

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 12715 by John M. Sousa and Applications  
13344 and 13345 by Walter C. Magneson to Appropriate Water from Merced  
River in Merced County for Irrigation Purposes.

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Decision A. 12715, 13344, 13345 D. 686

Decided December 20, 1950

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APPEARANCES AT HEARING HELD AT MERCED, JUNE 21, 1950.

For the Applicants

John M. Souza

H. K. Landram

Walter C. Magneson

Walter C. Magneson

For the Protestants

3 H Securities Company )

George J. Hatfield and  
Judith B. Hatfield )

Stevinson Water District )

James J. Stevinson, a Corporation )

George J. Hatfield

Joseph M. Pyle

No appearance

A. J. Quandt

No appearance

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division  
of Water Resources, Department of Public Works, for A. D. EDMONSTON,  
State Engineer.

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## OPINION

### General Description of the Proposed Developments

Application 12715 contemplates the diversion from Merced River of 1.60 cubic feet per second from April 1 to September 30 at a point within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, T 6 S, R 10 E, M.D.B.&M., the water to be used for the irrigation of 124 acres of alfalfa in Sections 25 and 36 of the same township. Diversion is to be effected by means of a 3600 gallons-per-minute pump, drawing from a sump in the stream bed. The applicant claims also a riparian right.

Application 13344 contemplates the diversion from Merced River of 2.5 cubic feet per second from March 1 to November 1 at a point within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T 6 N, R 12 E, M.D.B.&M., the water to be used for the irrigation of 148 acres of alfalfa and 40 acres of clover in Sections 8 and 9 of the same township. Diversion is to be effected by means of a 2300 gallons-per-minute pump. The applicant claims also a riparian right.

Application 13345 contemplates the diversion from Merced River of 1.25 cubic feet per second from March 1 to November 1 at a point within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, T 6 S, R 12 E, M.D.B.&M., diversion to be effected by means of a 1600 gallons-per-minute pump. The water is to be used for irrigating 20 acres of alfalfa and 70 acres of general crops within Sections 5 and 8 of the same township. The applicant claims also a riparian right.

### Protests

The 3 H Securities Company protests the three applications, claiming a right to the use of water from the source in question under Permit 863 (Application 1730). Under such right, it states, it is

entitled to divert 2.25 cubic feet per second from April 1 to October 1, for irrigation purposes. It states that its diversion heads in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, T 6 S, R 9 E, M.D.B.&M. and that it irrigates 180.2 acres within the same section. It alleges that the proposed appropriation will violate its rights and deprive it of water to which it is entitled.

George J. Hatfield and J. B. Hatfield protest the three applications, claiming that the proposed appropriations will violate their rights and deprive them of water to which they are entitled. They claim rights by virtue of ownership of some 60 acres of land riparian to Merced River, and that they irrigate said 60 acres, which are located within Sections 5 and 6, T 7 S, R 10 E, by diversions heading within the same sections.

The Stevinson Water District protests the three applications, claiming that the proposed appropriations will violate its rights and deprive it of water to which it is entitled. Its claimed right is based upon Permit 893 (Application 1885), authorizing the diversion of 80.58 cubic feet per second from Merced River from March 1 to October 1 for the irrigation of 7336 acres. It asserts that its diversions head within Sections 5 and 6 of T 7 S, R 10 E, in Sections 2 and 3 of T 7 S, R 9 E and in Section 36 of T 6 S, R 9 E, M.D.B.&M; and that the land which it irrigates lies within T 6 S, R 9 E; T 7 S, R 9 E; T 6 S, R 10 E and T 7 S, R 10 E.

James J. Stevinson, a Corporation also protests the three applications, claiming that the proposed appropriations will violate its rights and deprive it of water to which it is entitled. Its claimed right is based upon ownership of some 4000 acres of land riparian to Merced River and to the San Joaquin River below the mouth of Merced River.

It states that its diversions head in Sections 5 and 6 of T 7 S, R 10 E, in Sections 2 and 3 of T 7 S, R 9 E and in Section 36 of T 6 S, R 9 E, M.D.B.&M. The land irrigated is said to lie within T 6 S, R 9 E; T 7 S, R 9 E; T 6 S, R 10 E and T 7 S, R 10 E.

Josephte M. Pyle protests Applications 13344 and 13345, claiming that the water supply in the Merced River has been diminishing during recent years and that if additional amounts are diverted as proposed her supply will be endangered. She asserts a riparian right and intimates that she may also hold an appropriative right. She and her predecessors have diverted from Merced River on her land since 1919, she states, and perhaps earlier. She states that her diversion point is located within Lot 467 and her place of use within Lot 470 (containing 32.77 acres) of Delhi State Land settlement, in T 6 S, R 12 E, M.D.B.&M. She states in effect that her protest may be disregarded and dismissed provided the applicant is not seeking to divert water in excess of what he has previously used and will not divert water to non-riparian lands.

A. J. Quandt, alleged owner of Lots 468 and 469 of Delhi State Land Settlement, joins in the Josephte M. Pyle protest. According to a notation on reverse side of the Pyle protest, Protestant Quandt's lands are 70 acres in extent, adjoin the Pyle property and border the Merced River. He asserts willingness to waive his protest under the same conditions as set forth in the Pyle protest.

