

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of Application 10797 of Michael Rahilly, Jr.,
Application 10798 of Mamie F. Rahilly and Application
10844 of Frank C. Gomes to Appropriate
Water from Middle Slough of Mariposa
Creek, Tributary to San Joaquin
River in Merced County for
Irrigation and Stock
Watering
Purposes

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Decision A. 10797, 10798, 10844 D. 532

Decided March 11, 1946

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APPEARANCES AT HEARING HELD AT MERCED, OCTOBER 23, 1945.

For Applicants

Michael Rahilly, Jr.
Mamie F. Rahilly
Frank C. Gomes

Samuel V. Cornell
Samuel V. Cornell
No appearance

For Protestants

Eleanor E. Haun
Stevinson Water District
East Side Canal & Irrigation Co.
Charles S. Howard Corporation

Hugh K. Landram
Fred B. Wood
Fred B. Wood
No appearance

EXAMINER - GORDON ZANDER, Supervising Hydraulic Engineer in Charge of
Water Rights, Division of Water Resources, Department of
Public Works, State of California

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O P I N I O N

General Description of the Proposed Developments

Application 10797 was filed by Michael Rahilly, Jr., on April 11,
1944. The amount applied for is 3 cubic feet per second, from January 1 to

December 31; the source, Middle Slough of Mariposa Creek; the point of diversion, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 8 S, R 13 E, M D M; and the purpose, stock watering and the irrigation of 98.43 acres of rice, cotton and other crops, located partly within the NE $\frac{1}{4}$ and partly within the NW $\frac{1}{4}$ of the same Section 24.

Application 10798, filed by Mamie F. Rahilly on April 11, 1944, calls for the diversion of 3 cubic feet per second from Middle Slough of Mariposa Creek, from January 1 to December 31 of each season, at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24, T 8 S, R 13 E, M D M; the water to be used for the irrigation of 55 acres of rice, cotton and other crops lying within the NW $\frac{1}{4}$ of the same Section 24.

Application 10844, filed by Frank C. Gomes on July 19, 1944, also calls for the diversion of 3 cubic feet per second from Middle Slough of Mariposa Creek. The point of diversion is described as lying within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T 8 S, R 13 E, M D M; the purpose, irrigation (crops unstated) and stock watering; the season from January 1 to December 31 (irrigation from March 1 to October 1); the place of use, 108 acres within the NE $\frac{1}{4}$ of the same Section 24; and the crop, alfalfa.

Protests

Four protests, by the same parties in each instance, have been filed against each of the applications.

Charles S. Howard Company, a Corporation, asserts that it owns 4210 acres in T 7 S, R 11 E and T 8 S, R 11 E, M D M; that said land is riparian to Duck Creek and to other certain streams, below the applicants' points of diversion; that it has used practically all of the water in such streams for the irrigation of its lands, effecting diversion thereto by means of numerous sloughs or channels in Sections 5, 6, 7, 8 and 9, T 8 S, R 11 E; that it so diverts at all seasons of the

year, for the purpose of stock watering and of irrigation of grasses for grazing. In addition to riparian rights this protestant claims an appropriative right based upon commencement of use of water prior to the effective date of the Water Commission Act. It contends that the diversions as proposed by the applicants would cause the cessation of flow of Duck Creek water to its lands, so rendering the latter arid and their use unprofitable.

Eleanor E. Haun claims a riparian right, also an appropriative right, the latter under permit duly granted, in the amount of 2 cubic feet per second. Her point of diversion, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T 8 S, R 13 E, M D M, is situated on Middle Slough of Mariposa Creek, just below the lowermost of the three diversions proposed by the applicants. She asserts that since Applicant Gomes, the uppermost of the 3 applicants, dammed the channel on his property, she has been prevented from receiving the amount of water to which she is entitled under her permit. She explains that the small pipe installed in the Gomes dam passes not over 2 cubic feet per second down the channel and that this amount is further reduced by evaporation and percolation before reaching her property.

Stevinson Water District and East Side Canal and Irrigation Company protest the applications on identical grounds. They contend that the proposed diversions will injure them by depriving them of water to which they are entitled. They base their claims to rights to the use of water from the source in question upon the furnishing by them of irrigation water from Middle Slough of Mariposa Creek to approximately 10,000 acres of land. They claim to have had their rights to this water adjudicated. They describe their point of diversion as being at the intersection of said Middle Slough with the East Side Canal and Irrigation Company's Main Canal; and the place of use as lying within T 6 and 7 S, R 9 E, T 7, and 8 S, R 10 E, and T 7 and 8 S, R 11 E, M D M.

Answers to Protests

None of the applicants made answer to any of the protests.

