THE PINE FLAT PROJECT ON KINGS RIVER, CALIFORNIA

Should Reclamation Law Apply?

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A Briefing Paper on the Issues

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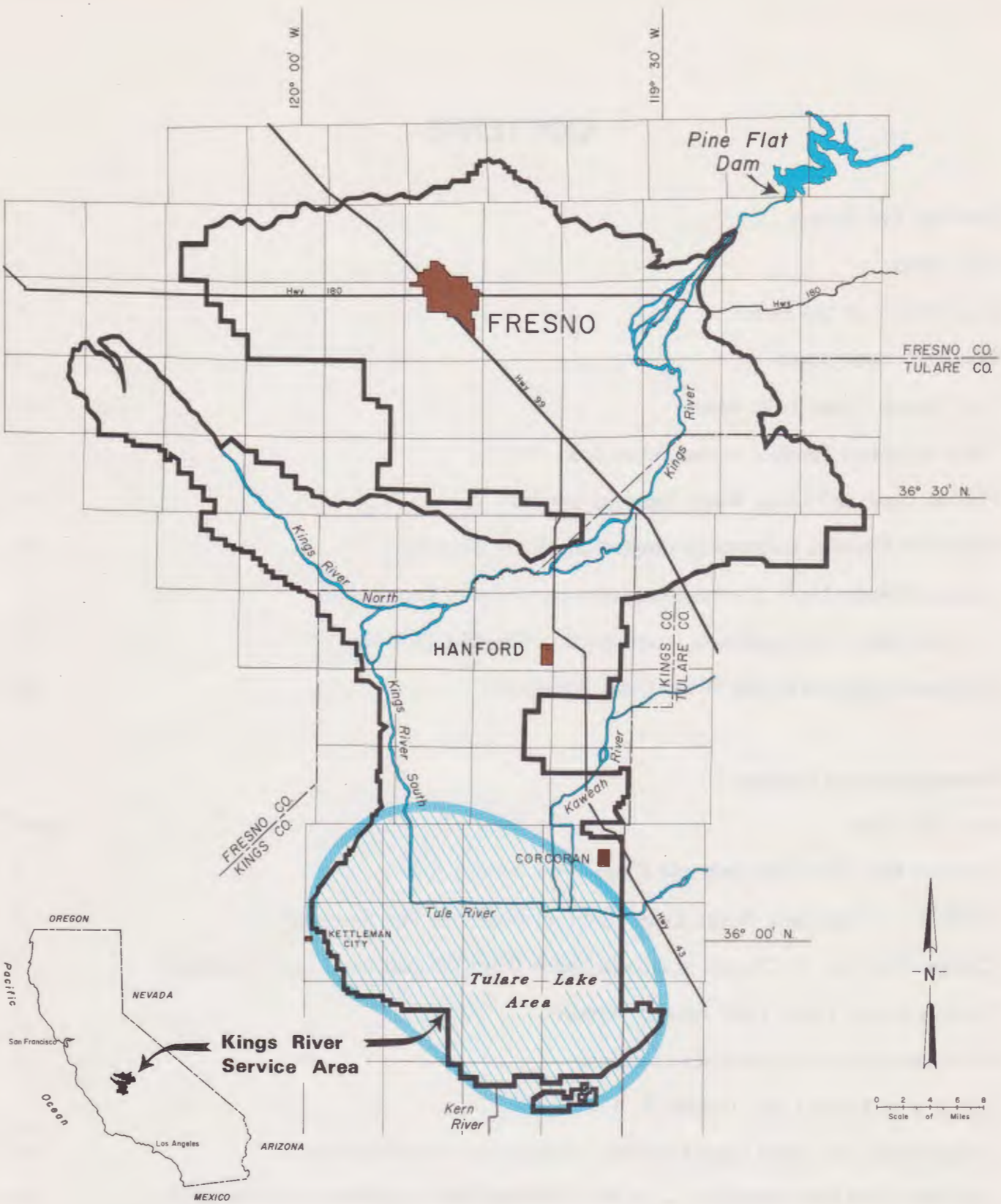


LOCATION MAP

PINE FLAT DAM AND KINGS RIVER SERVICE AREA

THE PINE FLAT PROJECT ON KINGS RIVER, CALIFORNIA

THE PINE FLAT PROJECT

Pine Flat Dam and Reservoir, with a capacity of about 1,000,000 acre-feet, is located on Kings River, east of the City of Fresno, in the foothills of California's San Joaquin Valley. (See Location Map)

The Pine Flat Project was constructed pursuant to the Flood Control Act of 1944 (58 Stat. 887) in which the U. S. Congress authorized ninety projects throughout the United States for design, construction and operation by the U. S. Army Corps of Engineers.

The Project was completed in 1954 at a total cost of about $42 million. In 1963, the 28 member units of the Kings River Water Association (KRWA) contracted for the perpetual and exclusive irrigation storage use of Pine Flat Reservoir and agreed to repay the entire $14,250,000 allocated to irrigation benefits by the Secretary of War. Twenty-two of the twenty-eight member units have executed lump sum repayment contracts and have fully repaid their respective allocated shares of the Project cost. The remaining six units have elected to enter into 40-year repayment contracts and, as of December, 1978, the balance owed to the United States by these units had been reduced to only $2.8 million. Excess lands within the latter units do not receive water that has been stored in Pine Flat Reservoir.

