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 14258 by Frank M. Ringer and M. Edward Ringer to Appropriate Water from Jackson Creek in Amador County for Irrigation Purposes.

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Decision A. 14258 D. 761

Decided September 25, 1952

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Appearances at Hearing held at Jackson, March 4, 1952:

For the Applicants

Frank M. Ringer and M. Edward Ringer	Joseph W. Gross

For the Protestants

Glen T. O'Brien Wm. Hyde Albert J. Ringer Mr. and Mrs. Hart (Alma Hart) Loren C. Barnert William Scully John Streiff Glen Fancher Mervin Kidd Jack Fancher Sam W. Kidd Warren Woolford Leo F. Kidd Dr. J. M. Wakefield John Orr	(D. R. Jacobs and William H. Woodward of the law firm of (Rutherford, Jacobs, Cavalero (& Dietrich

For an Interested Party

East Bay Municipal Utility District Harold Raines

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division of Water Resources.

Also present - Kenneth L. Woodward, Associate Hydraulic Engineer, Division of Water Resources.

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OPINION

General Description of the Proposed Development

The applicants seek to appropriate 3 cubic feet per second to be diverted from April 2 to September 30 of each season and applied directly to beneficial use without storage. They also seek to appropriate 200 acre-feet per annum, the water to be collected between April 2 and September 30 of each season, stored temporarily and later applied to beneficial use. The water is to be used for irrigation and the proposed point of diversion is described as being located within the SW¼NE¼ of projected Section 18, T5N R10E, MDB&M. The project includes a 2000 gallons-per-minute pumping plant, a concrete storage dam 4 feet high by 50 feet long and 4500 lineal feet of 12 inch pipe line. The dam is to create a reservoir 3 acres in surface extent and 3 acre-feet in capacity. The land to be irrigated lies mainly within Section 18 of the township mentioned but also extends into the adjoining Sections 7 and 19. It is 240 acres in extent: 120 acres are to be in alfalfa, 80 acres in general crops and the remainder, pasture. Irrigation is to extend from about April 1 to about October 1. The applicants claim a riparian right. Attached to the application is a supplement, reading in part as follows:

"The applicant herein intends to store any water flowing in Jackson Creek and after impounding same behind a low storage dam to divert by pumping as long as there is water to be diverted. The operation may be repeated many times during the season. Such last pumped water of each rotation may be described by others as direct diversion, therefore application has been made also for direct diversion. The whole operation may be defined by others as direct diversion, because of the limited storage space available. However, water may be stored for weeks or months, and application therefor includes stored waters.

"Applicant already enjoys rights to a reasonable use of the natural waters of Jackson Creek. He has no such right to store the waters of Jackson Creek, which right is herein applied for; he has no right either to divert or store foreign waters which may be flowing in the channel of Jackson Creek. Those rights are herein applied for. The State has declared these waters may be so diverted upon application to and approval by the Division of Water Resources.

"There have been foreign waters flowing in the past and during the present season. It is the express purpose of applicant to acquire first and superior filing for such waters if, when and as they may be available.

"Reference is made to Special Term or Condition No. 9 in the Permit 2459 issued in the matter of Application 4228 of the East Bay Municipal Utility District to appropriate water from the Mokelumne River:

> "Permittee shall construct Lancha Plana Dam and spillways in accordance with such final plans as approved by the Division of Water Rights so that the same may be used to divert water to the northward into the Jackson Creek Watershed or southward into Mokelumne River. The use, however, of said dam and appurtenances by permittee for its municipal supply herein approved shall be paramount and superior to said other use thereof. Any water in excess of that required for the needs of permittee for said municipal supply, which may be so lawfully diverted at said dam into said Jackson Creek Watershed or southward into Mokelumne River may be so diverted upon application to and approval by the Division of Water Rights of the State of California without compensation to said permittee for the use of said dam and spillways. Anyone so diverting shall save the permittee harmless from any damage resulting therefrom."

Protests

Property owners on Jackson Creek, twelve in number, protest the application jointly. They assert that the diversion proposed therein will shorten the season during which water flows in Jackson Creek, upon which stream they depend for stockwatering, subirrigation of bottom lands and maintenance of ground water levels. They claim riparian rights established prior to December 19, 1914. They state that they utilize water throughout the year for stockwatering, domestic purposes and irrigation. The protest sets forth the property owned by each signer, said property in general extending downstream from the applicants' proposed place of use, along Jackson Creek, for approximately 5 miles.

