

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

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In the Matter of Application 8642 of Hollister Irrigation  
District to appropriate from Arroyo Dos Picachos  
a Tributary to Pajaro River via Tequisquita  
Slough in San Benito County for  
Irrigation and Domestic  
Purposes.

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Decision A. 8642 D 409

Decided October 15, 1937

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APPEARANCES AT HEARING HELD AT HOLLISTER JUNE 24, 1937.

For Applicant

Hollister Irrigation District

Joseph W. Gross

For Protestants

Facheco Pass Water District  
Joseph A. Fedrazzi  
J. R. Jarvis  
Frank O'Connell

Kenneth R. Malavos  
In propria persona  
" " "  
" " "

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division  
of Water Resources, Department of Public Works, State of  
California.

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OPINION

GENERAL DESCRIPTION OF PROJECT

Under Application 8642 Hollister Irrigation District seeks to appropriate  
50 cubic feet per second from Dos Picachos Creek, a tributary of Pajaro River,

via Tequisquita Slough for the irrigation of 31,000 acres within the boundaries of the District. The application was filed as a substitute for that portion of Application 7720, Permit 4312, previously assigned by Pacheco Pass Water District to Hollister Irrigation District involving the diversion of a like amount of water from the same source. It is well, before proceeding to a discussion of the protests which were filed against the approval of Application 8642, to advert briefly to the circumstances leading up to the filing of this application and to the situation which surrounded Application 7720, Permit 4312.

Under Application 7720 permit was issued to Pacheco Pass Water District on April 23, 1934, allowing an appropriation of 50 cubic feet per second from Dos Picachos Creek and 16,000 acre feet per annum from Pacheco Creek for the irrigation of 9,614 acres in Pacheco Pass Water District. Subsequently a portion of Pacheco Pass Water District which overlapped Hollister Irrigation District was excluded from the former district and inasmuch as this area was served by the appropriation from Dos Picachos Creek, Pacheco Pass Water District transferred to Hollister Irrigation District its interest in that portion of Application 7720, Permit 4312, which involved the diversion from Dos Picachos Creek.

It has been the experience of the Division that partnership filings wherein the partners do not have a common interest in the service, prove awkward both from the standpoint of the Division and from the standpoint of the parties involved. In this case we had one district diverting from Dos Picachos Creek for the lands within its boundaries and the other district diverting from a different source for different lands included within its boundaries. The Division accordingly suggested that inasmuch as there were no intervening priorities it would serve the interest of all parties, including the Division,

if a new application were filed by Hollister Irrigation District to replace that portion of Application 7720, Permit 4312, involving the diversion from Dos Picachos Creek and that with this done said District might then authorize the Division to revoke that portion of Permit 4312 involving the diversion from Dos Picachos Creek, thereby eliminating from that permit all reference to the Dos Picachos Creek diversion. Hollister Irrigation District accepted this suggestion and therefore Application 8642 should be recognized as a substitute for that portion of Application 7720, Permit 4312, which will be revoked.

Application 7720 was protested by land owners in the valley area below the confluence of Dos Picachos and Las Viboras Creeks upon the ground that the flow would be decreased through stream channels which replenished the ground water from which they drew their supply by pumping from wells for irrigation and domestic purposes. In order to relieve these protests Pacheco Pass Water District agreed with the protestants that if they would withdraw their protests the Division might insert in the permit to be issued in approval of Application 7720 a clause to the effect that no diversions should be made from Dos Picachos Creek except at such times as water was flowing to the Shore Road and that no diversion for storage should be made on Pacheco Creek which would prevent the water from said creek flowing down the main channel of the stream until it reached Soap Lake. The Shore Road crossing is some 8 or 10 miles downstream from the diversion point on Dos Picachos Creek and Soap Lake lies several miles further downstream. In view of this agreement between the parties Permit 4312 was accordingly issued in approval of Application 7720 and included the following special terms and conditions:

"The diversion of waters of Dos Picachos Creek shall not be made at such times or in such manner as to prevent the waters of Dos Picachos Creek flowing down the channel and spreading over the river bottom until it reaches that certain point where said creek crosses the public road now known as the Shore Road, said point being in San Benito County, and

"The diversion and storage of the waters of North and South Forks of Pacheco Creek shall not be made at such times or in such manner as to prevent the waters of said creeks from flowing down the main channel of Pacheco Creek during flood periods, until it reaches the water of what is now known as Soap Lake in San Benito County."

