

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 13934 by L. S. Bambauer and Winifred W. Bambauer to appropriate water from Witcher Cabin Creek and from Cain Creek in Mono County for Irrigation and Domestic Purposes.

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Decision A. 13934 D. 758

Decided September 22, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources in Connection with the Proposed Appropriation on June 24, 1952:

L. S. Bambauer	Applicant
Jess Chance	Protestant
J. J. Heacock	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

Interviewed in Connection with the Investigation:

Gene Crosby	Owner of Paradise Camp
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OPINION

General Description of the Project

The applicants seek to appropriate 0.20 cubic foot per second from Witcher Cabin Creek and 0.15 cubic foot per second from Cain Creek, in Mono County, from April 1 to June 1 and from October 1 to November 1, for domestic purposes and irrigation. The proposed points of diversion on the two streams, which are both tributary to Rock Creek, are located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , respectively, of projected Section 10, T5S R30E, MDB&M.

Diversion is to be made by gravity. The project includes an earth dam 2 feet high by 3 feet long and some 5000 lineal feet of small earth ditch of a reported capacity of 2 cubic feet per second. The water is to be used on a property located within the  $\frac{N}{2}$  of Section 14 of the same township. Domestic use is to include service to 6 dwellings, 2 acres of garden, 3 horses, 3 dairy cows and 25 head of cattle. Some 10 acres of alfalfa and 52 acres of pasture are to be irrigated, irrigation extending from about April 1 to about November 1. The applicants claim that the land to be irrigated already has a water right in the amount of 0.65 cubic foot per second, under Application 42 Permit 274 License 211.

#### Protest

Jess Chance protests the application, stating in explanation of his position as follows:

"I own a ranch in Round Valley which is irrigated with the waters from Rock Creek. During the ten years that I have owned this ranch there has been no surplus water. There is a runoff in the spring but no surplus in the summer. In fact I have been without sufficient water to irrigate my land nearly every summer from the first of August on. The last 3 years I have had to dam up the creek, taking all the water except a little trickle to keep the fish alive. I particularly protest this application for irrigation water as it is a new development, above me, of water tributary to Rock Creek. The elevation of this land to be watered is above 7000 feet and the season is too short to grow any kind of crop except grasses and natural cover. The U.S. Forest Service does not grant homesteads at this elevation as it is not practicable to farm.

"Between this proposed place of use and Rock Creek is a cattle and sheep driveway that has been used by many stockmen for many years. This creek is the only watering place for stock for a distance of about 15 miles. You no doubt will receive other letters from the stockmen regarding the taking of this water. I therefore protest the granting of this application. I use this water on cattle drives.

"Each application taken individually may not look harmful to existing rights - - -. It is the accumulative aspect of these diversions that is injurious to us as owners of the oldest and first rights on the creek."

The protestant states that he diverts just above the NE corner of Section 5, T6S R31E and that he also diverts at the corner common to Sections 29, 30, 31 and 32 of T5S R31E. As to his water right and his use of water he states:

"The water from Rock Creek has been used on this ranch continuously since 1870 and perhaps before. I use the water from Rock Creek all the year for irrigation, stock water and the generation of electrical power. I use all I want of the Creek and these last several years there has not been enough water to complete the irrigation season. I also have a riparian right. - - -."

#### Answer

The applicants answer the protest as follows:

"We already have rights to 0.65 cubic feet per second from the two creeks named in this application, from June 1 to Oct. 1 of each year.

"New water under this application will be of greatest irrigation benefit in April and May, by supplying an early irrigation to our meadow land, on which we raise cattle. In this season Rock Creek and its other tributaries supply an excess over Mr. Chance's needs.

"In June, July and August the excess over 0.65 cu. ft. per second is so little that none of it reaches Rock Creek, which is  $1\frac{1}{2}$  and 1 miles from our diversion points, through very sandy and rocky soil.

"The flow after Sept. 1 does not supply even our 0.65 cu. feet, and none is left to flow toward Rock Creek. However, our domestic water ordinarily comes from a spring at the foot of Wheeler Range, on our own property. In the fall its flow is inadequate for our domestic needs, as we have 3 families living here totalling 12 persons. Water under this application will then supplement our spring in August, September and October.

