

McCUTCHEM, DOYLE, BROWN, TRAUTMAN & ENERSEN

COUNSELORS AT LAW

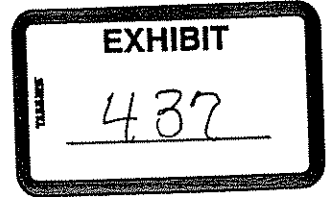
601 CALIFORNIA STREET

SAN FRANCISCO CALIFORNIA 94108

AT LOS ANGELES
McCUTCHEM, BLACK,
VERLEGER & SHEA
615 SOUTH FLOWER STREET

APR. 27 1979

November 2, 1964



AIR MAIL

Kern County Land Company
P. O. Box 380
Bakersfield, California

Attention: Mr. W. T. Balch

Kern River Water Rights

Dear Sirs:

You have received a copy of the "Decision Denying Applications" of the California State Water Rights Board No. D 1196 adopted October 29, 1964. For your files, an additional copy is enclosed to each of the persons to whom copies of this letter are being sent as noted below.

The decision denies all applications on the ground that there is no unappropriated water available in the stream. This is the position advocated on your behalf before the Board at its hearing on these applications on February 5, 1964. We believe the decision is correct.

This decision covers not only the applications filed by the First Point and Second Point interests and by the Tulare Lake Basin Water Storage District but also the applications by Arvin-Edison Water Storage District, the Estate of Harry R. Wiley and the County of Kern. However, it does not cover the applications filed by the State of California in 1927 through the Director of Finance (Applications Nos. 5641 and 5642). Those applications were not included in the Board's Notice of Hearing and they are still pending. However, there has been no attempt on the part of anyone so far as we know to activate those applications. If any attempt is made in the future to activate

NK002153

Kern County Land Company - 2.

these applications, the enclosed decision of the Water Rights Board to the effect that there is no unappropriated water in the stream will be an important precedent upon the basis of which to resist the granting of any water rights pursuant to the State's applications - unless there is a change of circumstances which might justify showing of abandonment of presently existing water rights.

Even though this decision has the practical effect of confirming the water rights now claimed by the First Point interests and governed by the Kern River Water Rights and Storage Agreement, it is still important to maintain continuing records of the stream-flows and of diversions and use of water within the First Point area. As you know, water rights can be lost through nonuse and your records of diversion and beneficial use should be maintained so as to be available at any time when you may be called upon to defend your water rights against claims of abandonment.

Very truly yours,

MCCUTCHEN, DOYLE, BROWN, TRAUTMAN & ENERSEN

By *Burnham Eversen*

Enclosure

cc: Messrs. Jans, Williams, Pigott, Montgomery, Cochran,
Hartmann

NK002154

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

RECEIVED	
OCT 30 1964	
DAYS ENTERED	
BY	<i>none</i>

In the Matter of Applications 9446,
9447, 10941, 11071, 11148, 11351,
13403, 13709, and 15440 of Buena Vista
Water Storage District and Others to
Appropriate from the Kern River and
Various Distributaries in Kern County

Decision D 1196

ADOPTED OCT 29 1964

DECISION DENYING APPLICATIONS

Applications 9446, 9447, 10941, 11071, 11148, 11351, 13403, 13709, and 15440 of Buena Vista Water Storage District and others having been filed; protests having been received; a public hearing having been held before the State Water Rights Board in Bakersfield, California, on February 5, 1964, conducted by Board Members Kent Silverthorne, Chairman, presiding, Ralph J. McGill, and W. A. Alexander; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

1. The subject applications are to appropriate water from the Kern River and various distributaries in Kern County. The essential information contained in the applications is set forth in Table 1.

NK002155

TABLE 1

DATA FROM APPLICATIONS FOR APPROPRIATION OF UNAPPROPRIATED WATER FROM KERN RIVER AND VARIOUS DISTRIBUTARIES

Applicaton No.	Applicant	Source	Amount	Diversion: (cfs)	Storage (afa)	Season
9446	Buena Vista Water Storage District, North Kern Water Storage District, et al.	Kern River	800,000 (a)			1/1-12/31
9447	Buena Vista Associates, Inc., and Miller and Lux, Inc.	Kern River	400			1/1-12/31
10941	Tulare Lake Basin Water Storage District	Kern River	2,000		550,000	1/1-12/31
11071	Arvin-Edison Water Storage District	Kern River	1,500		300,000	1/1-12/31
11148	Estate of Harry R. Wiley, et al.	Buena Vista Flood Channel			10,000 (b)	1/1-7/1
11351	Estate of Harry R. Wiley, et al.	Main Drain, Goose Lake Canal, West Side Canal, and Buena Vista Flood Channel	75			1/1-12/31
13403	Estate of Harry R. Wiley, et al.	Kern River and Kern River Flood Channel	50		4,800	1/1-12/31
13709	County of Kern	Kern River	200		550,000	(c)
15440	Tulare Lake Basin Water Storage District	Goose Slough and Big Canal	2,375		300,000	1/1-12/31