Later Application 8250 of the Pacheco Pass Water District involving storage on Las Viboras Creek under similar conditions was approved with a clause to the following effect:

"Diversion may be made under this permit only when water is flowing in Tequisquite Slough to a point at least one mile north of that certain highway which is now known as the Shore Road."

Land owners along Tequisquite Slough felt that it was desirable to incorporate in the permit to be issued in approval of Application 8643 a clause which would be to the same effect as those heretofore referred to which had been incorporated in permits issued on Applications 7720 and 8250. The applicant, however, objected upon the ground that there was no substantial percolation on Dos Picachos Creek or the stream channels to which it was affluent below a point some 2 or 3 miles above the confluence with Las Viboras Creek. A. M. Jarvis, C. R. Lanini, Mrs. Margaret Lanini, Mrs. Clara S. Frye, Henry Zanoni and F. Futado protested the application under date of September 10, 1936. On February 13, 1937, said protestants unconditionally withdrew their protests without abandoning their position, but in order to avoid the expense of the hearing which would be involved.

After extended correspondence between the two districts and the Division a situation was reached wherein the Pacheco Pass Water District protested the issuance of an unrestricted permit in approval of Application 8642 and insisted that any permit to be issued should contain either a condition similar to that incorporated in Permit 4312, which was issued in approval of Application 7720, or a clause which would require that Hollister Irrigation District divert at no time when there was less than 2 cubic feet per second passing the confluence of Dos Picachos and Las Viboras Creeks. Hollister Irrigation District on the other hand refused to consent to either condition. It maintained that there was no percolation in the channel of the lower two or three miles of Dos Picachos Creek and none below the confluence of that stream and Las Viboras Creek.

#### PROTESTS

Prior to the hearing on Application 8642 it was protested by Joseph A. Pedrazzi and Pacheco Pass Water District. At the hearing or subsequent thereto J. R. Jarvis and Frank O'Connell protested formally. Incomplete protests were filed also by E. E. Holbrook and J. E. Ayer subsequent to the hearing.

Joseph A. Pedrazzi protested upon the ground that he owned 250 acres through which Tequisquite Slough flowed and that an unrestricted permit which did not provide for the maintenance of the flow through this portion of the channel would reduce the underground supply upon which he was dependent for irrigation and stock watering purposes.

Pacheco Pass Water District protested upon the grounds that one of its functions was to charge the underground basin lying along Tequisquite Slough and that if an unconditional permit were issued to Hollister Irriga-

tion District the recharge of this basin which was partially supplied by the flow from Dos Picachos Creek would be decreased. Furthermore the District alleged that it held two permits with reservations as indicated above, which obligated it to by-pass a sufficient amount of the flow in Las Viboras Creek to provide for a flow through this stream and through Tequisquita Slough for the replenishment of the above described underground basin and that when it assigned a portion of its interest in Application 7720, Permit 4312, to Hollister Irrigation District a similar obligation rested upon that District. Pacheco Pass Water District further alleged that with a new and unconditioned permit issued to Hollister Irrigation District under Application 8642, and replacing that portion of Application 7720, Permit 4312, involving the Dos Picachos Creek diversion, Hollister Irrigation District would escape this obligation and the burden upon Pacheco Pass Water District would be greatly increased in connection with its appropriations on Las Viboras Creek.

The J. B. Jarvis, Frank O'Connell, E. E. Holbrook and J. E. Ayer protests were based upon grounds similar to those of Joseph A. Pedraza.