#### Answers

Applicant Sousa answers the protests against Application 12715 by stating that his application is for unappropriated waters only, that the validity of vested rights cannot be affected by action taken on that application, that the Division (of Water Resources) in acting upon applications cannot define the magnitude of vested rights and that therefore

he, the applicant, cannot specifically stipulate as to the measure of such vested rights as may exist.

In answer to the protests against Applications 13344 and 13345 Applicant Magneson states that his two pumps have been in operation for many years (40 years in one case and 13 or more years in the other) and that the small amounts of water diverted have not and should not interfere with the protestants' supply.

Hearing Held in Accordance with the Water Code

Applications 12715, 13344 and 13345 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 Wednesday, June 21, 1950 at 10:00 o'clock A.M. at the Merced County Court House, Merced, California. Of the hearing the applicants and the protestants were duly notified.

Discussion

Average monthly discharges of Merced River for the periods from March 1 to October 31 of three recent years, abstracted from published reports of "Sacramento-San Joaquin Water Supervision" have been as follows:

MONTHLY MEAN DISCHARGES OF MERCED RIVER  
(cubic feet per second)

Month	At Cressey Bridge (Mile 27.6)			Near Stevinson (Mile 4.6)		
	1949	1948	1947	1949	1948	1947
March	600	109	94	592	133	169
April	194	144	78	298	182	160
May	355	556	341	406	476	364
June	560	2336	118	655	2291	218
July	57.3	97.1	106	150	210	185
August	69.9	52.2	86	186	167	168
September	68.7	69.9	79	176	193	161
October	52.5	56.1	72	134	165	126

The Cressey Bridge gage (mile 27.6) is above all of the protestants; it is between the two points at which Applicant Magneson seeks to appropriate. The gage near Stevinson (mile 4.6) is centrally located with respect to the protestants' intakes (other than those of Protestants Pyle and Quandt). According to the 1949 Sacramento-San Joaquin Water Supervision report a total of 2780 acre feet was diverted from Merced River below mile 4.6 from March to October, both inclusive, 1949. That amount in 8 months is equivalent to an average flow of about 5.8 cubic feet per second.

Permit 863 referred to in the 3 H Security Company protest relates to Application 1730, under which License 1661 has also been issued. Under the license 2.25 cubic feet per second may be diverted from April 1 until October 31 for the irrigation of a total of 180.2 acres.

Permit 893, referred to in the Stevinson Water District protest and relating to Application 1835, authorizes the diversion of 80.58 cubic feet per second from March 1 to October 31. According to the progress report for 1949, 1800 acres were irrigated during that year and further expansion is expected.

It is at once apparent that the flow of Merced River at the gage near Stevinson (tabulated in an earlier paragraph) was much in excess of 1949 demands within the reach below that gage, which demands in that year aggregated but 5.56 cubic feet per second.

At the hearing of June 21, 1950 the protestants (except Protestants Pyle and Quandt) stipulated to the use of records on file with the Division of Water Resources relating to the discharge of Merced

River and diversions therefrom. According to those records, as set forth above, quantities passing the mile 4.6 gage (Merced River near Stevinson) have substantially exceeded current demands. During July 1949 for example, when supply was relatively scant, discharge at that gage averaged 150 cubic feet per second and diversions downstream therefrom in all amounted to 542 acre feet (from Sacramento-San Joaquin Water Supervision Report, page 162), equivalent to an average of about 8.7 cubic feet per second, leaving a surplus of the order of 141.3 cubic feet per second, an amount much in excess of the amounts applied for under Applications 12715, 13344 and 13345. In each of the other summer months during 1947, 1948 and 1949 the discharge at mile 4.6 was more abundant than in July 1949.

An element of uncertainty as to the amount of water ultimately available to the applicants in the matter at issue is the fact that Stevinson Water District has not applied to beneficial use all of the water which it may eventually divert under Permit 893 (Application 1885), which authorizes the diversion of 80.58 cubic feet per second for the irrigation of 7336.08 acres. Its claimed irrigation of 1800 acres in 1949 suggests that it may have used but  $1800/7336.08$  of 80.58 or roughly 20 cubic feet per second in 1949 and that its diversions in future under the same permit may increase by something of the order of 60 cubic feet per second. However the fact that some 29 years have elapsed since Permit 893 was issued suggests that the 60 additional cubic feet per second (or thereabouts) may not be utilized under that permit soon if at all, and the existence of Permit 893 need not therefore be a bar to the approval of the applications now at issue. As to the objections by Protestants Pyle and Quandt, who were neither present nor represented

at the hearing it is apparent that there is no water shortage, on average, in the reach of the river upon which their properties are located, discharges at mile 27.6 (Merced River at Cressey Bridge) being large in comparison with the probable requirements of the 102.77 acres that those protestants claim to own plus the amount applied for by Applicant Souza.

In view of the circumstances above discussed it is concluded that unappropriated water exists in Merced River at the points where appropriation is sought under Applications 12715, 13344 and 13345 and that such unappropriated water to the extent necessary to satisfy those applications may be taken and used in the manner proposed without injury to the protestants. The applications should therefore be approved, subject to the usual terms and conditions.

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ORDER

Applications 12715, 13344 and 13345 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 State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12715, 13344 and 13345 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 20th day of December 1950.



  
A. D. Edmonston  
State Engineer.