet in 1956 (Lower Tule Exh. 13; RT pp. 558-564). As a result of the importation of water to the Tule River area, the water table was raised an average of 22.4 feet between 1951 and 1959. This ground-water replenishment provides cyclic storage for carryover during dry years when insufficient water is available through the Friant-Kern Canal. No cyclic storage is available in Millerton Lake, the source of Friant-Kern Canal water. Measurements of the water table in the Lower Tule River Irrigation District, as of February, 1960, indicated that there had been a lowering of approximately 10 feet from 1959 to 1960, and it was the opinion of the engineer for the District that the water table would be lowered at least another 12 feet during 1960 (RT pp. 566-572). Porterville Irrigation District Exhibit 27 also shows a lowering of the water table at least 10 feet between the fall of 1958 and the fall of 1959 in the Tule River ground-water replenishment area.

The supply of water entering the Tulare Lake Basin that commingles with Tule River water is shown by fluctuations of the depth of Tulare Lake from 1850 to 1936 (Lower Tule Exh. 8) and by measured and computed flows from the four named rivers from 1937 through 1958 (South Lake and Bayou Vista Exh. 20).

Applicants' Projects

All of the subject applications are for storage of water during the wet season except Applications 16718 and 16892 which seek small direct diversions year-round for domestic purposes. Most of the storage facilities have been constructed and used for several years. The two major exceptions are the projects under Applications 15931 (Gill) and 16810 (South Tule

Independent Ditch Company) which have not been constructed. The principal uses to which the water has been or is to be applied are stockwatering, domestic, and irrigation.

Many of the reservoirs constructed by the applicants were partially financed by the Federal Government under what is known as the Agricultural Conservation Practices (A.C.P.) program which is administered by county Agricultural Stabilization and Conservation Committees (A.S.C.). The practice of rendering financial assistance to ranchers constructing reservoirs in the upper Tule River area has apparently been carried on by the local ASC Committee for a number of years without regard to water rights. It was not until about August of 1955 that the necessity of filing an application for a permit to store unappropriated water was brought to the attention of the Tule River Soil Conservation District by the State Soil Conservation Commission. As a result of this information most of the subject applications were filed. All of the points of diversion and places of use under the subject applications are within the Tule River Soil Conservation District (RT pp. 8, 9, 347-352).

The applicants in general claim existing appropriative, riparian, and "decreed" rights. Some of the applicants are in effect asking for permits to store "riparian" water originating on their own lands (RT p. 157). The reservoirs range in size from less than 1.0 acre-foot to 1,400 acre-feet, and most are less than 10 acre-feet (Staff Exh. 1).

Use by Protestants

Use of the waters of Tule River by the protestants and their predecessors began prior to 1901 when the first measurements of diversions from Tule River were made by A. E. Chandler of the United States Department of Agriculture. The main ditches being used at that time, most of which are still being used, were the Pioneer, Porter Slough, Burton, Gilliam, Hubbs and Miner, Campbell and Moreland, Vandalia, Poplar, Rhodes and Fine, Woods Central, Stockton, and the Lower Tule River Irrigation District (Staff Exh. 9, pp. 120, 121; RT pp. 511, 512, 613-615).

Apparently agricultural development in the Tulare Lake Basin area began around 1885 or 1890. By 1914 or 1915 a general movement toward reclamation of the lake basin area had commenced. Since that time the area has become one of the most intensively farmed in the San Joaquin Valley (RT p. 649).

Protestants submitted evidence of beneficial use of waters of the Tule River pursuant to pre-1914 appropriative, riparian, and "decreed" rights and of the pendency of prior applications before the Board (Staff Exh. 1; RT pp. 524, 525, 661-679, 769, 772, 773, 823-851, 858, 859). Evidence indicates that all of the water of the Tule River has been put to beneficial use by surface delivery or ground-water replenishment prior to leaving the boundaries of Lower Tule River Irrigation District in half the years (Lower Tule Exh. 16; RT pp. 573, 593, 594). The mean annual Tule River runoff reaching Tulare Lake is 16,900 acre-feet (Table IV). Such is the character of the Tulare Lake Basin and so extensive has been the use of water there in recent years that no water has overflowed from the basin

since 1878 (RT pp. 648, 649, 693-712; Lower Tule Exh. 8, South Lake Farms and Bayou Vista Ditch Co. Exh. 20).

