

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

D. Field

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In the matter of Application 5826 of Newman Land Company
for a permit to appropriate from Mud Slough, a con-
fluent of San Joaquin River Drainage, for
agricultural purposes.

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DECISION NO. 5826 D-209

Decided *Dec 31, 1928*

APPEARANCES AT HEARING HELD AT SACRAMENTO, NOVEMBER 20, 1928.

For Applicant

W. P. Gaubu, Atty.
Claus Spreckles Bldg.
San Francisco, Calif.

For Protestant

Fred B. Wood of
Hatfield, Wood & Kilkenny
315 Chancery Bldg.
San Francisco, Calif.

EXAMINER: Harold Conkling, Chief of Division of Water Rights

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O P I N I O N

This is an application to appropriate 10 cubic feet per second from
June 1st to December 31st for the irrigation of some 746 acres part of which
would be in rice. It was protested by James J. Stevinson, a Corporation.

The application was filed February 7, 1928, completed in accordance
with the Water Commission Act and the requirements of the Rules and Regulations
of the Division of Water Rights and being protested was set for a public hear-
ing at Room 401 Public Works Building, Sacramento, at 10:00 o'clock A.M. on
Tuesday, November 20, 1928. Of this hearing applicant and protestant were
duly notified and appearances thereat were made on behalf of both.

The protest by James J. Stevinson alleges protestant's adjudicated right to appropriate 500 second feet for the irrigation of 20,000 acres of land riparian to San Joaquin River and that any diversion from the source specified in the application will be injurious to protestant at any time the flow of the river is less than the amount claimed by protestant.

Mud Slough from which applicant would appropriate is one of the confluents of San Joaquin River, entering said stream from the West at a point approximately one mile above the mouth of Merced River and below all diversions of the protestant, according to the testimony of protestants own witnesses. In periods of extreme high water the San Joaquin River overtops its banks and spreads out to the westward feeding the upper reaches of Mud Slough, but during the periods of normal flow there is no surface connection between the two streams except at a point some two miles downstream from applicant's proposed point of diversion. It is impossible therefore for the diversion by applicant to affect the flow in San Joaquin River at the diversion point of protestant.

Protestant alleges, and it appears to be the fact, that during high water the overflow tops the banks of San Joaquin River below the confluence of Mud Slough thereby irrigating and otherwise benefiting abutting lands of protestant. But during the period of diversion proposed in this application (i.e. from June 15th to December 31st) there would only infrequently be sufficient water flowing in San Joaquin River to create this condition and therefore the proposed appropriation of applicant would only very infrequently affect the situation from this standpoint. If protestant has rights which should be respected during such infrequent periods the burden will be upon applicant to conduct himself accordingly.

We are not impressed with protestant's claim that the proposed diversion of applicant would materially affect the sub-irrigation of protestant's lands from San Joaquin River. The facts are that San Joaquin River throughout this area particularly during the period June 15th to December 31st acts as a drainage channel rather than as a feeder of the underground water. This is evidenced by the fact that measurements of the flow plainly indicate it is a rising stream. Records of the flow measured by engineers of the Division of Water Rights during recent years at various points both above and below the confluence of Mud Slough indicate that San Joaquin River in this vicinity is a gaining rather than a losing stream during the period of diversion proposed by applicant and therefore the flow is from ground water to stream rather than vice versa.

The Division of Water Rights is therefore impelled to believe that diversion of 10 second feet from Mud Slough will not appreciably lower the water plane under protestant's land and that the appropriation may be consummated without depriving protestant of any water rightfully used. The use proposed is beneficial and the application will be approved.

O R D E R

Application 5826 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 5826 be approved and that a permit be granted to the applicant subject to such of the usual terms

and conditions as may be appropriate.

Dated at Sacramento, this 31 day of *dec*, 1928

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

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