The twenty-eight KRWA contractors collectively pay the United States in advance for all of the annual operation and maintenance charges for irrigation storage use of the Project. The annual amount paid by the water users constitutes 37.4% of the total O & M costs, with the balance being paid by the United States as the allocated share of project costs attributable to the flood control function of the Project.

The Pine Flat Project continues to be operated and maintained by the U. S. Army Corps of Engineers. The U. S. Water and Power Resources Service, until recently the Bureau of Reclamation, is not involved in any way in the physical operation or maintenance of the Project.

All Kings River water rights, diversion works and distribution facilities are owned by the KRWA member units. Over $70,000,000 in locally generated funds have been invested in such facilities. No Federal funds were involved.

Approximately 500,000 Californians live and work in the geographic area served by the Kings River, known as the "Kings River Service Area." The Service Area encompasses 1.1 million acres, and is located in California's San Joaquin Valley. Agriculture is more than a $1 billion business in the Kings River Service Area, about 10% of the statewide total in California's largest industry, which in turn produces about 25% of the nation's fruits and vegetables and about 8% of the nation's total agricultural sales.

From the standpoint of irrigation benefits, the dam has created only a negligible amount of "new" water; its principal benefit is in the regulation of old, privately held water rights. The dam makes possible the use of these waters at more convenient and efficient times than was possible prior to its construction. The principal purpose of Pine Flat Dam is for flood control and it has already paid its cost many times over in the reduction of flood damages to local communities and agricultural lands.

THE ISSUES

The two major issues involved are:

1. Whether or not Federal reclamation law applies to the Pine Flat Project.
2. If reclamation law does apply, whether or not repayment of the Project costs allocated to irrigation benefits terminates the acreage limitation provisions of reclamation law.

LEGAL STATUS OF THE ISSUES

In a 1961 Opinion by the Solicitor of the Department of the Interior, the United States dramatically reversed its long standing policy and administrative practice that payout relieved landowners of the acreage limitation provisions of reclamation law.

Pending contracts between the KRWA members and the United States were then rejected by the

Bureau of Reclamation (now the Water and Power Resources Service) and the Bureau indicated that it would agree to a ''Court Test'' of the Solicitor's opinion. Eventually, in order to continue irrigation storage use of Pine Flat Reservoir under any conditions at all, and to avoid losing more than $6 million in credits for prior interim storage use, which would be applied only if permanent repayment contracts were executed immediately, the Kings River interests agreed to litigate the acreage limitation issue.

The package of agreements entered into in December of 1963 provided for a test case of the issues and, in early 1972, the Federal District Court found:

1. Reclamation law did not apply to the Pine Flat Project, and
2. Even if reclamation law had applied to the Pine Flat Project, the acreage limitation provisions of reclamation law would have terminated upon payment of that portion of the project cost allocated to irrigation storage benefits.
3. The constitutional questions raised by defendant (Tulare Lake Canal Company) were not reached.

Upon appeal by the United States, the Ninth Circuit Court of Appeals reversed the District Court on findings No. 1 and 2 above. Remarkably, the Circuit Court failed to reference even one of the several hundred exhibits entered into the District Court's record, nor were any of the District Court's findings of fact challenged. The basis for the reversal was more of a philosophical treatise on social policy than an analysis of the law and facts applicable to the case.

A petition for a Writ of Certiorari was subsequently filed with the United States Supreme Court; but on February 22, 1977, the Supreme Court declined to hear the case.

The constitutional issues of the case are now pending in the Ninth Circuit Court of Appeals. Additionally, a ''Petition for Recall of Mandate'' has been filed based upon the United States Supreme Court's recent reinterpretation of Section 8 of the 1902 Reclamation law in the case entitled, ''California v. United States of America.'' Regardless of the outcome, it appears as though a final judicial determination will not come quickly.

HISTORICAL BACKGROUND

Though primitive in nature and limited in extent, the first recorded irrigation diversions from Kings River were in the 1850's. During the period 1860-1880, substantial diversion structures and irrigation canals were constructed; by the turn of the century all of the normal flows of Kings River had vested in private ownership of local water users.

The Kings River Water Association was formed in 1927 and it now consists of 28 locally owned and operated public districts and mutual water companies. The Association has, since its formation, administered all of the waters flowing in Kings River. Some relatively minor riparian rights are privately owned by parties other than the KRWA member units. Many of the water rights date back over a hundred years. Essentially all of the lands in the Kings River Service Area were developed and the landownership patterns were established long before Pine Flat was completed in 1954. Except for the Tulare Lake area, most of the Kings River Service Area was subdivided into small parcels and is still farmed in that manner today.

