

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 13807 by Ralph E. Fisher and Kathleen P. Fisher to appropriate water from Snake Slough in Merced County for Irrigation Purposes.

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Decision A. 13807 D. 765

Decided October 31, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriation on June 22, 1951:

Ralph E. Fisher	Applicant
H. C. George	Applicant's Attorney
John Reed	Applicant's Witness
Peter J. Rahilly, Jr.	Protestant
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

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OPINION

General Description of the Project

The applicants seek to appropriate 2.25 cubic feet per second, year-round, from Snake Slough, in Merced County, at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T8S R14E, MDB&M, for irrigation purposes. Diversion is to be effected by gravity. The applicants consider no diversion dam

to be necessary, nor do they contemplate storage. They propose to convey water through one or the other of 2 earth ditches, one 4000 and the other 1450 feet long, each of a carrying capacity of 4 cubic feet per second. The water is to be used to irrigate 60 acres of alfalfa and 120 acres of general crops and pasture, located within the $W\frac{1}{2}$ of Section 17, T8S R14E, MDB&M. The applicants propose to irrigate throughout the year. No other water right or source of water supply is claimed.

Protest

Peter Rahilly Jr., and Mamie F. Rahilly jointly protest the application, stating that their property lies downstream from the applicants' proposed intake, that for many years they (the protestants) have used the waters filed upon, that the proposed diversion would prevent such use and that the flow of the source is insufficient to serve both the applicants and themselves. They (the protestants) state that their use has extended over 10 years, that the flow of Snake Slough amounts to about 3 cubic feet per second, that they have used practically all of that amount, that their use is for the irrigation of pasture, that their lands are riparian, that they are the holders of Application 13218 which was filed in 1949, and that their diversion point is located within the $SW\frac{1}{4}$ of Section 18, T8S R14E, MDB&M. They state no terms under which their protest may be disregarded.

Answer

The applicants in answering the protest deny that the protestants have used waters of Snake Slough for irrigation or for any other purpose, but that they themselves (the applicants) have used those waters, in their entirety, for irrigation. The applicants allege that the work done by the protestants, including the levee system referred to in the protest, was constructed for the purpose of flood protection.

Field Investigation

The applicants and the protestants 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 at the site of the proposed appropriation on June 22, 1951 by an engineer of the Division. The applicants and protestants were present or represented during the investigation.

Records Relied Upon

Applications 13218 and 13807 and all data and information on file therewith.

Discussion

The report covering the field investigation of June 22, 1951 indicates that Snake Slough is a small water course heading on the San Joaquin Valley floor near Merced, that it drains about one square mile of practically barren watershed above the applicants' property, that its channel through the applicants' property is not very well defined, that it is tributary to San Joaquin River via Duck Slough and Bear Creek, that it carries little or no natural flow except during storm periods, and that at times other than storm periods its flow is erratic and consists of wild or waste waters from upstream irrigation. According to the same report the flow of Snake Slough was about 0.25 cubic foot per second on the date of the investigation, Protestant Rahilly stated that its flow rarely if ever exceeds 3.00 cubic feet per second and Applicant Ralph E. Fisher stated that its flow sometimes amounts to 7.00 cubic feet per second.

At a conference preceding the field investigation Attorney George (on behalf of the applicants) made reference to a case designated "Costello vs. Bowen, 8 Calif., 2nd, 621 and 182 Pacific 2nd, 615," and he handed the

investigator a purported copy of the transcript in that case.

As to the applicants' use of water the report of investigation states:

"Applicants have been using water from Snake Slough in 4 duck ponds covering an area of from 25 to 30 acres, formed by low check levees with - - - drain pipes which maintain a constant depth of water in each pond. - - -

* * *

"While the drain pipes permit the flow in the slough to pass through the ponds and thence to the protestants there is, of course, loss in the ponds due to percolation, plant transpiration and evaporation. With 0.25 cubic foot per second entering the ponds at the time of this investigation - - - the protestants were receiving no water from Snake Slough."