A. J. Ringer protests, alleging that the proposed appropriation will lower the water level thereby irreparably impairing the productivity of his land. He asserts that livestock on his land require water at all seasons. He asserts a riparian right and use, since 1930, for livestock purposes. He describes his point of diversion as being located within the NE¼ of Section 13, T5N R9E, MDB&M. He states that his farm, 178 acres in extent, includes 33 acres of bottom land, that subirrigation is the big factor in making such land highly productive and that the proposed appropriation would adversely affect subirrigation and thereby lessen the value of his land.

Answer

In answer to the protests the applicants contend that the protests are insufficient in that they fail to comply with duly published protest requirements. They contend further that the protests do not set forth valid grounds for protest and that such grounds as are advanced do not come within the jurisdiction of the Department to determine. The applicants assert that

they seek to appropriate unappropriated water and that the appropriation which they seek will be expressly subject to prior and existing rights. They argue that such appropriation cannot injure a non-user of water from Jackson Creek but that it should on the contrary result in increased return flow to the stream during the late summer thereby making for a better supply for stockwatering and a higher water table. For the reasons stated the applicants pray that the protests be dismissed.

Hearing Held in Accordance with the Water Code

Application 14258 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for formal hearing under the provisions of Section 733(a) of the California Administrative Code, Title 23, Waters, on Tuesday, March 4, 1952 at 10:00 o'clock A.M. in the Supervisors' Room, Amador County Court House, Jackson, California. Of the hearing the applicants and the protestants were duly notified.

Discussion

Application 14258 while not identical with Application 13280 differs from that application only in matters of detail. Application 13280 was filed by the same applicants and designated the same source, the same point of diversion and the same place of use. It sought to appropriate 3 cubic feet per second from March 1 to October 1 of each season for direct application to beneficial use but made no mention of any diversion to storage. Application 13280 was heard informally and in due course was rejected and cancelled because of the apparent non-existence, during most of the irrigation months, of unappropriated water.

Witnesses at the hearing of March 4, 1952 in connection with Application 14258 testified in substance as follows:

Applicant Frank M. Ringer testified (pages 7 to 21 of transcript) that he is familiar with and has recently visited both his own proposed point of diversion and the "East Bay" spillway into Jackson Creek, that he personally took the several photographs counted upon Hearing Exhibits 1 to 13, inclusive, and that the exhibits consist of the following:

Hearing Exhibit 1: two photographs taken April 12, 1951, showing the spillway on the north shoulder of Pardee Dam, the spillway allowing water to flow down a ravine to Jackson Creek,

Hearing Exhibit 2: two photographs taken April 12, 1951, showing water flowing in channel leading from the spillway to Jackson Creek, taken from position practically straddling the stream, facing downstream,

Hearing Exhibit 3: two photographs, taken April 12, 1951, showing water flowing in channel leading from spillway, taken from position facing upstream,

Hearing Exhibit 4: view of lake, taken from road atop of spillway on April 12, 1951,

Hearing Exhibit 5: three photographs taken April 26, 1951, showing water flowing in channel leading from spillway, taken facing upstream,

Hearing Exhibit 6: three photographs taken June 1, 1951, showing respectively dry bed of Jackson Creek directly above entrance of spillway water, facing upstream, dry bed of Jackson Creek directly above entrance of spillway water, facing across stream and spillway water entering Jackson Creek.

Hearing Exhibit 7: two photographs taken June 1, 1951, showing respectively the spillway water at junction with Jackson Creek and flow in channel of Jackson Creek at intended point of diversion,

Hearing Exhibit 8: three photographs taken June 1, 1951, the first showing level of impounded water on lake side of spillway and the other two the water flowing from the spillway,

Hearing Exhibit 9: four photographs taken June 15, 1951, the first two showing the flow of water in channel from spillway to Jackson Creek, the third showing the dry bed of Jackson Creek at junction with channel leading from spillway and the fourth showing the flow in Jackson Creek at the proposed point of diversion,