The last potentially bona fide water rights claim by an outsider was removed in 1965 when the KRWA member units purchased the disputed claim of the United States to the so-called Fresno Slough water rights for the sum of $750,000. Under the "Conveyance and Covenants in Compromise and Settlement of Fresno Slough Claims", dated April 23, 1965, the United States granted and conveyed " . . . any and all right, title, or interest the (United States) now has or claims to have in and to the water of Kings River . . ." Thus, neither the Water and Power Resources Service (USBR) nor the Corps of Engineers nor any other federal agency owns or claims any water or water rights on Kings River which could be sold or made available pursuant to Federal reclamation law or otherwise.

The surface flow of Kings River does not provide a full irrigation water supply for lands within the Kings River Service Area, the balance of the water requirement being made up from pumping from groundwater wells, imported water from the federal Central Valley Project and imported water from California's State Water Project. Central Valley Project water is subject to Federal reclamation law and is therefore used exclusively on lands of small landowners.

None of these water supplies are uniformly available throughout the Kings River Service Area. The use of water from all sources is needed to provide a relatively dependable total water supply. Most of the area is in need of supplemental water to meet long range water requirements and to reduce the overdraft of the groundwater supplies.

Section 10 of the 1944 Flood Control Act authorized the War Department (now the U. S. Army Corps of Engineers) to design, construct and operate the Pine Flat Project as a flood control project with incidental irrigation uses, thus resolving the intense long-standing controversy between the Corps and the Bureau of Reclamation (now the WPRS) as to which agency would develop the Project. The Bureau had sought to integrate the Pine Flat Project into the Central Valley Project (CVP), but the local water users were bitterly opposed because of the known applicability of the acreage limitation provisions of reclamation law to the CVP.

The following statement from page 43 of the report of the Committee on Flood Control of the U. S. House of Representatives on March 29, 1944 (Report No. 1309, 78th Congress, 2d Session) is indicative:

> ''Local (Kings River) interests are so strongly in opposition to a project built under reclamation law that they have stated that rather than have the project built by the Bureau of Reclamation they prefer no Federal project at all.''

Notwithstanding what the local people believed to be the clear intent of Congress, as set forth in Section 10 of the 1944 Flood Control Act, President Harry Truman, by Executive Order dated May 2, 1946, directed the Secretary of Interior to instruct the Commissioner of the Bureau of Reclamation to ''proceed forthwith to make the necessary repayment arrangements with the prospective water users.'' Despite their protests, the local water users were left with no choice but to attempt to negotiate repayment contracts with the Bureau of Reclamation.

While the Bureau insisted on contracting ''under reclamation law,'' for many years prior to the authorization of the Pine Flat Project and up to the Solicitor's opinion issued in December, 1961, the local interests had been repeatedly assured by the highest officials of the Department of the Interior that

Kings River Watershed
About 80% of Kings River runoff occurs as snowmelt from the high Sierra

Kings River upstream from Pine Flat Reservoir
The local water users own all of the rights to the flow of Kings River. The federal government owns no Kings River water.

Cobbles Weir and 76 Channel of the Alta Irrigation District Canal

Over $70,000,000 in local funds have been invested in the construction of diversion and distribution systems to irrigate farm lands with Kings River water. No Federal funds were involved.

Small Farms near Kingsburg

The upstream portions of the Kings River Service Area are suitable for intensive farming to orchards, vineyards and vegetable crops and are farmed in small tracts.

even if Pine Flat were a reclamation project, upon repayment of the construction costs allocated to irrigation use, the acreage limitation provisions of Federal reclamation law would no longer apply to water owned by the local interests and stored in Pine Flat Reservoir. From the standpoint of basic equity and fair play in dealing with representatives of one's own government, this is a vital point and one which can be documented to the extent desired.

Section 10 of the 1944 Flood Control Act also provides, "that *the Secretary of War* shall make arrangements for payments to the United States by the State or other responsible agency, *either in lump sum* or annual installments for conservation storage when used." (emphasis added) In a letter to the President, dated January 31, 1947, the Secretary of War indicated that repayment arrangements "could have proceeded without placing any special requirements on local water users, except the requirement of adequate repayment." This further supported the water users' view that the acreage limitation provisions of Federal reclamation law would not apply to water stored in Pine Flat Reservoir.

The United States has never asserted that reclamation law applies to natural flow water rights passing through the Dam without benefit of storage. The Ninth Circuit Court of Appeals affirmed that point by stating "If a particular landowner does not believe that the irrigation benefit resulting from the Project (primarily a regulated water supply) is of sufficient value, he can forego that benefit and retain his excess land along with its pre-existing water supply". *U. S. v. Tulare Lake Canal Company* 535 F 2nd 1093 1144 *Ninth Cir., 1976*

The potential impact of the acreage limitation provisions of reclamation law on large landowners has been widely discussed, and, unfortunately, almost as widely misunderstood. The potential impact on small landowners has been largely overlooked. As hereinafter discussed, application of acreage limitation provisions of reclamation law to water stored behind Pine Flat Dam will work a hardship on large and small landowners alike.

Of particular significance, ***application of such acreage limitation provisions will not result in the break-up of large landowners either in the Tulare Lake or in other portions of the Kings River Service Area.***

It is now thirty-five years since the Pine Flat Project was authorized. The acreage limitation issue still has not been finally resolved.