Success Dam and Reservoir

Success Dam and Reservoir is a project of the United States Corps of Engineers which is now under construction. The dam is to be 140 feet in height, of earthfill construction, and will create a reservoir of 80,000 acre-feet capacity. Of the 80,000 acre-feet, 5,000 acre-feet are classed as dead storage for recreation and silt catchment. The remaining capacity is to be used primarily for flood control with secondary conservation benefits for irrigation. Under operating criteria the reservoir is to be drained to minimum pool level by October 31 of each year so that the entire usable capacity can be used for flood control purposes during the months of November, December, and January. There will be no carryover storage from year to year for irrigation. The main irrigation benefit from Success Reservoir will be regulation of the spring runoff so that it can be applied later in the season on the surface rather than percolating it into the underground for subsequent pumping later in the season (RT pp. 606-608). The operation of Success Dam will also reduce evaporation losses that would otherwise occur in Tulare Lake Basin in flood years. New water developed by these evaporation savings in Success Reservoir will average about 6,600 acre-feet a year, and will occur occasionally in large quantities during flood years, but in most years such new water will be nonexistent (RT p. 610).

Watershed Improvement

Certain of the applicants claim that their burning and clearing of brush and trees created additional runoff that would more than compensate for the amount of water sought for appropriation (RT pp. 145, 147, 167-170, 438-445). Although it is conceded by many that clearing of brush and trees increases the runoff from a watershed, evidence submitted by applicants in this regard is too general in nature and indefinite as to quantity of water to be the basis for required findings of unappropriated water (See Hirtle Exhs. 1, 2, and 3).

Conclusion

The Board has no power to approve an application and issue a permit unless it first finds the existence of unappropriated water available to supply the applicant (Water Code Section 1375). This same prerequisite finding of unappropriated water applies even with respect to applicants who have existing rights to divert and use water and who desire a permit only to add the authority to store the water in one season for use in another.

On a surface stream, such as the Tule River, unappropriated water would consist of flow which, at any given time and point of diversion, would not be required for downstream beneficial use under existing rights. The evidence shows that waters of the Tule River have been completely used during all but infrequent flood years such as 1943 and 1952 under claim of prior rights in the Tule River Delta and Tulare Lake area, that the water

which could be appropriated during flood years occurs too irregularly and infrequently to be of any value to the applicants.

The Board desires to emphasize that its failure to find the existence of unappropriated water in no way affects the existence or validity of riparian and other rights that the applicants may have.

The evidence indicates, and the Board finds, that there is no usable unappropriated water in the Tule River and tributaries available for any of the applicants. Therefore, these applications must be denied.

ORDER

Applications 15931, 16204, 16649, 16660, 16672, 16690, 16696, 16706, 16717, 16718, 16748, 16810, 16817, 16824, 16860, 16892, 17107, 17507, 17532, 18326, and 18615 to appropriate unappropriated water having been filed with the State Water Rights Board or its predecessors, protests having been received and a public hearing having been held by the Board; the Board having considered all of the evidence received at the hearing and now being fully informed in the premises;

IT IS HEREBY ORDERED that Applications 15931, 16204, 16649, 16660, 16672, 16690, 16696, 16706, 16717, 16718, 16748, 16810, 16817, 16824, 16860, 16892, 17107, 17507, 17532, 18326, and 18615 be, and the same are, denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the _____ day of _____, 1961.

_____
Kent Silverthorne, Chairman

_____
Ralph J. McGill, Member

Board Member W. A. Alexander, for good cause, disqualified himself from participating in this Decision and Order.