

2.0 GROUND FOR MODIFICATION OF DECLARATION OF FULLY
APPROPRIATED STREAMS LISTING

Paragraph 7.0 of Order WR 89-25, entitled "Findings Regarding Disposition of Applications Pending on the Effective Date of the Declaration", required the Chief, Division of Water Rights, to review all applications to appropriate water from a stream system declared to be fully appropriated, which are pending on the date of adoption of the Declaration. The Chief is further required to give notice to the applicants of the potential cancellation of such applications.

Pursuant to Water Code Section 1206(a), the State Water Board is authorized, but not required, to cancel pending applications where inconsistent with conditions contained in the Declaration. Section 7.3 of Order WR 89-25 states: "In any case in which an applicant responds to the notice provided for in paragraph 7.0 (Notice of Proposed Cancellation of Application), ...the Chief should provide the Board with recommendations concerning disposition of the application. Such recommendations should be in the form of a proposed order..."

Section 7.0.4 states: "A reasonable time should be specified within which the applicant may provide a statement, in the nature of an offer of proof, to show that

hydrologic circumstances have changed within the stream system declared to be fully appropriated, or that other circumstances exist which justify the continued processing of the application. The statement should be in sufficient detail to support a prima facie finding that unappropriated water is available to supply the applicant."

3.0 SUMMARY OF APPLICANT'S STATEMENT REGARDING HYDROLOGIC CONDITIONS IN THE KERN RIVER

On February 16, 1993, the Division of Water Rights notified the Lost Hills Water District (Water District) that Application 27554 is subject to cancellation due to conflict with the season of unavailability listed in the Declaration. Application 27554, filed on October 15, 1982, requests a right to directly divert 100 cubic feet per second for irrigation purposes from January 1 to July 31 of each year. The Kern River has been found to be fully appropriated from January 1 to December 31 in Decision 1196, adopted on October 29, 1964.

On April 21, 1993, the Water District submitted 35 records for Kern River Flows Past Wasco Road (State Highway 46) selected from the years 1895 through 1983 (Attachment 1), in an effort to challenge the Declaration and demonstrate that water is available for appropriation during the requested diversion season. Wasco Road is located near the southern

boundary of the Water District. The flows are listed in acre-feet per annum (afa), and indicate a peak flow of 1,562,000 afa for the year 1916. The submittal includes six flow records for recent water years. These are the flow records for 1966, 1967, 1969, 1978, 1980 and 1983. The peak flow during this period occurred in 1983, and it was 242,211 afa.

The applicant contends that these flow records provide ample hydrologic evidence that surplus Kern River water is available for appropriation. The applicant, however, provided no offer of proof or analysis of the data submitted.

4.0 BASIS FOR FINDING THAT THE KERN RIVER IS FULLY APPROPRIATED

The Kern River heads in a small glacial lake, among the high peaks of the Kings-Kern and Great Western Divides. It flows southward about 85 miles to the mouth of the South Fork Kern River. Isabella Dam has been constructed on the Kern River 1.5 miles below the mouth of South Fork Kern River. Below Isabella Dam, the Kern River continues its southerly course another 4 miles where it enters a canyon and flows southwest 27 miles to the floor of the San Joaquin Valley.

On the valley floor, the river continues its southwesterly course another 12.5 miles to a point known as the "First

Point of Measurement", which is located northeast of the City of Bakersfield. Below the First Point of Measurement, the Kern River continues its southwesterly course another 23 miles to a point known as the "Second Point of Measurement". Below this point the Kern River continues its southwesterly course another five miles where it enters an inlet canal and discharges into Buena Vista Lake located two miles to the south.

Water flowing in the Kern River may be directly diverted from the river for use or it may be diverted away from Buena Vista Lake into various canals where it can flow northward along the trough of the San Joaquin Valley toward Tulare Lake.

Decision 1196, adopted on October 29, 1964, found that the Kern River is fully appropriated throughout the year, and resulted in cancellation of applications filed between November 1, 1938 and July 31, 1953 which requested water for both storage and direct diversion.

The Engineering Staff Analysis of Record calculated the annual unimpaired runoff of the Kern River at the First Point of Measurement for the 70-year period 1894 through 1963 to be 680,600 af. The runoff for the years 1954 through 1963, was adjusted to eliminate the effect of Isabella Reservoir. The peak unimpaired flow at First

Point of Measurement considered in the analysis was 1,991,600 af in the year 1916.

The Staff Analysis concluded that the entire flow of the Kern River has been beneficially used since 1894. This conclusion was substantiated by the fact that no water had flowed out of Tulare Lake since 1878. As noted in Decision 1196, the shortage of water within the service areas is "further evidenced by the fact that groundwater levels within the service areas are constantly declining", and that various agencies have entered into negotiations for contracts to purchase additional water through the Friant-Kern Canal or the State water facilities.