THE UNIQUE TULARE LAKE AREA

The Tulare Lake area is located in the trough of the southern part of the Central Valley of California, about equally distant from the cities of Fresno and Bakersfield.

In geologic history, the Kings River deposited sediment across the Valley floor, forming an alluvial fan which blocked the southern Sierra Nevada streams from flowing northward toward the San Joaquin River and thence into San Francisco Bay and the Pacific Ocean. Water trapped south of the Kings River Delta and the deltas of other rivers to the south formed several inland lakes and sloughs. The most northerly and the largest of these shallow flooded depressions was the Tulare Lake Basin, which today constitutes about 20% of the Kings River Service Area.

The Tulare Lake is truly unique. There is no other area like it anywhere else in the world. There is no natural outfall and all flood waters entering the lake bed from the Kern, Tule, Kaweah and Kings Rivers and the numerous smaller foothill streams remain until consumed by evaporation or irrigation of nearby unflooded lands. The heavy clay soils prevent any measurable percolation into the ground water aquifers.

Despite the considerable hazard from both flood and drought, the Tulare Lake area was developed and farmed many years prior to the construction of Federal flood control reservoirs on the tributary streams (completed in 1954-1962) and prior to introduction of imported supplies from the California State Water Project (1968) by utilizing water supplies from:

1. Flood waters impounded in Tulare Lake, when available;
2. Water rights in and to the waters of tributary steams, principally Kings River, without the benefit of storage in mountain reservoirs;
3. A small amount of relatively inefficient regulatory storage in shallow reservoirs on lands northerly and easterly of Tulare Lake;
4. Groundwater wells.

The extent of cropping in any given year was generally limited by: (1) the available water supply and (2) flooding conditions. The Federal flood control dams on Kings, Kaweah, Tule and Kern Rivers

Irrigating Cotton Tulare Lake

Water Well

Portable Pump

Disc

Ripper

Farming in Tulare Lake: Flood hazards, heavy soils and poor water conditions make farming in small tracts infeasible in the Tulare Lake area.

These cotton gins and the surrounding farm lands were flooded from February 1969 until August 1971

