

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

*File*

oOo

In the Matter of Applications 6318 and 6555 of Sidney W. Fish  
to Appropriate Water from San Jose Creek and Tributaries  
in Monterey County for Irrigation and Domestic  
Purposes.

oOo

DECISION A. 6318, 6555, D 287

Decided

*May 1, 1931*

oOo

APPEARANCES AT HEARING HELD AT SALINAS, MARCH 27, 1931.

For Applicant

Sidney W. Fish

Wm. A. Boekel

For Protestant

J. G. Burnette, Administrator of the Estate  
of Alexander M. Allan, deceased

C. F. Lacey

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

oOo

O P I N I O N

GENERAL FEATURES OF THE APPLICATIONS

Application 6318 was filed on June 7, 1929, by Sidney W. Fish.

It proposes an appropriation of 0.2 cubic foot per second by direct diversion throughout the entire year from San Jose Creek in Monterey County for irrigation and domestic purposes on 40 acres of land within Section 24, T 16 S, R 1 W, M.D.B. & M. The point of diversion is described as being within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 24, T 16 S, R 1 W, M.D.B. & M. The application was protested by A. M. Allan.

Application 6555 was filed on February 5, 1930, by Sidney W. Fish. It proposes an appropriation of 0.5 cubic foot per second by direct diversion throughout the entire year from Palo Corona (also known as Seneca) Creek and tributaries in Monterey County for irrigation and domestic purposes on 165 acres of land within Section 5, T 17 S, R 1 E, M.D.B. & M. The points of diversion are to be located upon Palo Corona Creek and its tributaries between the north and south boundaries of Section 5, T 17 S, R 1 E, M.D.B. & M. in the County of Monterey, at any point or points except upon the E $\frac{1}{2}$  of NE $\frac{1}{4}$  or NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of said Section 5. The application was protested by J. G. Burnette, administrator of the Estate of Alexander M. Allan, deceased.

#### PROTESTS

The protest of A. M. Allan against the approval of Application 6318 was filed August 12, 1929. Mr. Allan claims rights to the use of the waters of San Jose Creek based upon riparian ownership and appropriation and beneficial use for over forty years. He states that he has diverted the water throughout the entire year for domestic, stock and irrigation purposes, using all of the water during the summer months and during the remainder of the year as needed for the purposes stated above. He alleges in effect that there is no unappropriated water in San Jose Creek and any appropriation by applicant would interfere with his rights as riparian owner and appropriator. Mr. Allan stated that his point of diversion at the present time was approximately 2,000 feet above the point of diversion described in Application 6318 but at other times it had been both below and above Mr. Fish's proposed point of diversion.

The protest of J. G. Burnette, administrator of the Estate of Alexander M. Allan, deceased, against the approval of Application 6555 was

filed May 2, 1930. The protest is essentially the same as that filed by Mr. Allan against the approval of Application 6318.

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

Applications 6318 and 6555 were completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the water Commission Act on March 27, 1931, at 10:00 o'clock A.M. in the Board of Supervisors Room, Courthouse, Salinas, California. Of this hearing applicant and protestant were duly notified. (Mr. A. M. Allan having died since protest was filed, the administrator of his estate was notified.)

PHYSIOGRAPHY AND HYDROGRAPHY

San Jose Creek rises in the Santa Lucia Range at an elevation of about 3100 feet and flows in a general northwesterly direction a distance of approximately seven miles to its outlet on Carmel Bay. Its main tributaries are the North Fork or Las Animas Creek, Palo Corona or Seneca Creek, Van Winkleys Canyon and William's Canyon.

The entire watershed of San Jose Creek comprises a drainage area of 14.7 square miles of which about 14 square miles lies above the junction of Las Animas Creek and San Jose Creek where it is proposed to divert water under Application 6318. The drainage area of Las Animas Creek is 1.6 square miles and the drainage area of Palo Corona Creek above the north line of Section 5, T 17 S, R 1 E, M.D.B. & M. which is the northerly limit of the diversions proposed under Application 6555 is 1.3 square miles.

The following measurements of flow were submitted at the hearing:

Measurements by Hyde Forbes on May 17, 1929

San Jose Creek at junction of Las Animas Creek	1450 g.p.m.
Las Animas Creek at junction of San Jose Creek	30 g.p.m.
Palo Corona Creek at junction of San Jose Creek	325 g.p.m.
Van Winkley's Canyon at junction with San Jose Creek	270 g.p.m.

Measurements by H. D. Peters on July 30, 1929

San Jose Creek below junction with Las Animas Creek	31 g.p.m.
San Jose Creek above junction with Las Animas Creek	25 g.p.m.
Las Animas Creek above junction with San Jose Creek	9 g.p.m.
San Jose Creek above Allan intake	236 g.p.m.
Amount diverted through Allan pipe line	200 g.p.m.

Mr. Forbes estimated the minimum flow of Las Animas Creek in average years to be 10 g.p.m. and the minimum flow of San Jose Creek to be 150 g.p.m. There is no measurable underflow in San Jose Creek according to Mr. Forbes, the creek having a very shallow sand and rock fill. Water flows in a continuous surface stream from the junction of Palo Corona and Van Winkleys Canyon to the junction of Las Animas Creek.