"In the Fall several cattle ranchers bring their stock down the trail from Long Valley. Water once a day is considered sufficient for cattle. There is only a 10 mile stretch from water at Tom's Place to water in Round Valley. Therefore cattle will not suffer from lack of water if none crosses the trail in Kane Creek."

#### Field Investigation

The applicants and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted on the site of the works involved on June 24, 1952 by an engineer of the Division. The applicants and the protestant were present or represented during the investigation.

#### Records Relied Upon

Applications 42, 10548 and 13934 and all data and information on file therewith.

#### Discussion

According to the report of the investigation of June 24, 1952 the points of diversion under Application 13934 are the same as those under Application 42, the watershed above the points of diversion on Witcher Cabin Creek (sometimes called Birch Creek) and on Cain Creek are 2.5 and 1.5 square miles in extent respectively, precipitation on those watersheds is mainly in the form of snow and averages 30 to 35 inches, the creeks when visited were discharging about 0.75 and 0.4 cubic foot per second respectively, at the applicants' points of diversion, the flow of Witcher Cabin Creek was said to be perennial, that of Cain Creek annual, the latter failing usually in late July or August, and, at the time of the investigation, no water from Witcher Cabin Creek but the entire flow of Cain Creek was being diverted. According to the same report Witcher Cabin Creek enters Cain Creek about a mile below the point of diversion on the latter stream

and about  $\frac{1}{4}$  mile above Rock Creek, the entire flow of Witcher Cabin Creek - the applicant states - is never diverted, a portion being allowed to remain therein for stockwatering purposes on lower meadows, the ditch diverting Witcher Cabin Creek water into Cain Creek passes through decomposed granite and transportation losses are therefore fairly high, the ditch leading from Cain Creek to the place of use contains a flume which limits deliveries to about 0.34 cubic foot per second, and seepage losses in that ditch are of the order of 30% per half mile. As to the applicants' use of water the report states that they irrigate about 15 acres of natural pasture (by flooding) and a half acre of garden, that due to the nature of the soil the duty of water is very low, that there are 3 houses on this place of use, permanently occupied by 12 persons, also 3 cabins that house up to 12 persons in summer, and that some 25 head of livestock are on the place in spring, summer and fall. The protestant, the report states, irrigates about 237 acres, mostly pasture, by wild flooding, and at times waters several hundred head of cattle. The protestant's right is said to date back to about 1873 and to cover diversions of about 3.5 cubic feet per second.

Applicant Bambauer is reported to have stated during the field investigation that it is not his purpose to increase the amount that he is already entitled to divert under licensed Application 42 but that he wishes merely to extend the diversion periods authorized under that filing to periods beginning on April 1 and ending on November 1.

As to diversions from Rock Creek other than the protestant's the report refers to a statement contained in a report of investigation in connection with Application 10548 (by Engineer Kibbey) to the effect that about 12 cubic feet per second are required to satisfy water rights in

Round Valley. The report (relating to Application 13934) also contains data as to the flow of Rock Creek at the Sherwin Hill Recorder Station, secured from the Division of Hydrography, City of Los Angeles, the agency operating that station; and from those data the following monthly mean discharges, in cubic feet per second, for the months of April to October inclusive of the years of record, are quoted:

<u>Year</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>
1947	*	*	*	26.93	15.73	9.99	10.31
1948	11.92	12.66	25.67	28.07	9.52	5.14	5.91
1949	13.64	21.23	41.20	16.61	11.00	4.36	5.48
1950	14.91	21.48	33.95	33.30	8.90	6.88	4.67
1951	14.81	25.28	45.13	37.38	18.49	8.82	6.50
1952	23.17	77.35	*	*	*	*	*

\*No record

The report states that on June 24, 1952 Rock Creek at the Sherwin Hill recorder station was discharging 150 cubic feet per second and that Cain Creek at its mouth, which is 6 miles above the recorder station, was discharging about 1 cubic foot per second. It also states that Protestant Chance's diversion heads about  $\frac{1}{2}$  mile below the recorder station, that the Round Valley diversions are also below the recorder station and that the irrigation season usually ends in late September. The report of the investigation of June 24, 1952 ends as follows:

"It is notable from the tabulation that in all months of interest there is more water available than Protestant Chance's right, but in April 1948 and in October of all years there is less than the 12 cubic feet per second noted by Kibbey.