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

Application 8642 was completed in accordance with the provisions of the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for hearing under the provisions of Section 1a of the Water Commission Act. Of this hearing the parties in interest received due notice and the hearing convened on Thursday, June 24, 1937, at 10:00 o'clock A. M. in the Court Room of the Court House at Hollister, California.

### SOURCE

Des Picachos Creek rises in the Diablo Range in the vicinity of Henrietta and San Joaquin Peaks in San Benito County and flows in a generally easterly direction to its confluence with Las Viboras Creek. Below the confluence of the two streams they are known as Tequisquita Slough, the channel, or channels, of which pass in a generally northwesterly direction to San Felipe or Soap Lake into which passes also the waste from Pacheco Creek and from which the overflow passes into Pajaro River. Entering Tequisquita Slough from the south at a point about two miles below the confluence of Des Picachos and Las Viboras Creeks is Santa Ana Creek and about 1 mile below this point Tequisquita Slough divides into two channels which unite again at a point about two miles further downstream. It continues thence as a single channel for a distance of about 1/4 of a mile and again divides into two channels which come together again about 1/2 mile above San Felipe or Soap Lake.

The watershed of Des Picachos Creek above its confluence with Las Viboras Creek is approximately 9 miles long with an average width of 2-1/2 miles. The watershed area is approximately 22.2 square miles and varying in elevation from about 200' to about 5,000'. Of this total area approximately one-half lies above the point of diversion named in Application 8642, which is at an elevation of about 450', and about 450' downstream from where the upper tributaries of the stream join and debouch on to the valley floor.

It appears from the record that formerly Des Picachos Creek terminated in what was known as Dealing Swamp at a point close to the Fallon Road and approximately two miles above the confluence with Las Viboras Creek. Many years ago, however, a channel was dug to confine the flow in this section of the stream.

PROTESTANTS' WELLS ARE WITHIN AN  
ARTESIAN AREA

Applicant and protestants agreed at the hearing, and so stipulated, that the entire valley area north of Hollister, which would include the area within which protestants' wells are situated, was at one time artesian. There are wells flowing still in the northwesterly portion, but in the southerly and easterly portion of this area the ground water has receded to a point where the wells no longer flow.

According to U. S. G. S. Water Supply Paper No. 519 entitled, "Underground Water in Santa Clara Valley" published in 1924, this artesian area formerly extended as far east along Dos Picos Creek as Fairview Road but had gradually receded at that time to a point near the confluence of Dos Picos and Las Viboras Creeks. Tequisquita Slough throughout its entire length is shown within an artesian area (See Plate 19).

Protestant Pedrazzi has three wells, two of which are sealed. The one from which he now obtains his supply is about 100' deep and has a layer of 40' of gravel underlying 60' of impervious earth. This well is about 1/8 to 3/4 of a mile from Tequisquita Slough and when pumping the water level is within 30 to 38 feet of the ground surface and at times the water is within 30 feet of the ground surface.

C. R. Lanini has several wells, the one nearest Tequisquita Slough being about 30 feet from the south bank and 500 feet below the confluence of Dos Picos and Las Viboras Creeks. This well is 162 feet deep and intersects several strata of gravel the location of which he could not describe except the last stratum which is about 22 or 24 feet thick. This well was drilled in 1924 and at that time the surface of the water level was 4 or 5 feet above the bed of Tequisquita Slough and during the winter of 1956-57 the water rose in this



well to within 8 or 10 feet of the top. Mr. Lanini testified that he obtained most of his water from the lower strata of gravel.

Frank O'Connell has several wells, the one closest to Tequisquita Slough being on Santa Ana Creek near the confluence of the two streams at about 400 feet from San Felipe Road. This was at one time a flowing well but it has not flowed for some 15 years. It is about 180 to 200 feet deep and when being pumped the water level is about 35 feet below the surface of the ground. It was submerged during the high water of 1937.

J. R. Jarvis has three wells, one being within about 75 feet of Tequisquita Slough. This well is approximately 100 feet deep with 44 feet of gravel and the water fluctuates between 35 and 37 feet from the ground surface. It is within a recognized artesian area.