Hearing Exhibit 10: three photographs taken July 15, 1951, showing respectively the flow from the spillway, spillway water entering dry bed of Jackson Creek and spillway water flowing in Jackson Creek at proposed point of diversion,

Hearing Exhibit 11: three photographs taken August 1, 1951, showing respectively spillway water flowing in Jackson Creek at proposed point of diversion, water flowing from spillway and spillway water entering dry bed of Jackson Creek,

Hearing Exhibit 12: two photographs taken August 15, 1951, showing respectively water flowing from spillway and spillway water in Jackson Creek at proposed point of diversion,

Hearing Exhibit 13: three photographs taken February 26, 1952, showing the flow of Jackson Creek at the proposed point of diversion.

Applicant Ringer further testified (pages 21 to 45 of transcript) to the effect that his property is upstream from the protestants' properties, that he is seeking to appropriate both from the natural flow of Jackson Creek and from the supplemental flow that issues from the Pardee spillway, that flow from Pardee spillway has occurred ever since Pardee dam was built, that that flow has been relatively even and extends usually from the beginning of April to the end of summer, that the flow of Jackson Creek is variable and depends upon rainfall, that the flow from Pardee Reservoir is leakage through the spillway structure, and that that leakage diminishes as the water level in Pardee Reservoir recedes.

E. L. MacDonald testified (pages 45 to 53 of transcript) to the effect that he is manager of the Mokelumne Division of the East Bay Municipal Utility District, that his employment with that district began in 1924, that he worked in connection with the construction of Pardee Reservoir, that he is thoroughly familiar with the flow of water into and out of that reservoir, that Jackson Creek spillway was built in 1928, that the openings in the spillway were bulkheaded in 1930 in order to prevent water from going into the Jackson Creek area, that from the first year when the reservoir filled which was in 1930 there was considerable leakage and that thereafter the bulkheads were caulked each year, that leakage has not been eliminated, that currently the wooden bulkheads are being replaced with concrete which is expected to completely eliminate leakage, that leakage in 1950 and 1951 was greater than at any previous time, that leakage in 1951 extended from some time in April until the middle of September, increasing from zero to a peak of 2 cubic feet per

second and then tapering down, that it is hoped to complete the concreting of spillway openings by May, 1952, and that of 20 or 21 years of operation Pardee Reservoir has filled in all but 6 years.

The data considered in connection with an informal hearing in the matter of Application 13280 included a record of the flow of Jackson Creek below most of the protestants against that application (or against Application 14258). That record, which was (and is) available for 1950 only, indicates that the mean flows during March, April and May of that year were 4.04, 33.6 and 2.0 cubic feet per second, respectively, that flow ceased on May 19 and that rainfall during the same 3 months was about 8 per cent above normal. Measurements by the U. S. Bureau of Reclamation at a point a short distance upstream from the applicants' proposed intake indicated that flow ceased in 1942 on July 1 and in 1943 and 1944 on June 1. At the field investigation of June 8, 1950, in connection with Application 13280, the spokesman for the protestants stated that after May 1 the flow usually is no more than enough to satisfy the protestants' minimum requirements.

The findings written in the matter of Application 13280 contain the following passages:

> "In view of the location of the project and the use to which the water is to be applied (irrigation of alfalfa, general crops and pasture) a water supply limited to the months of March and April is manifestly inadequate. Such a supply would require supplementation from another source. Water is even more necessary during May, June, July, August and September than it is in March and April. The application makes no mention of a supplementary source of supply nor did the applicants or their representative, at the field investigation, mention any source of supply other than Jackson Creek.

"Inasmuch as unappropriated water appears to be nonexistent in approximately 5 of the 7 irrigation months it is the opinion of this office that the approval of Application 13280 is unjustified - - -."

Insofar as direct diversion from the natural flow of Jackson Creek is concerned the conclusions reached in passing upon Application 13280 appear to apply to the situation presented by Application 14258 also. According to the 1950 record of streamflow unappropriated water probably exists throughout April and into early May. A supply which fails so early is unsuitable for irrigation.

As to the storage feature of the application, the 1950 record indicates that the 200 acre-feet applied for could readily be collected prior to mid-May, were sufficient storage capacity available. However, the applicants' proposed reservoir which is described in the application as being but 3 acre-feet in capacity is altogether too small to enable the spring surpluses in Jackson Creek to be utilized.