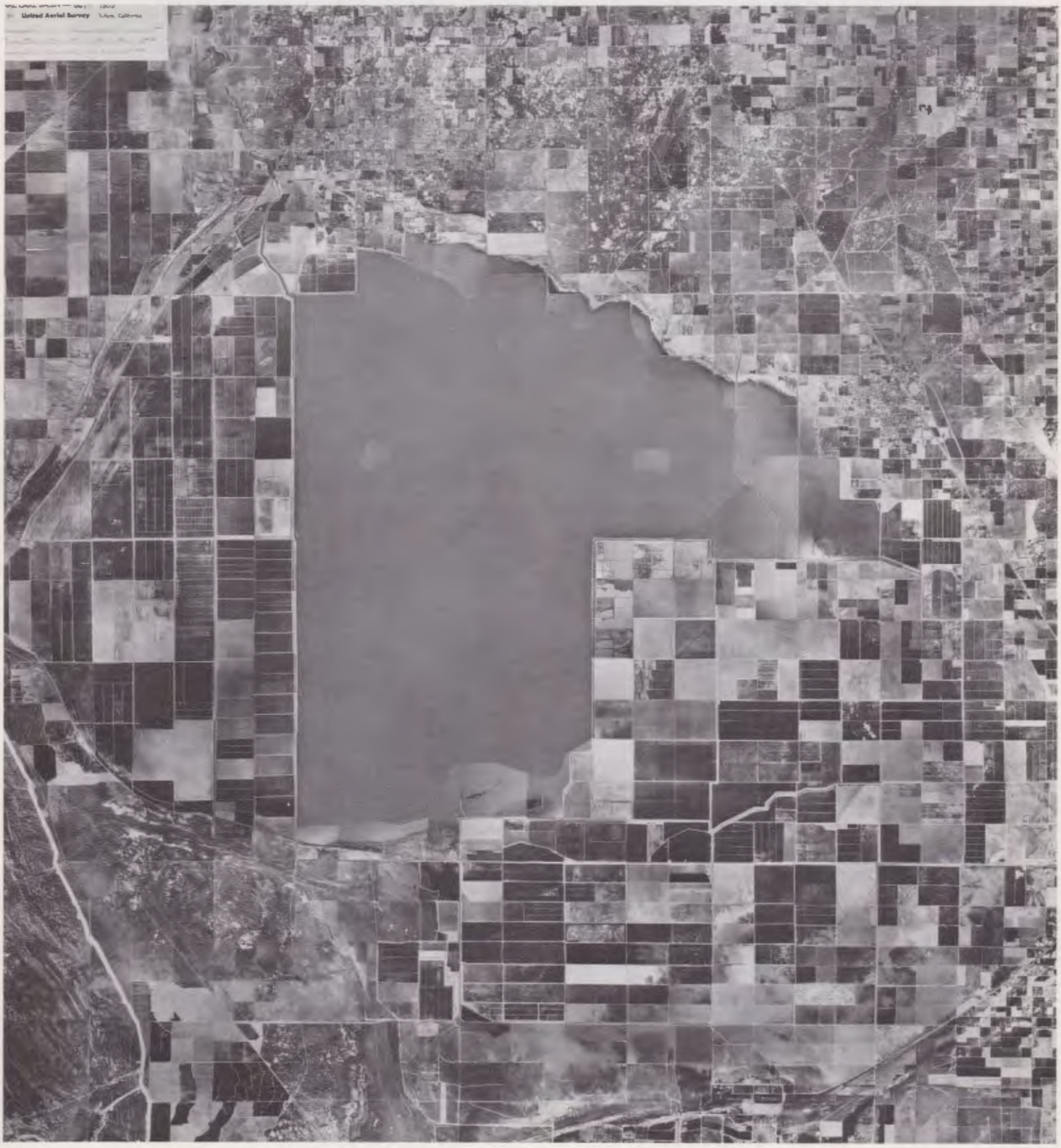
Flooded and non-flooded lands

Work on El Rico Levee

Auto Bodies for wave protection

Auto Bodies—closeup

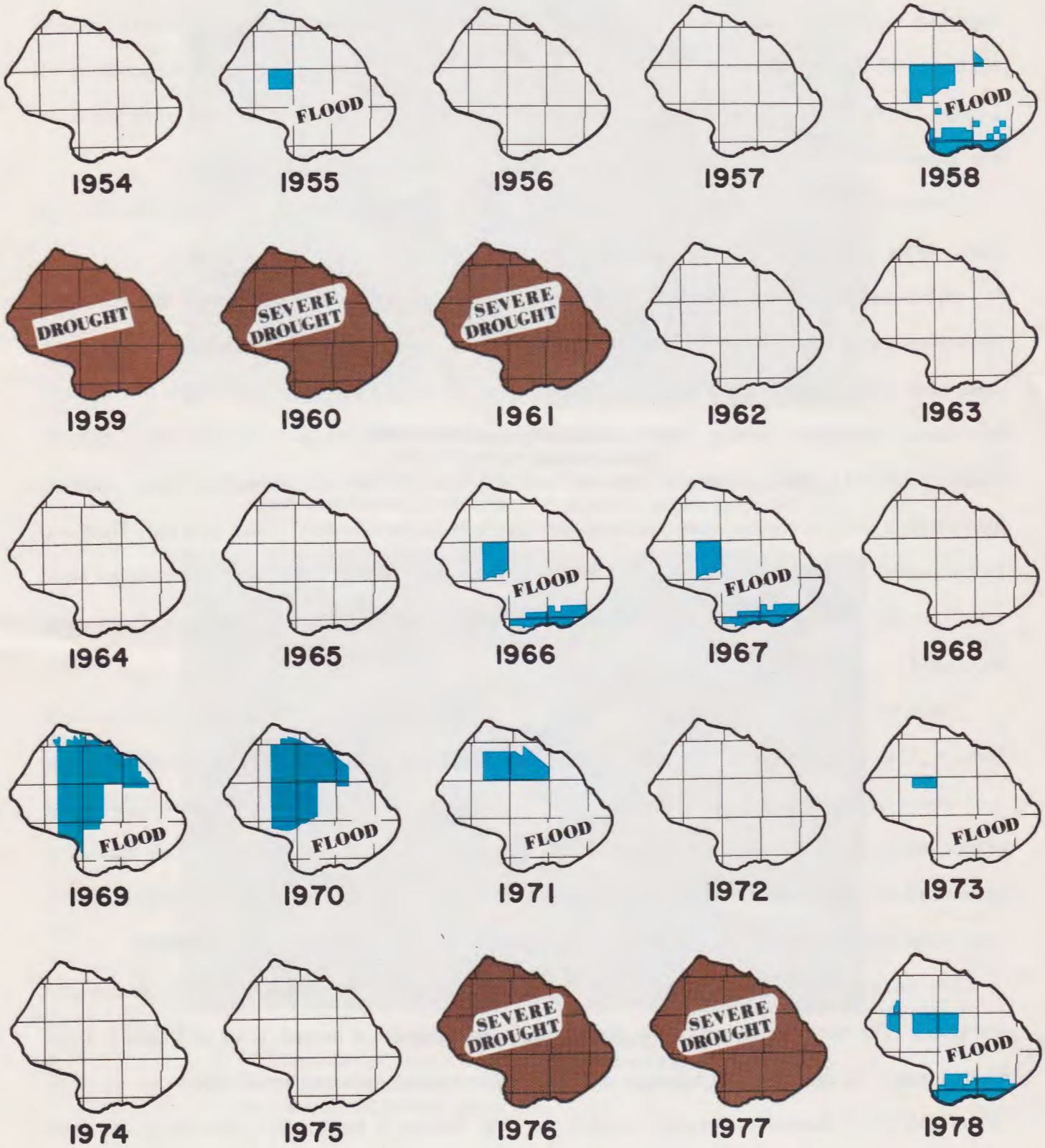
FLOODING IN TULARE LAKE OCTOBER 5, 1969



Scale of Miles

0 1 2 3 4 5 6

CONDITIONS IN THE TULARE LAKE AREA SINCE COMPLETION OF PINE FLAT DAM



have substantially reduced, but not eliminated, the hazard of flooding and have provided regulatory storage to make more efficient use of locally owned water rights. The State Water Project provides an important supplemental water supply to Tulare Lake lands on a relatively dependable basis to reduce the hazard of drought. However, the Federal and State projects have not changed the basic nature of Tulare Lake farming operations, nor have they resulted in the farming of any additional lands that were not farmed, at least periodically, prior to their completion.