The record would indicate that the rainfall is light in this area and that there is little if any percolation to ground water from local precipitation. While there are some evidences of gravel along the banks of Tequisquita Slough and in its bed, the evidence would indicate that these are detached bodies of gravel which do not feed the main underlying ground water supply. In fact the evidence indicates that pools of water stand in Tequisquita Slough for long periods of time following the flow. While there may be some percolation from the local stream channels to these gravel beds they cannot well serve as aquifers bearing water to the main underground supply because the evidence is that this underground supply is artesian and under pressure. The waters of an artesian area being under pressure are not receptive to local percolation.

### PERCOLATION BELOW DIVERSION POINT

Active opposition of protestants reduced itself to insistence that the flow be maintained as far as the Shore Road during any time that the applicant diverts. This insistence was based upon the assumption that there is percolation on the Dos Picachos and Tequisquita to that point but evidence as to the facts in this connection is conflicting and leads us to no definite conclusion. Reference to the soil surveys which are reported by the University of California and introduced as Exhibit 12 by the applicant, and the general recognition that this area was formerly artesian, would lead us to the belief that the percolation below Fairview Road would make no valuable contribution to the ground water supply of protestants. This belief finds support in measurements which were reported by the applicant's engineer who made float measurements on February 3rd and on April 7th and found little or no percolation below Fallon Road.

On the other hand measurements were made on April 6th by the engineer of Pacheco Pass Water District and he reports a loss of 3.1 second feet between Fallon Road and the confluence of Dos Picachos and Las Viboras Creeks of which approximately 2.2 second feet were lost in the upper one-half of the distance. Applicant's engineer discounted these measurements because he observed that the water of Dos Picachos Creek was turned out of the channel some 3 miles above Fallon Road between 8:15 and 8:30 A. M. of that day and were returned to the natural stream channel between 5:30 and 6:00 P. M. in order to unwater the channel for some construction work which was in progress. It is the theory of the engineer of applicant that this diversion of the flow vitiated the measurements made by protestants' engineer.

This last set of measurements was carefully made and it was unfortunate that the diversion on the stream above should have cast some doubt upon their value. From the evidence at hand we are unable to determine whether or not the report of these measurements should be used. However, we believe that under the circumstances doubt should be resolved in favor of protestants. Applicant does not object to a condition which would require that the flow be maintained as far as Fallon Road. If there is no percolation below that point on Dos Picos Creek the applicant will not suffer if the limiting point is moved to the confluence of the two streams. Applicant consented at one time that the determining point should be the confluence of Las Vieras and Dos Picos Creeks and now objects only upon the ground that it is more difficult to observe the flow at the lower point because of the distance. However, if there is no percolation between Fallon Road and the confluence of the two streams it should be sufficient for the applicant to gauge the time of its diversions by the flow at Fallon Road in the knowledge that if the flow is maintained to Fallon Road it will pass on down to the confluence of the two streams. On the other hand, if there is in fact percolation between the two points there is ground for the objection of protestants and we feel that the determining point should be the confluence of the two streams rather than Fallon Road. No measurements were reported to show percolation below the confluence of the two streams and the evidence is all to the effect that there could be no substantial replenishment to ground water by percolation in Tequisquita Slough. We are of the opinion, therefore, that any permit which is issued in approval of Application 8642 should contain a limitation or condition which would prevent the applicant and permittee from diverting

except when the flow was maintained in Dos Picachos Creek as far as its confluence with Las Viboras.

#### SUMMARY AND CONCLUSIONS

Application 8642 is to appropriate 50 cubic feet per second from Dos Picachos Creek for the irrigation of 31,000 acres of land within the boundaries of the District. Diversion is proposed at a point some 5 or 6 miles above the confluence of that stream and Las Viboras Creek. The application is protested by the Pacheco Pass Water District and land owners at or near the confluence of the two streams and downstream therefrom. Objection is based upon the grounds that it is necessary to maintain the flow through Dos Picachos Creek and the streams of which it is a confluent in order to replenish the ground water of land owners through which these streams flow and from which they derive their supply for irrigation and domestic purposes. Protestants do not deny there is surplus water, but ask that any permit which may be issued in approval of Application 8642 be so conditioned as to insure a maximum of percolation to their ground water supply. In order to accomplish this they ask that a condition be inserted in any permit which is issued requiring that the flow must be maintained as far as Shore Road whenever applicant diverts. Applicant on the other hand maintains that there is no percolation in Dos Picachos Creek below Fallon Road which would be at a point some two miles above the confluence of that stream with Las Viboras.

