

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 22241, )  
22242 and 22243 of Johnson Stock )  
Company to Appropriate from Eleven )  
Unnamed Streams Tributary to Tule- )  
lake Sump in Modoc County )

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Decision 1305

DECISION APPROVING APPLICATIONS

Johnson Stock Company having filed Application 22241, 22242 and 22243 for permits to appropriate unappropriated water; a protest having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board (predecessor of the State Water Resources Control Board) pursuant to said stipulation; the Board, having considered all available information, finds as follows:

1. Applications 22241, 22242 and 22243 are for permits to appropriate a total of 7 acre-feet per annum (afa), a total of 2.5 afa, and a total of 16.8 afa, respectively, by storage in eleven reservoirs on unnamed streams in Modoc County

from October 15 of each year to April 15 of the succeeding year for stockwatering purposes. The points of diversion under Application 22241 are within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 10, NE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 3, and SE $\frac{1}{4}$  of NE $\frac{1}{4}$ , Section 4, T46N, R6E; and NW $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 33, T48N, R6E. The points of diversion under Application 22242 are within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 24, and SE $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 23, T48N, R6E. The points of diversion under Application 22243 are within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , SW $\frac{1}{4}$  of NW $\frac{1}{4}$  and NW $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 27, SE $\frac{1}{4}$  of SE $\frac{1}{4}$ , Section 16, and NE $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 21, T48N, R6E, all MDB&M.

2. All of the reservoirs have been constructed. Most of them were formed by excavating the streambeds of the streams rather than by constructing dams. Approximately 1,500 head of cattle water directly from the reservoirs. The applicant has designated the reservoirs as Nos. 43, 44, 45 and 46 (Application 22241); Nos. 49 and 50 (Application 22242); and Nos. 4, 5, 6, 7 and 25 (Application 22243).

3. There are no records of the flows of the streams that fill the applicant's reservoirs. On August 10, 1967, when a field investigation of the applicant's project was conducted, no flow was observed in any of the streams. However, the reservoirs have filled in almost every year since their construction.

4. Protestants Michael H. and Mary L. Fayne claim a pre-1914 appropriative right to divert water year round at a reservoir constructed on the unnamed stream to which the sources under Applications 22241, 22242 and 22243 are all tributary. It is approximately 3 miles below the applicant's lowermost reservoir (No. 43) and approximately 7 miles below the applicant's uppermost reservoir (No. 25). It has a capacity of approximately 32 acre-feet. It has spilled in six out of the last nine years, during which time the applicant's reservoirs were in existence.

5. The water occurring at Reservoirs Nos. 4, 5, 6, 25, 44, 45, 46 and 50 would seldom, if ever, reach the protestants' reservoir even if applicant's reservoirs were not constructed. This is due to their distance from the protestants' reservoir, the topography of the land, and the porosity of the soil.

6. The water available for storage at Reservoir No. 7 is principally the result of the reclamation of a swampy area and the destruction of aquatic plants by the applicant. The applicant has cleared approximately 20 acres of brush above Reservoir No. 49, resulting in increasing the available runoff by approximately 17 acre-feet each year, which far exceeds the capacity of the reservoir. The applicant is entitled to the water that is salvaged by this work.

7. Approximately 80 percent of the water occurring above Reservoir No. 43 originates in the watershed northeast of the reservoir. Reservoir No. 43 is located on a tributary of the stream which drains this watershed.

The applicant has installed a pipe with a valve at the head of a ditch it uses to divert water from the stream channel to off-stream storage in Reservoir No. 43. The water occurring in this watershed can be bypassed by closing the valve. The other 20 percent of the water occurring above Reservoir No. 43 originates in the watershed to the northwest and flows uncontrolled into the reservoir. The protestants will be adequately protected from interference by this reservoir if any permit issued on Application 22243 contains a term prohibiting the diversion of water through the pipe into Reservoir No. 43 until the time when the protestants' reservoir commences to spill. The term should provide an alternative allowing diversions each season after 32 acre-feet, along with losses through conveyance of this quantity of water to the protestants' reservoir, has passed the applicant's property as determined by a water stage recorder installed by the applicant.

8. 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.

9. The intended use is beneficial.

10. Reservoir No. 5 was built about the year 1910 and is on Forest Service land. The reservoir is covered by a special use permit issued by the Federal Government. The permit issued pursuant to Application 22243 should contain a special term stating that upon judicial determination that permittee is entitled to store water in Reservoir No. 5 by prior appropriative or other rights, the rights so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the largest of the rights.

From the foregoing findings, the Board concludes that Applications 22241, 22242 and 22243 should be approved and that permits should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Applications 22241, 22242, 22243, 14267, 15268, 15269 and 21532 and all relevant information on file therewith, particularly the report of the field investigation made August 10, 1967; Department of Water Resources Bulletin No. 23-55, "Report of Sacramento-San Joaquin Water Supervision", dated June, 1957; and U. S. Geological Survey topographic maps of the area under consideration.

ORDER

IT IS HEREBY ORDERED that Applications 22241, 22242 and 22243 be, and they are, approved, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1(a). The water appropriated pursuant to Application 22241 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 7 acre-feet per annum by storage in Reservoirs Nos. 43, 44, 45 and 46 to be collected from about October 15 of each year to about April 15 of the succeeding year.

(b) The water appropriated pursuant to Application 22242 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 2.5 acre-feet per annum by storage in Reservoirs Nos. 49 and 50 to be collected from about October 15 of each year to about April 15 of the succeeding year.

(c) The water appropriated pursuant to Application 22243 shall be limited to the quantity which can be beneficially used and shall not exceed a total of 16.8 acre-feet per annum by storage in Reservoirs Nos. 4, 5, 6, 7 and 25 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 and lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair.

3. The permit issued pursuant to Application 22241 shall contain a term stating that the permittee shall not divert water into Reservoir No. 43 from the northeast watershed until the Michael Fayne Reservoir located in the NE $\frac{1}{4}$  of SW $\frac{1}{4}$ , Section 27, T47N, R6E, MDB&M, begins to spill. As an alternative, the permittee may install a water stage recorder on the unnamed stream near the southerly boundary of its property and divert each season after 32 acre-feet of water, along with losses through conveyance of this quantity of water to the Michael Fayne Reservoir, has passed the recording station.

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

5. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control 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 Resources Control 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.

8. Permittee shall allow representatives of the State Water Resources Control 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.

9. The permit issued pursuant to Application 22241 shall contain a term stating that upon a judicial determination that permittee is entitled to store water in Reservoir No. 5 by prior appropriative or other rights, the rights so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the largest of the rights.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Fresno, California.

Dated: JUN 20 1968

/s/ George B. Maul  
George B. Maul, Chairman

/s/ W. A. Alexander  
W. A. Alexander, Vice Chairman

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

/s/ Norman B. Hume **ABSENT**  
Norman B. Hume, Member

/s/ E. F. Dibble  
E. F. Dibble, Member