HEARING HELD IN ACCORDANCE WITH SECTIONS 1340 TO 1353 OF WATER CODE

The applications were completed in accordance with the provisions of the Water Code and the Rules and Regulations of the Division of Water Resources and, being protested, were set for public hearing in accordance with Section 1340 to 1353, inclusive, of the Water Code, on March 7, 1945, at 10:00 o'clock A.M., in Supervisors Room, Court House, Merced, California. By Notice of Postponement of Hearing, dated March 2, 1945, this hearing was postponed to be reset at a later date. By Notice of Hearing, dated September 21, 1945, it was reset for hearing on October 23, 1945, at the same place and hour as previously specified. Of this hearing and postponement the applicants and the protestants were duly notified.

General Discussion

From the testimony at the hearing at Merced, it appears that the stream or channel upon which the applicants under consideration have filed is in effect a remnant of the older and more extensive stream system designated as the Middle Slough of Mariposa Creek; that the waters that find their way into this remnant channel are derived from irrigation wastage from a close-by area, restricted in extent; that this wastage is limited in amount and erratic as to occurrence; and that its utilization is essentially a local problem.

In summary, the principal witness testifies - and his testimony is not contradicted - that Middle Slough, from a point about $3\frac{1}{2}$ miles above the Michael Rahilly property, downstream to the Haun property, inclusive, no longer carries flood waters except under extraordinary conditions, or any waters other than drainage from about one square mile of pasture, which "spills in" at a point $2\frac{1}{2}$ miles upstream from the Rahilly place; that this drainage flow occurs in consonance

with the irrigation routine on the lands from which it issues, discharges, sometimes 15 cubic feet per second in amount, sometimes less, occurring once per week or ten days and continuing from 3 to 5 days at a time; that the flow is practically nil between discharges although the channel never goes completely dry; that the channel continues to the Haun property and there "ceases to exist"; that below the Haun property and above the point where the spillage enters, the absence of flow is evidenced by the leveling over of the channel in many places and the planting thereon of crops; and that this general state of affairs has existed upward of 20 years.

The testimony also indicates that the flow of the channel in the limited reach described, while fitful and fluctuating, is usable, profitably, for irrigation and has been so used for several years by the Applicants Rahilly and by Protestant Haun; that irrigation has been tried on the Gomes property at the location and in the manner proposed in Application 10844 and found impracticable, due to the escape of waters into other channels when dammed high enough to command the diverters' land; that such water supply is enough for the Rahillys, for Haun and for Gomes if equitably distributed; that the dam with small pipe inserted, installed by Applicant Gomes, prevents Protestant Haun from receiving her due quota; that said obstruction adversely affects the Rahillys, also; that the Rahilly dam to a lesser degree adversely affects Haun; that it would be practicable to substitute gates for dams on the properties above Protestant Haun, thereby achieving satisfactory delivery to all immediately concerned.

The testimony to the effect that the Middle Slough of Mariposa Creek ends on or near the Haun property is in agreement with the U. S. Geological Survey Topographic Map (Sandy Mush Quadrangle). It does not appear that water after reaching the Haun property continues on and/or reaches other channels tributary

to the sources supplying the lower protestants. For this reason it is felt that the protests of Charles S. Howard Company, Stevinson Water District and East Side Canal and Irrigation Company should be dismissed.

For the reason that Applicant Gomes has failed to reply to communications from this office for a year or more, has failed to answer the protests filed against his application and has failed to make appearance at the hearing or within five days to show good or any cause for such failure, and for the further reason that according to testimony the project described in his application has been tried and found impracticable, it is concluded that the project under Application 10844 should be considered to have been abandoned and the application dismissed without prejudice.

With reference to Applications 10797 and 10798 it appears that permits should be granted, authorizing the use of water in amounts consistent with the established duty for rice irrigation, viz, not to exceed a total of 3 cubic feet per second and 2 cubic feet per second under these applications, respectively, which figures include allowances, deemed ample, for transmission losses not reasonably avoidable.

Records Relied upon in the Determination of Action
in Connection with Applications and Protests

Application 10797	Entire File
Application 10798	" "
Application 10844	" "

U. S. Geological Survey Topography: "Lingard", "Sandy Mash", "Turner Ranch", "San Luis Ranch" and "Stevinson" quadrangles.

In addition to the foregoing, the files pertaining to the following applications were reviewed: Applications 5724, 5725, 6069, 6111, 6114, 6160, 6807 and 7012. No additional information essential to a determination of the matters herein at issue was found in these files.

ORDER

Applications 10797, 10798 and 10844 having been filed with the Division


of Water Resources as above stated, protests against the approval of said applications having been received, 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 10797 be approved for the amount of water applied for and that a permit be issued subject to such of the usual terms and conditions as may be appropriate, and

IT IS FURTHER ORDERED that Application 10798 be approved for an amount of water not to exceed 2 cubic feet per second and that a permit be issued subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that Application 10844 be denied and canceled upon the records of the Division of Water Resources without prejudice.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 11th day of March, 1946.


EDWARD HYATT, STATE ENGINEER

SCW:RW