Most of the Kings River Service Area outside of Tulare Lake is farmed in small to medium size units, with a diversity of orchards, vineyards, vegetables and other crops.

In contrast, the Tulare Lake area is farmed in large tracts necessitated by physical and economic constraints caused by flood hazard, heavy poorly drained clay soils and intermittent and sometimes inadequate water supplies. Over the years, small farmers in Tulare Lake have been unable to withstand the financial burden of fighting floods, temporarily abandoning flooded lands and the special cultural practices dictated by the soil and drainage conditions. Historically, the small farmer has either expanded his operation to an economic size, has leased his land to a larger operator, or has sold out. There are no permanent on-site farm residences or permanent plantings in Tulare Lake, but well managed large scale operations of field crops such as cotton, safflower, feed grains and alfalfa have been quite successful.

There are 177 separate landowners within the 188,000 acres of the Tulare Lake Basin Water Storage District, 124 of these owning 160 acres or less. However, there are only 15 operators in the District, 9 of whom farm about 98% of the District area. The other 6 operators farm from 320 to 1,248 acres of land within the District, but it should be added that each of these smaller operators farms substantial areas of additional land in the general Tulare Lake area that lie outside of the District boundaries. Many small farm ownerships are operated by large operators, in combination with their other lands.

The flooding and flood hazard conditions in Tulare Lake are shown on accompanying photographs and charts. The very real nature of the continuing Tulare Lake flood hazard, even with federal flood control reservoirs on the major tributary streams, is documented in a number of reports by the U.S. Water and Power Resources Service (formerly the U.S. Bureau of Reclamation) and the U. S. Army

Corps of Engineers. In addition, flood is not an insurable cause of loss by the Federal Crop Insurance Corporation (an agency of the U. S. Department of Agriculture) for approximately 300,000 acres of land in the Tulare Lake Basin.

FARM SUPPORTED FAMILIES IN THE TULARE LAKE AREA

In the classic sense, there are no "family farms" in the Tulare Lake area. However, the large farming operations, nearly all of which are owned and managed by second and third generation descendants of the pioneers who developed the area, provide an economic and social structure which achieves many desirable economic and social goals.

A 1977 survey of one large ranching operation indicates that the company employs approximately three full time employees for each section of land farmed. Expressing it another way, about three farm families are supported year-round by each 640 acres of land or, more exactly, one family for each 220 acres. In addition, to meet peak labor requirements, part time help is used to the extent of about 500 hours per year per section.

These numbers do not include personnel involved in the processing of the crops after leaving the field, nor do they include personnel working in support industries such as farming equipment, supplies, trucking, fertilizers, insecticides, gypsum, etc.

The basic wage rates (1979) vary from a ranch minimum of $5.05 per hour for irrigation labor to $6.00 per hour for operators of sophisticated equipment, with most of the hourly employees receiving wages in the range of $5.25 to $5.75 per hour. The average earnings of full time hourly employees are about $12,000 per year. In addition, employee related expenses and fringe benefits averaging an additional 25% of basic wages are provided. They include medical insurance, life insurance, Social Security, Worker's Compensation insurance, unemployment insurance, a generous retirement income program and paid vacation.

Thus, in a social sense, each ranch employee represents a farm family supported by and responsible in part for the success of the ranching enterprise. By operating together, with each person working in his special field, the total ranch income is maximized, the risk of loss of income is greatly reduced and heavy personal investment is eliminated.

FEDERAL, STATE AND LOCAL WATER AGENCIES INVOLVED

Water management in the Kings River Service Area in general, and the Tulare Lake area in particular, involves close coordination with a large number of Federal, State and local agencies, each with important functions to perform. A summary of the more significant of these follows:

Agency or Type of Agency	Function
U. S. Army Corps of Engineers	Construction and operation of the Pine Flat Project for flood control and irrigation purposes.
U. S. Water and Power Resources Service (formerly the Bureau of Reclamation)	a) Contract administration of the irrigation benefits from Pine Flat Reservoir. b) Sale and delivery of irrigation water from the Friant Division of the Central Valley Project to certain areas within the Kings River Service Area and others.
State of California Department of Water Resources	Sale and delivery of imported water from the California State Water Project to the Tulare Lake area and others.
Kings River Water Association	Administration of privately owned water rights of the twenty-eight member units of KRWA, including use of Pine Flat Project storage.
Kings River Conservation District	Administration of designated floodway program to assure preservation of channel capacities; development of hydroelectric power generation facilities at and upstream from Pine Flat Dam; and proposed water importation through the Mid-Valley Canal Project.
Tulare Lake Basin Water Storage District	Administration of water rights in Kings River and other streams; administration of State Project Water supplies and conveyance of same to the District's boundaries.
Twenty-seven other member units of the KRWA	Administration of their respective water rights in Kings River; administration of such other water supplies as may be available to the units and, in some cases, distribution to the individual water users.
Reclamation Districts	These local districts, about ten in number, serve principally to provide flood control to district lands; in addition, some reclamation districts provide a partial irrigation water supply.

