

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

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In the Matter of Application 6276 of A. J. Warrington to  
Appropriate from Dog Creek, Tributary to Virginia Creek  
in Mono County for Mining Purposes.

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DECISION A. 6276 D-267

Decided *August 25, 1930*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, JANUARY 27, 1930

For Applicant

A. J. Warrington

J. M. Walthall

For Protestants

Walker River Irrigation District)

I. A. Strosnider, et al )

Dressler, et al., successors in )

interest of C. E. Loose, Corp.)

W. M. Kearney

EXAMINER: Everett N. Bryan, Hydraulic Engineer, Division of Water Resources,  
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Under Application 6276 filed May 3, 1929, it is proposed to divert  
3 cubic feet per second by direct diversion from October 1st to June 23th of  
each season and 200 acre feet per annum by diversion to storage from January  
1st to June 1st of each season from Dog Creek tributary to Virginia Creek in  
Mono County. The maximum rate of diversion to storage is 3 cubic feet per  
second. The point of diversion is within the NE<sub>1</sub> of SE<sub>1</sub> of Section 16, T 3 N,  
R 25 E, M.D.B. & M. After being used for placer mining purposes the water is

to be returned to Virginia Creek at a point within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 11, T 3 N, R 25 E, M.D.S. & M. The placer mines are located within the SW $\frac{1}{4}$  of Section 11 and the NE $\frac{1}{4}$  of Section 10, T 3 N, R 25 E, M.D.S. & M. The application was protested by Walker River Irrigation District, I. A. Stroenider, et al., and C. E. Loose Corporation.

#### PROTISIS

The Walker Irrigation District alleges in effect that there is no unappropriated water in Dog Creek, and that there is a suit pending in the U. S. District Court for the District of Nevada entitled "United States of America, Plaintiff, v. Walker River Irrigation District, et al., Defendants, wherein the United States of America claims a shortage of water on behalf of the Walker River Indian Reservation and seeks to enjoin any additional use of water by the Walker River Irrigation District, et al.

C. E. Loose Corporation claims the right to the waters which applicant seeks to appropriate by virtue of riparian ownership and use begun prior to December 1914 and alleges in effect that the approval of the applications would reduce the amount of water now available and required for irrigation, stock watering, domestic and other uses.

I. A. and Fred Stroenider, Joe Scairine and the Plymouth Land and Stock Company allege in effect that there is insufficient water available in the source from which applicant proposes to divert to supply their needs. The protest also mentions the suit referred to above in the protest of the Walker River Irrigation District. Protestants also allege injury to their lands by the deposition of tailings and debris thereon.

HEARING SET IN ACCORDANCE WITH SECTION 1a  
OF THE WATER COMMISSION ACT

Application 2278 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing, in accordance with Section 1a of the Water Commission Act on January 27th, 1930, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestants were duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

Dog Creek, the source of supply from which the applicant seeks to appropriate rises on the northerly and easterly slope of Banderberg Mountain in the Sierra Nevada Mountains and flows northerly a distance of about 8 miles to its junction with Virginia Creek which in turn is tributary to East Walker River at a point about four miles below. The point of diversion is located about  $\frac{1}{2}$  miles above the junction of Dog Creek and Virginia Creek at an elevation of about 8100 feet above sea level. According to the Bridgeport quadrangle of the United States Geological Survey the runoff at the proposed point of diversion is from a watershed of 5 or 6 square miles, the maximum elevation being about 12,300 feet above sea level. The runoff consists of melting snow and occurs principally from about November to June of each season.

DISCUSSION

The lands of protestants I. A. and Fred Strosniider, Joe Sceirine and the Plymouth Land and Stock Company are located in Bridgeport Valley in the vicinity of the junction of Virginia Creek and East Walker River and above the Bridgeport Reservoir of the Walker River Irrigation District. The water rights

of these protestants were involved in a suit entitled "Pacific Livestock Company v. P. B. Richey, et al.", which resulted in the adjudication by the Court of the water rights in the valley. The Decree was signed by Judge Pooling, District Judge in the United States District Court for the District of Nevada on March 22, 1919 and a copy of this decree was submitted at the hearing as protestants' Exhibit No. 1.

According to the Decree the water rights of these protestants have priorities dating from 1860 to 1890. From a description of the lands as set forth in their protest and the amounts of water allotted to those lands by the Decree it appears that these protestants were allotted about 101 cubic feet per second for use upon about 6,113 acres of land. Testimony presented at the hearing indicates that a large portion of the lands are used for grazing purposes and are uncultivated.