Apart from the natural flow of Jackson Creek there appears from the testimony to have been available at the applicants' intake, for several years past, an accretion due to leakage, through the so-called Jackson Creek spillway, of waters originating within the Mokelumne River watershed and stored by the East Bay Municipal Utility District in Pardee Reservoir. The flow line elevation at Pardee Reservoir is reported to be 567.5 feet. Of the two spillways which were provided the south spillway, only, is in operation. As to the northerly or Jackson Creek spillway Division of Water Resources Bulletin 29 states:

"The Jackson Creek spillway is located at the head of Jackson Creek in a topographic saddle on the divide between the Mokelumne River and Dry Creek watersheds. It is a concrete structure of 16,000 second-feet capacity, consisting of a battery of 16 siphons, each having throat dimensions of four by twelve feet. The

siphons are provided with gates which are sealed at present. The structure was built with the idea of discharging surplus waters into the proposed storage reservoir on Dry Creek and will not be permitted to function until such time as the Inne Reservoir is constructed."

The protestants against Application 14258 have no apparent right to foreign waters reaching Jackson Creek by way of Jackson Creek spillway and such foreign waters therefore would appear superficially to be subject to appropriation. In that connection however Witness MacDonald's testimony to the effect that the work of concreting the spillway openings to eliminate leakage had begun and was expected to be completed by May, 1952 indicated that leakage would probably be of short duration; on June 26, 1952 an engineer of the Division observed that concrete bulkheads had been installed, reducing leakage, on that date, to some 10 gallons per minute; on August 26, 1952 the same engineer estimated spillway leakage to be 15 gallons per minute, found the channel of Jackson Creek to be dry, with no water holes visible, in the vicinity of the road by the Ringer place; and secured from Camp Pardee Supervisor Hussey the East Bay Municipal Utility District record of volumetric measurements of leakage through the spillway during the summer of 1952, said record containing figures as follows:

Date	Gallons per Day	Date	Gallons per Day
6-26	13925	7-16	25412
6-27	14400	7-22	27000
7-1	9391	7-25	33231
7-3	21600	8-4	28800
7-8	20575	8-11	28800
7-10	22737		

The water surface on the dates when the leakage was measured is reported to have varied in elevation between 568.36 feet and 565.45 feet. Leakage through the Jackson Creek spillway is said to occur when water stands at

elevation 564 or higher. The measured leakages just arrayed average 22,352 gallons per day or about 0.035 cubic foot per second. It is evident that leakage through the Jackson Creek spillway has been reduced by operations of the East Bay Municipal Utility District to amounts too small to contribute materially to the flow of Jackson Creek.

Summary and Conclusion

It is evident from the testimony and from other information outlined in preceding paragraphs that unappropriated water probably exists in Jackson Creek, in a normal season, during April and early May, that irrigation by direct diversion for so short and early a period falls short of the requirements of growing crops of the locality and that irrigation by diversion of waters accumulated in storage is infeasible because of insufficiency of storage space. It is further evident that unappropriated water emanating as leakage through Jackson Creek Spillway has existed as recently as 1951 but that such leakage cannot be regarded as subject to appropriation at this time in view of recent leakage elimination operations by the District.

For the reasons summarized it is the opinion of this office that the approval of Application 14258 is unjustified and that the application should therefore be denied.

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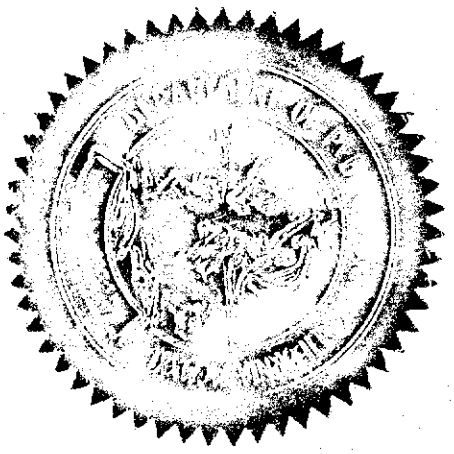
ORDER

Application 14258 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 Application 14258 be rejected and canceled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 25th day of September 1952.



A. D. Edmonston
State Engineer