USE OF WATER BY APPLICANT

The lands of Sidney W. Fish are designated on Exhibit 1 of applicant as Parcels A and B. Under Application 6318 applicant proposes to appropriate water for use on a portion of Parcel A and under Application 6555 it is proposed to appropriate water for use at a "dude ranch" on Parcel B.

Parcel A is comprised of two tracts of land. The larger, known as the Oliver Ranch and containing 610.53 acres was purchased from Mrs. Elizabeth Oliver on April 28, 1927, and the smaller tract, known as the Stephen Field property containing 42.7 acres was acquired by purchase in 1930.

The Stephen Field tract is located at the extreme westerly end of Parcel A and borders on San Jose Creek a distance of about 1500 feet.

This tract was at one time owned by Mr. A. M. Allan but was sold by him with a reservation of all the waters of San Jose Creek except such water as might be necessary for stock and domestic purposes and also the right to enter upon the land for the purpose of constructing and maintaining a dam or dams.

The only portion of the so called Oliver Ranch portion of Parcel A which borders on San Jose Creek is a small projection at the extreme south end through which the creek flows for a distance of approximately 31 feet. At this place which is in a rocky gorge, Mr. Fish in January and February, 1929, constructed a rock crib sump in the creek bed and installed a 2½" x 6" plunger pump (rated capacity 25 g.p.m.) direct connected to a 7½ H.P. motor by means of which water is lifted about 300 or 400 feet to a 50,000 gallon reservoir on applicant's property from where it is distributed for domestic, stock watering and garden and lawn irrigation purposes. The amount which Mr. Fish is using at the time is insufficient for his proposed development, being only ample for his present needs, and he is therefore asking for an additional amount of water.

The "homesite" of Mr. Fish on Parcel A is located on the crest of a ridge between the San Jose Creek watershed and the Carmel River watershed, at an elevation of about 450 feet. The greater portion of the lands which Mr. Fish seeks to serve lie within the San Jose and Las Animas Creek watershed to which his lands are riparian. None of Mr. Fish's lands are riparian to the Carmel River. No use of water has been made on that portion of Parcel A known as the Stephen Field property and apparently none is contemplated at the present time.

The lands which comprise Parcel B of applicant were acquired at different times most of the parcels having been purchased prior to January, 1929. The watershed of Palo Corona Creek south of the northerly boundary line of Parcel B lies almost entirely within that parcel. Testimony introduced at the hearing indicated that some water had been diverted from Palo Corona Creek by the applicant for stock watering and domestic purposes.

The attorney for the protestant stated at the hearing that he was not interested in any appropriation of water from Palo Corona Creek unless it interfered with his right to take the amount he was entitled to divert as riparian owner on San Jose Creek.

#### USE OF WATER BY PROTESTANT

Testimony presented at the hearing indicated that practically all the land which is riparian to San Jose Creek is owned by the Allan Estate, Sidney Fish and Geo. Gordon Moore. The Allan Estate is by far the larger owner.

Prior to the installation of the Fish pumping plant at the junction of Las Animas Creek and San Jose Creek, Mr. A. M. Allan was the only user of water from San Jose Creek. He installed a pump on the lower San Jose Creek and since 1897 has diverted water each year during the summer months for use at an abalone canning plant. It also appears that from 1913 to date water has been used by protestant for domestic, stock watering, industrial and irrigation purposes. In 1929 and 1930, 20 acres of artichokes were irrigated and prior to those years the same acreage was planted to forage crops which also required irrigation. The amount of land leased for the cultivation of artichokes was limited by the available water supply.

Mr. Allan's original point of diversion was located about one mile below the junction of Las Animas Creek and San Jose Creek at which point water was pumped to a regulatory reservoir on his property. It appears however that the points of diversion have been changed from time to time and protestant is now, and since the installation of Mr. Fish's pumping plant, has been diverting from a point about one-half mile above the diversion point of Mr. Fish in order that the water may be delivered to the reservoir by gravity thereby reducing the pumping cost at the lower point of diversion. The lower pumping plant has been operated each year however and apparently has not been abandoned although most of the supply is obtained from the upper point of diversion. It appears from the testimony that during the summer months all of the available water in San Jose Creek and its tributaries is diverted by the protestant and Mr. Fish.

#### CONCLUSION

It appears entirely clear from the testimony presented at the hearing that the available water supply during the period from about July 1st to about November 1st of a year of normal runoff has been the limiting factor in the protestant's development and that during this period there is no unappropriated water in San Jose Creek and its tributaries for the use of the applicant either under Application 6318 or 6555. It appears however that during the period from about November 1st to July 1st of each season there is sufficient unappropriated water in the sources to justify the approval of the application in the event that the season of diversion is so limited.

#### ORDER

Applications 6318 and 6555 for permits 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 said Applications 6318 and 6555 be approved and that permits be issued thereon subject to the usual terms and conditions with the diversion season so limited as to exclude the period from about July 1st to about November 1st.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 1st day of May, 1931.

EDWARD HYATT, State Engineer

WES:MP

BY

Harold Corbeling  
Deputy

