

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 11003 by William F. Cook, et al. to Appropriate Water from Fresno River Tributary to San Joaquin River in Madera County for Irrigation and Stockwatering Purposes; Application 11047 by Ray Flanagan to Appropriate Water from Berenda Slough and Ash Creek, both tributary to Fresno River in Madera County for Irrigation Purposes; Application 11048 by Ray Flanagan to Appropriate Water from Fresno River in Madera County for Irrigation Purposes; Application 11653 by W. P. Roduner to Appropriate Water from Fresno River in Madera County for Irrigation and Stockwatering Purposes; and Application 12332 by H. V. Eastman to Appropriate Water from Ash Creek, Tributary to Fresno River, in Madera County, for Irrigation Purposes.

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Decision A. 11003, 11047, 11048, 11653, and 12332 D. 619

Decided September 16, 1949

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APPEARANCES AT HEARING HELD AT MADERA, FEBRUARY 15, 1949:

For the Applicants

William F. Cook, et al.	)	(Athearn, Chandler, Farmer, Hoffman & Angell
Ray Flanagan	)	(Attorneys at Law
W. P. Roduner	)	( By Milton T. Farmer
H. V. Eastman		Green, Chandler & Green
		Attorneys at Law
		By Denslow Green

For the Protestants

Patterson Ranch Co.		No appearance
W. P. Roduner		(Athearn, Chandler, Farmer, Hoffman & Angell
		(Attorneys at Law
		( By Milton T. Farmer

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for EDWARD HYATT, State Engineer.

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O P I N I O N

General Description of the Proposed Developments

Application 11003 by William F. Cook, Elmer B. Stone, and Nellie C. Harris contemplates diversions, year-round, aggregating 35 cubic feet per second, from Fresno River, tributary to San Joaquin River, for irrigation and stock watering purposes. Two points of diversion are proposed, located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T 11 S, R 14 E and the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, T 10 S, R 13 E, MDB&M, respectively. At the first mentioned of these points diversion is to be effected by means of an earth dam 6 feet high and 570 feet long; at the second, water is to be pumped by means of a plant of 10000 gallons per minute capacity. The proposed place of use is a tract of pasturage, 3320 acres in extent, lying within Sections 26, 27, 34, 35 and 36 of T 10 S, R 13 E, and Sections 8, 9, 10, 15, 16 and 17 of T 11 S, R 13 E, MDB&M. Besides the irrigation of this area, 7000 head of livestock are to be watered.

Application 11047 by Ray Flanagan is for a total of 35 cubic feet per second, to be diverted from February 1 to November 1, for irrigation. Of the total amount applied for, 17.5 cubic feet per second are to be diverted from Berenda Slough at a point within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, T 11 S, R 15 E, and 17.5 cubic feet per second from Ash Creek, at a point within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, T 10 S, R 14 E, MDB&M. Both of these streams are tributary to Fresno River. The place of use is described as a tract of 2511 acres of general crops, lying within Sections 7, 8, 9, 16, 17 and 18 of T 10 S, R 14 E, MDB&M.

Application 11048, also by Ray Flanagan, contemplates the diversion of 35 cubic feet per second from Fresno River, at a point within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T 11 S, R 15 E, MDB&M, from February 1 to December 1 of each season. The water is wanted for the irrigation of 2511 acres of rice located within Sections

17, 18, 19, 20, 21, 22, 26, 27, 34 and 35 of T 10 S, R 14 E, MDB&M.

Application 11653 by W. P. Roduner contemplates the diversion of 40 cubic feet per second from Ash Slough, tributary to Fresno River, from October 1 to June 1 of each season, for irrigation and stock watering. Three diversions are proposed, heading respectively within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 22, the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 21 and the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, of T 10 S, R 14 E, MDB&M. The place of use is a 3117 acre pasture, lying within Sections 20, 21, 22, 27, 28, 29, 32, 33 and 34 of T 10 S, R 14 E, MDB&M.

Application 12332 by H. V. Eastman is for 7.5 cubic feet per second, to be diverted from Ash Creek, tributary via Fresno River to San Joaquin River, throughout the year. The point of diversion is described as lying within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T 9 S, R 15 E, MDB&M, and the proposed use is the irrigation of some 600 acres of alfalfa and general crops located within Sections 25 and 26 of the same township.

#### Protests

Applications 11003, 11047, 11048 and 11653 were protested by the Patterson Ranch Company. That protestant asserts that the proposed appropriation would cause loss of crops and permanent injury to its lands. It asserts rights to the use of water from the sources in question, based upon prior appropriation and riparian ownership. It claims under such rights to be entitled to divert in excess of 100 cubic feet per second from the San Joaquin River at a point opposite the town of Patterson, and to have diverted from February to October of each year since about 1909, for purposes of irrigation. It further describes its points of diversion as being located in Sections 15 and 36 of T 5 S, R 8 E. It states that its protests may be disregarded and dismissed if its rights are legally protected by agreements approved by its attorney.