"It appears that during most years there is water available for the three months, as the records from Sherwin Hills recorder show in most cases that it is available in April and May, and any use in October is after the main irrigation season in Round Valley is past."

Application 10548, referred to in the preceding paragraph, by R. L. and E. M. Zink, to appropriate 1300 gallons per day from Rock Creek at a point within Section 32, T4S R30E, MDB&M, was protested also by

Jess Chance for substantially the same reason that he now protests Application 13934. Extracts from the report of field investigation conducted by Engineer Kibbey in connection with Application 10548 on September 22, 1943 are as follows:

"The situation in Round Valley was found to be as follows:

"Chance irrigates 237 acres owned in fee together with a considerable acreage leased from the City of Los Angeles. The bulk of the water is diverted just below the Gene Crosby place (Paradise Camp) and lesser amounts at two points farther down. Another lessee of the City diverts at a point opposite the Chance ranch. As given subsequently by the Department of Water and Power there are approximately 500 acres, other than the property of Jess Chance, irrigated from Rock Creek in Round Valley. That is a total of 737 acres. The soil is of loose texture and mainly in pasture - both planted and native. Irrigation is by wild flooding. Under this setup there is probably a fairly extravagant use of water. At the time the entire flow of the creek, with the exception of about 0.35 c.f.s. which protestant stated was allowed to pass for the purpose of preserving fish life, was being diverted. Both Mr. Chance and the irrigator who has handled the water for a number of years stated that there is usually a shortage from about August 15th into the latter part of September, when the irrigation season closes.

" - - -. All things considered it would not appear that beneficial use in Round Valley could well exceed gross diversion of 1 c.f.s. to 60 acres irrigated or around 12 c.f.s. for the area claimed."

Application 42 Permit 274 License 211, referred to in preceding paragraphs, authorizes the applicants Bambauer to divert a total of 0.65 cubic foot per second from about June 1 to about October 1 of each season, from the same points of diversion, for the same purposes, and on the same place of use as described in Application 13934.

In addition to the record of monthly mean flow of Rock Creek at the Sherwin Hill recorder station set forth in part in an earlier paragraph, records covering longer though earlier periods - one dating from 1903 - are available in the Water Supply Papers of the U. S. Geological

Survey. Mean flows, in cubic foot per second, of "Rock Creek near Round Valley", a recorder station maintained by that agency from April 1930 to September 1940, are quoted for the months of April, May and October only, of that period, as follows:

<u>Year</u>	<u>April</u>	<u>May</u>	<u>October</u>
1930	*	18.7	14.5
31	12.6	12.4	13
32	15.8	34.2	24.1
33	17.5	14.5	14.5
34	17.7	15.3	13.0
35	18.6	27.5	16.5
36	21.9	50.8	16.5
37	21.4	59.8	16.0
38	35.6	83.7	35.7
39	29.5	27.3	19.9
1940	22.9	49.3	*

\*No record.

"Rock Creek near Round Valley" is located within the SE $\frac{1}{4}$  of Section 9, T6S R31E. It is about 0.1 mile above the mouth of Pine Creek.

#### Summary and Conclusions

The applicants seek to appropriate a total of 0.35 cubic feet per second from tributaries of Rock Creek during the months of April, May and October. Irrigated lands within Round Valley, including the protestant's lands, appear to aggregate about 737 acres and to utilize up to about 12 cubic feet per second beneficially, mainly for irrigation. Irrigation as practiced in Round Valley extends into the latter part of September. The flow of Rock Creek in all years of record since 1930, except one, has exceeded 12 cubic feet per second during both April and May, and, since irrigation in Round Valley does not ordinarily extend into October, it has usually exceeded the probable needs of Round Valley water users during that month also.

For the reasons above summarized it is the opinion of this office that unappropriated water usually exists in Rock Creek at the times at

which the applicants seek to divert it, that such water may be taken and used in the manner that they propose without injury to downstream users, and that Application 13934 should therefore be approved and permit issued, subject to the usual terms and conditions.

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ORDER

Application 13934 having been filed with the Division of Water Resources as above stated, a protest having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13934 be approved and that a permit 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 22nd day of September 1952.

Original signed by A. D. Edmonston

A. D. Edmonston  
State Engineer

SE:dm