In support of its contention applicant introduced the report of measurements by its engineer, which would indicate that there was no percolation on three occasions when he made measurements. On the other hand Pacheco Pass Water District, which is one of the protestants, submitted the report

of one set of measurements made by its engineer which found a loss of 3.1 cubic feet per second between Fallon Road and the confluence of Dos Picachos and Las Viboras Creeks. The value of this measurement is discounted by applicant's engineer upon the ground that a diversion of Dos Picachos Creek was made on the day that the measurement was made by the engineer of Pacheco Pass Water District. It is contended by applicant's engineer in this connection that it was this interruption to the flow of Dos Picachos Creek which accounts for the lessened discharge at the confluence of the two streams. Evidence, therefore, on the point as to whether or not there is percolation in the lower two miles of Dos Picachos Creek is conflicting and uncertain.

It is generally recognized that the lands of protestants overlie an artesian basin and that the wells from which protestants draw their supply are of artesian character. This view is supported by the Water Resources Branch of the U. S. Geological Survey in its Water Supply Paper No. 519. In fact this bulletin indicates that the artesian area at one time reached to a point 1 mile above Fallon Road. Wells which are of artesian character cannot obtain their replenishment from local percolation. The water in such wells is under pressure and will not receive local waters. In order to be of artesian character such wells must receive their supply from other than local sources and it is reasonable to assume that in this case replenishment comes from San Benito River and percolation upon the delta cones of Dos Picachos, Las Viboras and Pacheco Creeks. Although there was no evidence introduced in support of this theory, it would appear altogether probable that there is percolation on Dos Picachos Creek some distance below where that stream debouches into the valley. There is nothing in the record to show definitely the lower limits of this percolation area. The lower limit

might be as far down stream as the confluence of Dos Pisachos and Las Viboras Creeks, but it would appear clear from the evidence which is submitted that there is no percolation to the general ground water supply of protestants below that point. In fact water stands in pools along Tequisquite Slough below the confluence of the two streams after flow has ceased.

If protestants are right and there is percolation as far down stream as the confluence of Las Viboras and Dos Pisachos Creeks it is appropriate that any permit issued in approval of Application 8642 be so conditioned as to insure that a flow is maintained to that point in order to provide proper replenishment of wells of protestants. If protestants are in error and there is no percolation below Fallon Road no great hardship will be worked upon the applicant if such a condition is inserted in the permit. There being no percolation below Fallon Road applicant would be required to by-pass no more water to insure a flow to the confluence of Dos Pisachos and Las Viboras Creeks than is required to insure the flow to Fallon Road. Under the circumstances we believe that doubts should be resolved in favor of protestants and until there is additional information available applicant should be required at all times to by-pass a sufficient amount of water at its diversion point to insure the maintenance of a flow in Dos Pisachos Creek to the confluence with Las Viboras.

ORDER

Application 8642 for a permit to appropriate water from Dos Picachos Creek having been filed with the Division of Water Resources, as above stated, the application having been protested, and a hearing having been held upon these protests, and the Division of Water Resources now being fully informed in the premises,

IT IS HEREBY ORDERED that Application 8642 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject to the following special terms or conditions:

"Diversion may be made under this permit only at such times as the flow in Dos Picachos Creek reaches to or beyond the confluence of that stream with Las Viboras Creek."

WITNESS my hand and the seal of the Department of Public Works of the State of California this 15th day of October, 1937.

EDWARD HYATT, State Engineer

By HAROLD CONKLIN  
Deputy.

WES: GG  
ENB:

(Seal)