The applicants answer the protests by Patterson Ranch Company as follows: William F. Cook et al. admit the protestant's riparian claim but allege that claim to be correlative to their own similar rights; admit the protestant's alleged appropriative right but argue that that appropriation has been impaired and subordinated by the United States in the construction of the Friant dam and reservoir and the diversion of waters of San Joaquin River thereinto. Applicant Flanagan answers in similar vein. Applicant Roduner has not elected to answer the protest against his application.

Application 11653 was also protested by James J. Stevinson, 3 H Securities Company, Maybelle Paul Iribe and Geo. J. Hatfield, who united in a joint protest. These parties contend that the proposed appropriation will deprive them of water to which they are entitled by virtue of riparian ownership and prior appropriation. They assert ownership of some 5000 acres below the intended point of diversion. They assert that their headworks are located within T 7 S, R 10 E, and T 8 S, R 10 E, M.D.B. & M. and that their places of use lie within the same townships. This protest was voluntarily withdrawn by letter dated June 10, 1948. It was not answered by the applicant.

Application 12332 was protested by W. P. Roduner only. That protestant contends that all normal flow in Ash Creek reaching his lands is either used by him for surface irrigation or percolates into the soil and builds up the water table for pumping. He claims a riparian right, appropriative rights and rights as an overlying land owner. He states that his points of diversion are located within Sections 21, 22 and 28 of T 10 S, R 14 E, MDB&M and that he owns over 3100 acres, all of which lie downstream from the point of diversion proposed under Application 12332, and which are and have long been irrigated from Ash Creek. The protest was answered by Applicant Eastman, the applicant claiming a right to the water

in question, based upon old appropriative rights, riparian rights and rights as an overlying land owner, and asserting that his lands have been irrigated from Ash Creek by himself and his predecessors since 1872, and that his lands are portions of the same ranch from which the protestant's lands were subdivided. He denies that Protestant Roduner can beneficially utilize the waters in question. He requests that the matter be set for hearing.

Hearing Held in Accordance with the Water Code

Applications 11003, 11047, 11048, 11653, and 12332 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and, being protested, were set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Tuesday, February 15, 1949, in the Supervisors' Board Room, County Court House, Madera, California. Of this hearing the applicants and the protestants were duly notified.

General Discussion

At the outset of the hearing it developed that the Patterson Ranch Company, which had protested Applications 11003, 11047, 11048 and 11653, was unrepresented. No appearance was entered on behalf of that protestant during the course of the hearing, nor was any explanation for such non-appearance offered subsequently.

At the hearing also Protestant W. P. Roduner withdrew the protest previously filed by him against Application 12332.

In view of the withdrawal of all protests except those by Patterson Ranch Company, the failure of that protestant to participate in the hearing, and the disinclination of the parties present to introduce evidence or testimony, the hearing adjourned.

With reference to the several protests by Patterson Ranch Company, the apprehension expressed in those protests that loss of crops and damage to lands will result from the proposed appropriations does not appear well founded. Permits issued by the Division in response to applications to appropriate unappropriated water are invariably issued subject to vested rights and legal protection to the possessors of vested rights is afforded by that practice. If the rights claimed by Patterson Ranch Company actually exist and are maintained it is not apparent that that protestant can be injured by approval of the applications against which it has protested. The protests by Patterson Ranch Company against Applications 11003, 11047, 11048 and 11653 are therefore dismissed, no valid ground of protest having been shown.

Summary and Conclusions

All protests against Applications 11003, 11047, 11048, 11653 and 12332 having been withdrawn or dismissed, no bar remains to the approval of those applications. The applications should be approved, subject to the usual terms and conditions.


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ORDER

Applications 11003, 11047, 11048, 11653 and 12332 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

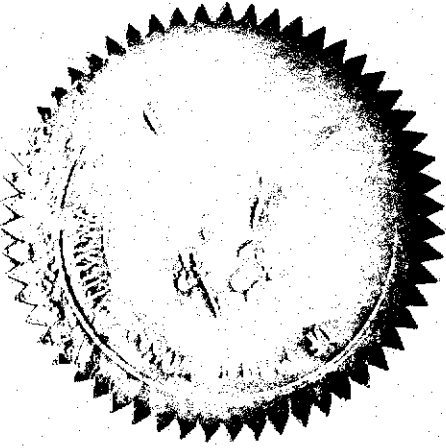
IT IS HEREBY ORDERED that Applications 11003, 11047, 11048, 11653 and 12332 be approved and that permits be issued to the applicants subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the  
State of California this 16<sup>th</sup> day of Sept., 1949.

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Edward Hyatt, State Engineer



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