Agency or Type of Agency	Function
Approximately 16 Mutual Water Companies	Water supply and some distribution.
Approximately 12 Mutual Water Companies	Water distribution with minor water supplies.
Tulare Lake Drainage District	Collection and disposal of poor quality drainage waters.

WESTLANDS SITUATION DISTINGUISHED FROM KINGS RIVER SITUATION

Much has been said in the news media concerning the Westlands Water District. Although the Westlands Water District lies immediately to the west of the Kings River Service Area, the two areas should not be confused, as substantial differences exist between them. For example, Kings River water has always been used by the local water users in the Kings River Service Area, whereas the water being supplied to Westlands could never have been obtained by the Westlands landowners without the federal project.The following additional comparisons demonstrate other significant differences between the two projects and project areas:

Subject	San Luis Project and the Westlands Water District	Pine Flat Project and the Kings River Service Area
Authorization	San Luis Project Act of 1960 (74 Stat. 156). Constructed by the U.S. Bureau of Reclamation (now W&PRS) as a unit of the Central Valley Project.	Flood Control Act of 1944 (58 Stat. 887). Constructed by the U.S. Army Corps of Engineers, principally as a flood control project with incidental irrigation benefits.
Contracting parties	Westlands Water District, a district organized in 1952 for the express purpose of acquiring a supply of imported water for its landowners.	Twenty-eight member units of the Kings River Water Association, formed in 1927 to coordinate water use among public districts and privately owned mutual water companies.

Subject	San Luis Project and the Westlands Water District	Pine Flat Project and the Kings River Service Area
Water supplies available without the San Luis or Pine Flat Projects	A diminishing supply of groundwater.	1. Long-established privately owned water rights in Kings River. 2. Groundwater. 3. For some users, contracts with the State Water Project. 4. For some other users, contracts with the USBR for CVP water from the Friant-Kern Canal.
Water supply provided by the federal facilities	A "new" supply of imported, federally owned water sufficient to meet about 80% of total irrigation water requirements.	No "new" water.[1] Provides regulatory storage for privately owned water for delivery at more useful times.
Water distribution facilities	Federally owned.	Privately owned.
Recordable contracts, wherein the large land owners agree to dispose of their "excess" lands within a 10-year period as a condition for receiving project water	Executed by all "excess" landowners in Westlands who now receive San Luis Project water.	None executed to date and none contemplated to be executed, since landowners can continue to farm, if less than efficiently, without use of Pine Flat storage.
Representations by the United States to the local people	Reclamation law would apply, including the acreage limitation provisions thereof.	If reclamation law applied to the Pine Flat Project at all, the acreage limitation provisions of reclamation law would not apply upon payout of the Project costs allocated to irrigation benefits.
Representations by the local people to the United States.	Westlands landowners accepted the fact that the acreage limitation provisions of reclamation law would apply to all users of Project water. The rules and regulations concerning their administration are currently being reviewed.	Landowners on Kings River have consistently stated that they would forego use of Pine Flat Reservoir rather than become subject to the acreage limitation provisions of reclamation law. (See, for instance, the 1941 hearings before the House Flood Control Committee, and H.R. Rep. No. 1309, 78th Cong., 2nd Sess. 43, 1944)

[1]The United States had a disputed claim to the so-called Fresno Slough rights, which claim was conveyed to the Kings River interests in 1965 in consideration for $750,000.

IMPACT ON WATER USERS IF ACREAGE LIMITATION PROVISIONS OF RECLAMATION LAW WERE TO BE APPLIED TO WATER STORED IN PINE FLAT RESERVOIR

On Kings River in California, the application of the excess land provisions of reclamation law would destroy the delicately balanced irrigated agricultural economy that now exists. For the large landowner, it would be expensive and inefficient. For many of the small landowners, it could be disastrous.

The large landowner could and would survive application of reclamation law by simply turning back the clock and returning to the irrigation practices which he followed before Pine Flat Dam was completed in 1954. As a matter of fact, he is now much better off because of the reduced flood hazard to lands along the Kings River and in Tulare Lake and because of the partial supplemental water supply which is available from the State Water Project.

Many of the smaller operators, particularly those in the middle and lower reaches of Kings River, however, desperately need the cooperative assistance of the large landowners and their water rights. With the loss of "carrying water", if the large landowners run their water by natural flow (without the use of Pine Flat Reservoir storage), the small landowners stand a good chance of losing much, if not all, of their water in the soaking of the stream bed (channel losses) between Pine Flat Dam and their respective diversion points.

