

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 Applications 12513 and 12685 by Pioneertown Corporation to Appropriate Water from Burns Creek Tributary to Pipes Creek and from Pipes Creek Tributary to Mojave Desert in San Bernardino County for Domestic Purposes.

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Decision A. 12513 - 12685, D. 655

Decided April 5, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON MAY 13, 1949:

C. W. Bush	Applicant's Superintendent
Ralph W. O'Neill	Applicant's Engineer
Karl P. Ahlswede	Protestant
J. J. Heacock	Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works, representing the State Engineer

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OPINION

General Description of the Project

Application 12513, filed May 21, 1948 in the name of Pioneertown Corporation contemplates a diversion of 0.50 cubic foot per second from Burns Creek, which is tributary via Pipes Creek to Mojave Desert. The proposed point of diversion is located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, T 2 N, R 4 E, S.B.B.&M., in San Bernardino

County. The diversion is to be gravity, effected by means of a concrete dam 10 feet high and 30 feet long. The conduit is to be a 6 inch pipe line 6857 feet long. Water is to be diverted year round and used for domestic purposes within a tract in Section 3, T 1 N, R 4 E, S.B.B.&M., on which are said to be located 29 homes with gardens averaging 1/2 acre per home.

Application 12685, filed September 10, 1948 in the name of Pioneertown Corporation contemplates a diversion of 1.30 cubic feet per second, year round, from the above mentioned Pipes Creek. Diversion is proposed at a point within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, T 1 N, R 4 E, S.B.B.&M., by means of a concrete dam 6 feet high and 40 feet long. From the dam water is to be conducted by gravity through 7870 lineal feet of 8 inch pipe line and 5450 lineal feet of 6 inch pipe line to the place of use, a rather widely scattered group of homes located within T 1 N, R 4 E, and T 1 N, R 4 E and T 1 N, R 5 E, S.B.B.&M. According to the application the area is being developed mainly for the production of motion pictures and for recreational purposes, the place of use includes the unincorporated village of Pioneertown with its rapidly growing community center and it is expected that extensive motion picture facilities will soon be built. The application mentions 72 homes with a 1/2 acre garden per home but is not clear as to whether that figure represents present or projected development.

#### Protest

On behalf of Karl P. Ahlswede, Attorney John Davis Babbage protested against the approval of the applications under consideration, by letter dated November 29, 1948. The protest alleges that any appropriation of water from Pipes Creek or Burns Creek would interfere with the

flow of water to his property adjoining the junction of Pipes Creek and Burns Creek and described in records of the Division. The protestant claims a water right under Application 11455 but states that he has been prevented from exercising that right, first by operations of the Shay Cattle Interests, and later by operations of the Pioneertown Corporation.

The applicant answers the protest by stating that the diversions which it proposes drain but 56 $\frac{1}{2}$ % of the watershed tributary to the protestant's point of diversion, that the protestant appears never to have attempted to divert in the manner authorized by Permit 6677, that the granting of that permit may have been premature, that the operations of the Pioneertown Corporation have not affected the water table on the protestant's land, that the reference in the protest to operations by the Shay Cattle Interests is irrelevant, that the shortage of water during the recent 18 month period referred to in the protest has been due to a general drought, and that the protest is not in accordance with the requirements of the Code and is invalid.

#### Field Investigation

The applicant and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, a field investigation was conducted at the site of the proposed appropriation on May 13, 1949 by an engineer of the Division. Both applicant and protestant were present or represented during that investigation.

#### Records Relied Upon

Applications 12513 and 12685 and all data and information on file therewith.

