

Jeff Jardine: Tuolumne County has no rights to water that flows through it

BY JEFF JARDINE

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A ditch near Twain Harte carries water from Lyons Lake that eventually ends up in Phoenix Lake, where Sonora finds its supply. **JEFF JARDINE** — jjardine@modbee.com [Buy Photo](#)



Two of the Sierra's most prominent rivers, the Stanislaus and Tuolumne, run right through Tuolumne County. They cut some pretty massive and spectacular canyons, in fact. Between them and on them, 10 dams can store about 6 million acre-feet of water.

And the county's water agency, the Tuolumne Utilities District, owns rights to none of it. The city and county of San Francisco own senior rights on the Tuolumne River, with the Turlock and Modesto irrigation districts controlling Don Pedro Reservoir.

The Oakdale and South San Joaquin irrigation districts, the federal Bureau of Reclamation and PG&E control the Stanislaus – all three forks of it. OID and South San Joaquin, through the Tri-Dam Project, own Donnell, Beardsley and Tulloch reservoirs. The Bureau of Reclamation operates New Melones and its 2.4 million acre-feet of storage.

Tuolumne Utilities District generally gets more than 17,000 acre-feet of water free from Lyons and Pinecrest reservoirs, both on the south fork of the Stanislaus River and both owned by PG&E. When it needs more than its allotment, the district pays \$250 per acre-foot. But this year, with a lousy snowpack, water levels at Pinecrest and Lyons are lower than normal for this time of year. TUD recently imposed water restrictions on its customers. Because the extra water likely won't be available this year from the lakes above, officials had to go begging for water and found kind souls many miles downstream in Manteca.

After Oakdale refused Tuolumne's plea for help, South San Joaquin offered to sell 2,400 acre-feet of water at \$200 per, meaning – symbolically, at least – that water will run back uphill. An acre-foot is about 326,000 gallons, enough to supply an average San Joaquin Valley family for 12 to 18 months. TUD serves about 40,000 people.

The Chicken Ranch Band of Me-Wuk Indians, which owns the Chicken Ranch Casino in Jamestown, offered to pick up the tab.

How could this be? How can so much water, in good years and bad, pass through the county and its people have no rights to it? How can it saunter through to Valley farms and sold on occasion to other water customers without the Tuolumne County folks at the source having first dibs?

Pretty simply, one water world veteran said. "To obtain water rights, you have to file on it," said Cecil Hensley of Waterford, who served on Modesto Irrigation District's board of directors for two decades but began his career in irrigation with the Waterford Irrigation District in 1955. "It's like a pickup truck. Until you have the pink slip, you don't have the right to drive it."

And Tuolumne County's 22-year-old water agency holds no pinks slips on either river, nor did its predecessors, Tuolumne County Water Districts 1 and 2. San Francisco does. So do Turlock, Modesto and PG&E, all of whom have the pre-1914 water rights that are more valuable than post-1914 rights.

The feds? They pretty much do as they please, basically confiscating the old Melones dam built by the OID and South San Joaquin in the 1920s by drowning it with water behind the New Melones dam in the early 1980s. During the planning of New Melones, Tuolumne water officials tried to negotiate purchase rights to water and, TUD spokeswoman Lisa Westbrook said, documents detail some of those conversations. But they found themselves shut out completely when the deal was done, she said.

Indeed, Valley and big-city leaders displayed greater foresight, political power and will than the folks in the mountain counties. They locked up water rights, not unlike the way Southern California gained rights to Owens Valley and Colorado River water.

Water rights and water wars on the Stanislaus began during the Gold Rush era. One of the early rights holders was the Tuolumne County Water Co., controlled by Sacramento businessman D.O. Mills and some San Francisco investors – not the county or its residents.

Mining drove water rights in the early years. The Tuolumne company and the Columbia and Stanislaus River Water Co. built intricate systems of canals, or ditches, some of which still exist. According to a former U.S. Forest Service historian Pamela Conners, the Columbia-Stanislaus company fell prey to foreclosure by creditors linked to Mills. The Carlo M. De Ferrari Archives in Sonora contain pages upon pages of records noting civil lawsuits involving water rights owners and competitors, or against customers who failed to pay their bills.

Eventually, PG&E snapped up rights on the main and south forks, as well as the north fork in Calaveras and Alpine counties.

On the Tuolumne River, San Francisco began its move on the river by hiring an engineer who had been fired by the Modesto Irrigation District, which claimed rights on the Tuolumne in the 1800s. He, San Francisco Mayor James Phelan and another engineer bankrolled surveys and water filings, according to the book “The Greening of Paradise Valley – The First 100 Years of Modesto Irrigation District.”

Phelan even filed a claim for water rights as a private citizen in 1901. In 1913, and with plenty of politicking along the way, the Raker Act cleared the way to build HetchHetchy Reservoir on the upper Tuolumne. The legal battle involved San Francisco versus the Valley irrigation districts at the local levels; the Sierra Club and John Muir fought the government agencies at the higher rungs. Tuolumne County officials don’t even get a mention.

Attempts by Tuolumne County supervisors in the late-1950s and early 1960s to develop water storage in the southwestern part of the county never materialized, nor did a plan by the county and Turlock Irrigation District to dam the Clavey River in the early 1990s. Too little, too late.

Because Tuolumne County leaders from the early days didn’t foresee the need to secure rights more than a century ago, officials there have no clout or claim to the rivers today.

In times of drought and severe water shortages like we’re now experiencing, the county’s water agency is a buyer – not a seller or owner – even though two rivers run through it.

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