For this and other reasons, large and small landowners alike have continually opposed the efforts to apply reclamation law, and particularly the acreage limitation provisions of reclamation law, to the Pine Flat Project. In an amicus curiae brief filed in Federal Court on behalf of the smaller water users, attorney J. Thomas Crowe stated that any such application of acreage limitations to water stored in Pine Flat Reservoir would produce " . . . chaotic and disastrous . . ." consequences for all Kings River water users.

Within the Tulare Lake area itself, the problems for any possible 160-acre farmer who might establish a farming enterprise would be physically and economically impossible. He would be subjected

to the problems of flood, drought, insufficient Kings River water rights, and lack of any groundwater supply (if he were located in the southwesterly two-thirds of the Tulare Lake area) or a very expensive groundwater supply (if he were located in the northeasterly one-third of the area).

Furthermore, because of the heavy clay soils, flood hazard and drought conditions, he would not be able to grow the high income orchard, vineyard and vegetable crops that make smaller farming operations economically feasible in other parts of California, including the upper Kings River area.

These same conclusions have been reached in all studies of the Tulare Lake area with which we are familiar, including two in-depth studies by the United States Bureau of Reclamation, one prepared in 1947 and the other in 1971.

The evidence is overwhelming that the farm families who now support and are supported by the Tulare Lake area farming enterprises could not hope to economically survive the experiment of farming these same lands in small individually operated tracts.

If there is any social purpose to be achieved by putting these families out of work so that others can be placed on the land which they are presently farming, it has not yet been explained to them.

WIDESPREAD SUPPORT FOR THE WATER USERS VIEWPOINTS

The widespread support for the viewpoints of the Kings River water users is evidenced by:

1. Assembly Joint Resolution No. 22, passed virtually unanimously by the California State Legislature and filed with the Secretary of State on July 20, 1979. (See copy on Page 23)
2. Resolutions of support adopted by:
   - (a) Fresno County Board of Supervisors
   - (b) City of Fresno
   - (c) Kings County Board of Supervisors
   - (d) City of Hanford
   - (e) City of Corcoran
   - (f) City of Lemoore
   - (g) Kings County Water Commission
   - (h) Kings River Conservation District
   - (i) Kings County Water District
   - (j) Lakeside Irrigation District
   - (k) Westlands Water District
   - (l) Fresno City and County Chamber of Commerce
   - (m) Fresno County Farm Bureau
   - (n) Fresno Metropolitan Water Agencies Joint Committee
   - (o) Committee to Save the Kings River
3. Editorial support by: (a) Fresno Bee (b) Hanford Sentinel

Assembly Joint Resolution No. 22

RESOLUTION CHAPTER 47

Assembly Joint Resolution No. 22 — Relative to federal reclamation law.

[Filed with Secretary of State July 20, 1979.]

LEGISLATIVE COUNSEL'S DIGEST

AJR 22, Lehman. Reclamation law: Kings River.

This measure would request the President and the Congress to enact legislation to specifically exempt the Kings River Service Area from the provisions of federal reclamation laws and also to modernize such reclamation laws to recognize the changes that have taken place in agriculture.

WHEREAS, Pine Flat Dam on the Kings River, California, was authorized by the Flood Control Act of 1944 for construction by the U.S. Army Corps of Engineers primarily as a flood control project with incidental conservation storage of water for irrigation; and

WHEREAS, The Kings River water users owned 100 percent of the rights to use such Kings River water for more than 80 years before such flood control dam was built; and

WHEREAS, The Kings River water users have paid or contracted to pay all the costs allocable to irrigation storage behind Pine Flat Dam; and

WHEREAS, For many years, representatives of the United States repeatedly stated that this project would not come under reclamation law or the restrictions thereof; and

WHEREAS, By virtue of building the dam, no "new" water was created, no "new" lands came into cultivation, no "arid" lands were reclaimed, and no "public" lands were opened for settlement; and

WHEREAS, No distribution facilities were built by the United States; and

WHEREAS, A substantial portion of the Kings River service area lies within the Tulare Lake Basin and is not susceptible to farming in small tracts due to periodic flooding and other factors; and

WHEREAS, In spite of such aforementioned facts, the Ninth Circuit Court of Appeals has reversed a judgment of the trial court and decreed that the reclamation laws of the United States apply to all waters stored behind Pine Flat Dam; and

WHEREAS, Such decree will cause the larger users to forego storage of their privately owned water and use it under natural flow conditions as was done before Pine Flat Dam was built; and

WHEREAS, Such natural flow use will destroy most of the recreation benefits of the reservoir and harm the smaller users of Kings River water by substantially increasing their reliance on already overdrafted and costly groundwater supplies; and

WHEREAS, As a matter of fairness and equity, such aforestated facts dictate that the beneficiaries of the Pine Flat Project should be exempt from the provisions of reclamation law; and

WHEREAS, Legislation has been introduced in the House of Representatives specifically to exempt such Kings River service area from such laws; and

WHEREAS, Legislation has also been introduced in the House of Representatives which would modernize such reclamation laws to recognize the changes that have taken place in agriculture, this state's number one industry, over the past 76 years; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation to specifically exempt the Kings River service area from the provisions of reclamation law and also to modernize such reclamation laws to recognize the changes that have taken place in agriculture; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.