Decision 1196 states that there is no water surplus to the established uses within the First Point, Second Point, and Lower River Service Areas for the period 1894-1963.

Decision 1196 denied Applications 9446, 9447, 10941, 11071, 11148, 11351, 13403, 13709 and 15440, which requested a combined total of 6,600 cfs for direct diversion and 2,514,800 afa for storage, due to lack of unappropriated water.

5.0 ANALYSIS OF THE WATER DISTRICT'S SUBMITTAL

The Water District seeks to challenge the State Water Board's finding that there is no unappropriated water in the Kern River. The State Water Board considered the Kern River flows for the 70-year period 1894 through 1963 prior to adoption of Decision 1196. The Water District must show that hydrologic conditions in the Kern River have changed since Decision 1196 was adopted or other circumstances exist that would justify the continued processing of Application 27554. The State Water Board considered all of the available streamflow records through the 1963 calendar year prior to adoption of the decision. The Water District has not provided a basis for submittal of 35 flow records for the years 1895 through 1983. The Water District's submittal includes only six years of data which have not previously been considered by the State Water Board.

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Lost Hills Water District Submittal
Kern River Flow Past Wasco Road
Post-1963 Impaired Flows
Peak Years

1966	..... 1,800 af	1978	..... 45,500 af
1967	.....43,900 af	1980	..... 36,400 af
1969	.....166,200 af	1983	.....242,211 af

Lost Hills Water District Submittal
Kern River Flow Past Wasco Road
Pre-1963 Impaired Flows
Peak Years

1906	.....749,000 af	1938	..... 481,500 af
1907	.....266,400 af	1941	..... 537,000 af
1909	.....737,400 af	1943	..... 552,900 af
1916	...1,562,000 af		
1937	.....368,500 af		

Decision 1196
Engineering Staff of Record
Kern River At First Point of Measurement
Unimpaired Peak Water Year Flows

1906	...1,899,900 af	1938	.....1,358,700 af
1907	...1,013,000 af	1941	.....1,401,000 af
1909	...1,838,000 af	1943	.....1,220,800 af
1916	...1,991,600 af		
1937	...1,260,200 af		

The flows in the Kern River channel at Wasco Road, located downstream (north) of the "First Point of Measurement" streamflow reporting station utilized in Decision 1196 to determine whether water was available for appropriation, are lower than the flows at the First Point of Measurement. The U.S. Geological Survey discontinued the stream gage located near the First Point of Measurement in 1976. Therefore, recent data are not readily available for this flow station.

The Wasco Road flows listed previously for the period from 1966 through 1983 do not exceed the Wasco Road flows for the 70-year period from 1894 through 1963, and are far less than the maximum flows reported in the Engineering Staff Analysis of Record which formed the basis for finding that there is no unappropriated water in the Kern River. Therefore, we conclude that the flow record which was submitted by the Water District is not adequate to make a prima facie showing that hydrologic conditions in the Kern River have changed. Nor does the information submitted, which lacks supporting analysis or even an explanation as to why the particular years of record submitted were selected, demonstrate that for any other reason the application should be processed notwithstanding the declaration that the stream system is fully appropriated.

6.0 THE WATER CODE AUTHORIZES CANCELLATION OF APPLICATIONS WHICH ARE INCONSISTENT WITH THE DECLARATION

Water Code Section 1206(a) authorizes the State Water Board to cancel pending applications which are not consistent with the Declaration.

7.0 CONCLUSIONS

The request for modification of the Declaration has not been supported by a prima facie showing that hydrologic conditions in the Kern River have changed or that other

circumstances exist which justify the continued processing of Application 27554. Therefore, the request is inadequate for the purpose of modifying the Declaration and the request should be denied.

If the Water District believes that there is unappropriated water available during abnormally wet water years, it may seek temporary authorization to appropriate the water by filing an Application for a Temporary Permit. The temporary permit process is exempt from the Declaration.

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ORDER

IT IS HEREBY ORDERED that the request for modification of the Declaration of Fully Appropriated Streams Listing on the basis of changed hydrologic conditions in the Kern River is denied.

IT IS FURTHER ORDERED that Application 27554 is canceled.

CERTIFICATION

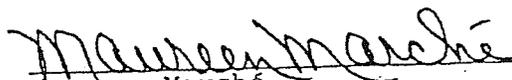
The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on 1/19/94

AYE: John Caffrey
Marc Del Piero
James M. Stubchaer
Mary Jane Forster
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board