Protestant J. E. Loose Corporation prior to the hearing was represented by Mr. George L. Sanford, who in reply to a telegram asking him if his client would be represented at the hearing replied that it was uncertain due to storm conditions. He also stated that the damage to his client would be "through debris and loss of water consumed by Warrington". He also stated that he assumed if a permit were issued it would be granted subject to prior rights and that it would be possible to "maintain injunctive and other relief at any time". At the hearing Mr. Kearney, attorney for the other protestants stated that he would represent the Dressler interests who it appears have succeeded to the interests of J. E. Loose Corporation. No testimony was presented as to the use of water made by either J. E. Loose Corporation or Dressler and it is not apparent that the lands of these protestants were included in the Decree of 1919.

Under Application 1389, Permit 2536 the Walker River Irrigation District has the privilege of diverting 57,000 acre feet per annum of the waters of East Walker River from September 1st to July 20th of each season for irrigation purposes. The storage reservoir which is located in the lower end of Bridgeport Valley has a capacity of 42,000 acre feet. It appears that the reservoir was completed in 1923 and since its completion has only been filled once on account of a deficiency in the water supply.

The Walker River Irrigation District as well as other users of water in the Bridgeport Valley are at the present time involved in a law suit brought by the United States of America against the Walker River Irrigation District, et al., involving a question of the right of the Government to reserve water rights under a priority of 1859 for some 10,000 acres of land embraced in the Walker River Indian Reservation. Until the case is decided, the District is of the opinion that further construction work should be delayed.

Testimony presented at the hearing indicated that during a year of normal runoff there is sufficient water in the East Fork of Walker River to satisfy the decreed rights in the Valley from about the middle of May to about the first of July. At times during this period, when there has been a considerable fall of snow in the mountains, there is a surplus but this surplus flows down to the Bridgeport Reservoir of the Walker River Irrigation District and is stored therein for irrigation purposes under its permit from this office. It appears that should the applicant be allowed to store 200 acre feet of these waters very little if any thereof, would ever reach the Bridgeport reservoir because of the fact that the waters so stored would be released at a time when they would either be lost entirely by evaporation and percolation in transit or captured by the users of water in Bridgeport Valley before reaching

the reservoir. It is therefore our opinion that the storage feature of the application should not be approved.

As to the direct flow which applicant proposes to divert from about October 1st to about June 30th, the water after being used for ground sluicing will be returned to Virginia Creek at a point above the points of diversion of the protestants. The use is a non consumptive one and the only loss involved would be in transportation. Although the testimony presented at the hearing indicated that conveyance losses were considerable in that locality the applicant indicated that if he found such to be the case he might substitute either a flume or pipe line for the ditch proposed. In any case it appears the seepage losses from the ditch would normally find their way back into the stream above protestants.

The protestants introduced testimony to the effect that it would be impossible for the applicant to divert water during the months of December, January, February and March on account of the fact that the water froze in the streams. The applicant introduced testimony to the effect that this condition did not always exist. It appears reasonable to assume, since the point of diversion of the applicant is at an elevation of more than 8,000 feet, that there would be times during the winter months that snow and ice conditions would prevent his diversion, but it is apparent that should this condition exist the protestants would not be injured thereby. The period of diversion may be determined if and when license action is taken.

The protestants I. A. Strosnider, et al., are concerned with the possible pollution of the waters of Virginia Creek resulting from the mining operations of the applicant. Testimony presented at the hearing indicated that in

the past the waters of Virginia Creek were impregnated with a sediment or slime which was deposited upon the grass and rendered it unfit for grazing purposes. It is not entirely clear whether the pollution was occasioned by mining operations, by sheep herding, or by highway construction. The applicant has constructed seven dams in Virginia Creek for the purpose of retaining the tailings and intends to construct other dams for the same purpose. The question arose at the hearing as to the jurisdiction of this office in such a matter and was discussed by briefs submitted by the attorneys subsequent to the hearing. While there can be no doubt that protestants are entitled to injunctive relief and damages if the mining operations of applicant injure them as feared no legal or other basis has been established upon which this office may deny the appropriation upon a showing that damage may result to protestants. Applicant proposes, and so far as we know it is entirely practicable, to construct debris dams by which the debris may be removed from the water before it reaches the lands of protestants. Relief for protestants in this matter lies not in denial of the application to appropriate but in injunctive or other relief through the courts.

#### CONCLUSION

The use to which applicant proposes to put the water is a useful and beneficial one. The place of use has been acquired by virtue of mining loca-tions and was at the time of the hearing under a 50 year lease to one Quincy Stephens together with such water rights as may be acquired. For reasons given above it is the opinion of this office that the storage feature of the application should not be approved. The direct flow under Application 6278 however, is to be used for non consumptive purposes and is to be returned to the stream above the points of diversion of the protestants and it is the opinion of this office that this feature of the application should be approved.

O R D E R

Application 6273 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 6273 be approved insofar as the direct diversion feature alone is concerned and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate, and

IT IS FURTHER ORDERED that the storage feature of the application be denied.

WITNESS my hand and the seal of the Department of Public Works, this  
25th day of August, 1930.

EDWARD HYATT, State Engineer

BY Harold Conkling  
Deputy

WES:MP