(a) At the maximum rate of 3,800 cfs

(b) At the maximum rate of 75 cfs

(c) Direct diversion season - January 1 through December 31

2. Protests were filed by the Carmel Cattle Company, Southern California Edison Company, Pacific Gas and Electric Company, and the Hacienda Water District, the latter being the only protestant that presented evidence in support of its protest. The City of Bakersfield was recognized as an interested party at the hearing.

3. The applicants presented no evidence as to specific project plans. Their evidence was directed to establishing their past use of water, their claims of prior rights, and lack of unappropriated water.

4. The natural flow of Kern River reaching the floor of the San Joaquin Valley has been apportioned among the various users for many years by court decisions and agreements. Those of interest are (a) 1886 - Decision of the California Supreme Court in Lux vs. Haggin; (b) 1888 - Miller-Haggin Agreement (North Kern Exh. 1); (c) 1900 - Decree of Kern County Superior Court No. 1901 "Farmers Canal Company, et al. vs. J. R. Simmons, et al." commonly known as the Shaw Decree (North Kern Exh. 2); (d) 1930 - Amendment to Miller-Haggin Agreement (North Kern Exh. 3); (e) 1955 - Amendment to the Miller-Haggin Agreement (North Kern Exh. 4); (f) 1962 - Kern River Water Rights and Storage Agreement (North Kern Exh. 5), and (g) Lake Isabella Recreation Pool Agreement (North Kern Exh. 6).

After the completion of Isabella Dam and Reservoir which then allowed the flow of Kern River to be regulated and controlled, the users approved on December 31, 1962, the "Kern River Water Rights and Storage Agreement". This agreement, filed of record on

April 5, 1963, with the Kern County Recorder's Office, divides the water supply among three general service areas designated as First Point Service Area, Second Point Service Area, and Lower River Service Area. The division is based upon the water which would have entered the First Point Service Area in the absence of Isabella Dam.

The water diverted between the "first point of measurement" located northeast of the City of Bakersfield, and the "second point of measurement" approximately 23 miles further downstream in a southwesterly direction is utilized in the First Point Service Area. Water diverted between the "second point of measurement" and Highway 466 is utilized in the Second Point Service Area. The Lower River Service Area extends from Highway 466 northerly to and including the Tulare Lake Area.

5. The applicant North Kern Water Storage District is within the First Point Service Area. The applicants, Buena Vista Water Storage District, Buena Vista Associates, Inc., and Miller and Lux, Inc., are within the Second Point Service Area. The applicants Tulare Lake Basin Water Storage District and Estate of Harry R. Wiley, et al., and the protestant Hacienda Water District are in the Lower River Service Area. Applicant, Arvin-Edison Water Storage District, is not in any of these service areas and has not used surface water from the Kern River.

6. Water is diverted directly from the Kern River for use on lands within these service areas by ditches and canals which have been in existence since prior to 1894. The water is also

spread for percolation into the ground water basin for storage and later use on lands within the service areas, which provides cyclic storage for extended periods of drought. Water entering Tulare Lake, the terminus of the river, is stored in cells created by levees and rediverted for irrigation.

7. A comparison of the quantities of water used in the First Point, Second Point, and Lower River Service Areas for the period 1894-1963, with the quantities of water flowing past the first point of measurement, adjusted to eliminate the effect of Isabella Reservoir, shows that there is no water surplus to the established uses of the applicants, protestants, and other users in these areas. This conclusion is further supported by the fact that ground water levels within the service areas are declining, and agencies within the area have entered into or are negotiating contracts to purchase additional water from the U. S. Bureau of Reclamation and from water facilities now under construction by the State of California.

8. There has been no showing that there is unappropriated water available to supply the applicants.

From the foregoing findings, the Board concludes that Applications 9446, 9447, 10941, 11071, 11148, 11351, 13403, 13709, and 15440 should be denied.

ORDER

IT IS HEREBY ORDERED that Applications 9446, 9447, 10941, 11071, 11148, 11351, 13403, 13709, and 15440 be, and they are, denied.

Adopted as the decision and order of the State Water
Rights Board at a meeting duly called and held at Sacramento,
California, this day of 1964.

/s/ Kent Silverthorne
Kent Silverthorne, Chairman

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

/s/ W. A. Alexander
W. A. Alexander, Member