### Discussion

Protestant Ahlswede bases his claim of a water right upon authorization contained in approved Application 11455 (Permit 6677) to divert 1.0 cubic foot per second, from Pipes Wash, for domestic purposes and irrigation. Protestant Ahlswede's point of diversion was to be within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, T 1 N, R 5 E, S.B.B.&M., domestic use was to extend throughout the year and irrigation was to extend from March to December, both inclusive, diversion was to be made by gravity, through an open ditch 1300 feet long, and the place of use was to be a 50 acre tract planted to alfalfa, orchard, and general crops and located within the S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 8, T 1 N, R 5 E, S.B.B.&M. According to the permit terms construction was to start by April 1, 1947 and to be completed by December 1, 1949; the water was to be completely applied by December 1, 1950. No protests were filed against Application 11455.

According to a map of the locality the streams upon which the Pioneertown Corporation has filed (Burns Creek and Pipes Creek) unite above Protestant Ahlswede's point of diversion and their combined flow passes through his lands.

According to the report of investigation Protestant Ahlswede has a potential need for water to irrigate 25 to 30 acres of scattering bench lands but has not irrigated those lands since his application was filed. The report also states that Protestant Ahlswede has an old well 20 to 25 feet deep in the stream channel, that the well is dry and has not been used for a number of years, that the springs in the stream channel apparently flow after a very wet period and for a limited time, and that in order for him to have a dependable supply it will be necessary for him to provide a deeper well.

Mr. Ahlswede's progress reports for 1947 and 1948 indicate that very little if any construction work has been accomplished on his project, that water has been used for domestic purposes, and that full use will be contingent upon cessation of interruption to the flow of the source, upstream. No reference is made in the progress reports or in other communications of intention by Mr. Ahlswede to overcome the upstream interruption mentioned or to proceed other than on the basis of diversion of surface flow, as contemplated in his application. Mr. Ahlswede's progress report for 1949 again reports construction incomplete, states that construction will be complete "when indications of the water supply return to normal" and that use will be complete "when present draught is ended". It omits answer to Question 7 of the progress report form which reads, "Has use of water commenced? If so describe use made during the past 12 months." In answer to the same question the two previous progress reports had stated "Yes....Domestic". Inasmuch as Mr. Ahlswede's Application 11455 calls for a gravity diversion, effected by means of a dam and his progress reports indicate that the dam has not been constructed it is inferred that the domestic use which he reported relates to a supply obtained under some other right and that no water has been developed under Application 11455, at all.

By letter of December 4, 1948 (filed with Application 11455)

Mr. Ahlswede stated:

" I am firmly convinced that the cross cutting and damming of the Pipes wash by the Shay and Barker Cattle Interests in late 1924 or 1925 was responsible for the failure of my springs to continue as they had for over forty years previous; also that the lack of use of these

waters by Shay etc. prior to my refiling was responsible for the water returning for the two years previous to the last application; also that since filing the use of these waters by parties located to the west and towards the source of the waters is responsible for their again receding."

That an upstream diversion tends to diminish the supply available to lower users is obvious. However applications to appropriate are not necessarily denied for the mere reason that prior rights exist downstream; and unless it appears that substantial injury will result, an upstream application is ordinarily approved. In this connection it has even come to be considered that a protestant cannot properly insist upon maintenance of water level for the sole purpose of facilitating pumping but must yield to the public policy and welfare declared in Section 100 of the State Water Code.

The data by no means establish that a firm supply of 0.50 cubic foot per second from Burns Creek or of 1.30 cubic feet per second from Pipes Creek can be secured by an exploitation of surface flow in the manner proposed in Applications 12513 and 12685. However the need of a satisfactory domestic supply for a considerable population as contemplated in the Pioneertown Corporation project may warrant that applicant to incur greater expense, as for the capture of subsurface flow, than would be feasible on a smaller project.

Very few data bearing upon the flow of any of the streams mentioned are of record. According to the report of investigation there was no surface flow at the protestant's proposed point of diversion on May 13, 1949. There was standing water but little evidence of

flow at the point of diversion under Application 12513. Surface flow apparently was insignificant also at the point of diversion under Application 12685. On Pipes Creek near the east line of Section 15 (some 3 miles above the protestant) the flow was estimated at 5 or 6 miner's inches, and the flow at that point 3 years earlier was reported to have been approximately 20 miner's inches. Below the proposed point of diversion on Pipes Creek there is reported to be a 30 to 40 acre area extending approximately 1.5 miles along the stream, with a moderately heavy growth of willows and grasses, indicative of losses by transpiration that conservation measures might salvage. In elevation the watershed ranges from somewhat below 4500 feet at the Ahlswede property to some 9000 feet at points along the divide. Mean annual precipitation is reported as being about 12 inches and rainfall during 1948-49 as some 75% of normal. Watershed areas tributary to Protestant Ahlswede's property are, roughly: Antelope Creek (which joins Pipes Creek at the Ahlswede place) 11,500 acres, Burns Creek 5,000 acres and Pipes Creek 10,000 acres; total 26,500 acres. Watershed areas tributary to the points of diversion proposed under Applications 12513 and 12685 are, roughly: Burns Creek 2,900 acres and Pipes Creek 9,300 acres; total, 12,200 acres. Water Supply Paper 578 (U.S.G.S.) contributes certain water supply information, stating (on page 636), "There is a high desert area east of the Pipes (in Sec. 13, T 1 N, R 4 E) through which flows the runoff of Pipes Canyon, Burns Canyon and other drainage ways ..... Abundant supplies of good water are probably obtainable in nearly all the washes in this area at depths of 100 feet or less." As to "the Pipes" the same reference states, "It is said that in the canyon the flow is 2 second-feet or more but the water usually sinks into the gravel farther downstream."

According to the report of investigation the protestant's springs were not in evidence either on May 18, 1949 or on December 13, 1949. The investigating engineer remarks that they are not mentioned in Water Supply Paper 578 (U.S.G.S.) and surmises that they flow only after years of heavy rainfall and for short periods. According to all the data available it appears highly improbable that surface flow will reach the protestant's property unless at times of freshet or cloudburst. The only remaining way in which the protestant can develop the water supply sought under Application 11445 would seem to be by exploitation of subsurface flow. Inasmuch as some 26,500 - 12,200 or 14,300 acres of watershed are tributary to him exclusive of the 12,200 acres of watershed tributary to the Pioneertown Corporation project (Applications 12513 and 12685) the two projects do not appear to be in conflict. Should conflict arise, Protestant Ahlswede would still hold the advantage of a priority earlier than that of the Pioneertown Corporation applications. In the light of all the circumstances the protest of Karl P. Ahlswede is adjudged insufficient.

The reported precipitation on the watershed and the latter's extent and characteristics, the evidence that some flow occurs at the proposed points of diversion, and the applicant's belief in the light of its explorations that more may be developed, all point to the probability that surpluses exist. It appears that such surpluses may be taken and used without adverse effect downstream. Whether or not such surpluses can be recaptured economically is problematical but the applicant urges that the need is great and that it is in a position to bear the expenses of development even though these are relatively large. In view of all the circumstances it is concluded that Applications 12513



and 12685 should be approved and permits issued, subject to the usual terms and conditions.

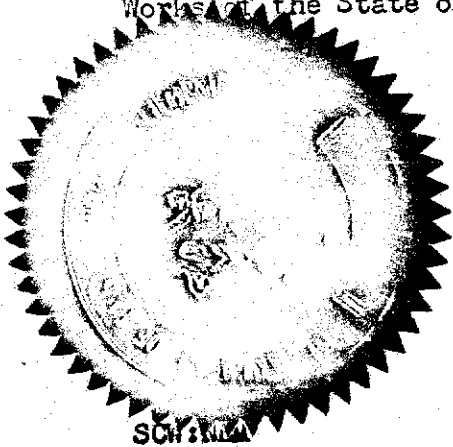
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ORDER

Applications 12513 and 12685 for permits to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12513 and 12685 be approved and that permits be issued to the applicant, 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 5th day of April 1950.



*A. D. Edmonston*

A. D. Edmonston  
State Engineer.