As to the protestants' use of water the report of investigation states:

"Protestants have been using the waters of Snake Slough commingled with water from Duck Slough (Mariposa Creek), to irrigate a considerable area of pasture lands.

"Subsequent to the investigation protestants submitted affidavits in support of their claims of use.

"Mr. Fisher at the conference contended that protestants had not been using Snake Slough waters and had constructed works to keep the waters off their lands and to deliver Duck Slough waters to the lands. An inspection of the works disclosed that while the works kept Snake Slough waters off a portion of protestants' lands, they diverted Snake Slough waters to the lands covered by protestants' Application 13218."

According to the report of investigation the applicants also obtain water from Duck Slough and the protestants obtain a part of their supply from wells.

The gist of the purported copy of the transcript in Costello vs. Bowen, submitted by Attorney George as mentioned in an earlier paragraph, is that Snake Slough ends in the middle of a certain barley field where the water spreads out, evaporates or goes into the ground, except that at times

of overflow it reaches the Bloss place (immediately downstream from the protestants); and that the water that spreads out is made up in part of drainage from irrigated lands.

The affidavits submitted by the protestants, as mentioned in an earlier paragraph, are in substance as follows:

Affiant Alfred Thomas stated that on Ralph E. Fisher's request he constructed a levee along the fence line between the Fisher property and the Rahilly property in connection with a projected duck pond, that in order to construct the levee he had to first construct a levee on Fisher's eastern boundary, and a drain therefrom to exclude the flow in Snake Slough, that until that time water apparently had been flowing regularly down the slough to the Rahilly lands and no other levees had been built across the slough, that in late June, 1948 water in the amount of about 3 cubic feet per second was passing around the levee and on down to Rahilly, and that later in 1948, both before and after the opening of the duck season, he noted that the flow was about the same.

Affiant Harry G. Fritz stated that on hunting trips to the Rahilly Ranch at various times during the summer, fall and winter months of the past 10 years he has observed water to be flowing in a slough on the north side of said ranch, which he believes to be Snake Slough, that the flow in said slough has varied from almost nothing to a substantial amount, and that the water in the slough was used to irrigate Rahilly pasture.

Affiant Peter Rahilly, Jr., (protestant) stated that Snake Slough is a natural drainage channel, that until about 10 years ago it carried flood flow but very little summer flow, that about 10 years ago systematic

irrigation of upstream lands began and has increased, that return flow from such irrigation has also increased and now amounts to about 3 cubic feet per second, that for approximately 15 years he has diverted substantially all of the flow of the slough for irrigation of pasture land located on the north side of Snake Slough, that in July 1949 he and his mother (Protestant Mamie F. Rahilly) filed Application 13218 to appropriate the 3 cubic feet per second aforementioned, that notwithstanding the approval of Application 13218 the Fishers, by the installation and maintenance of diversion works on their ranch, have prevented and are preventing him and his mother from receiving the full flow, particularly the summer flow, of Snake Slough.

Application 13218, by Peter Rahilly Jr., and Mamie F. Rahilly, mentioned in the preceding paragraph, initiated an appropriation of 3 cubic feet per second, year-round, for irrigation purposes, from Snake Slough, at a point within the ~~NE1/4~~ of Section 18, T8S R14E, MDB&M. There were no protests and the application was approved and Permit No. 8130 issued. The progress report by those permittees for the year 1951 contains statements to the effect that use of water has commenced, that from 35 to 40 acres of pasture were irrigated during the spring and summer months of 1951, that practically 155 acres were irrigated with flood water available in November and December, 1950 and that water will be used in other months if it is available. In answer to the question as to when use will be full and complete the permittees state: "When Ralph E. Fisher's diversion works upstream, covered by Application 13807 and protested by the permittees, are removed."

The point at which the applicants seek to appropriate scales about

3/4 mile upstream from the protestants' point of diversion under Application 13218. There is no evidence that accretions reach Snake Slough between those two points and it therefore may be inferred that there is no unappropriated water in Snake Slough except when the flow at the applicants' proposed point of diversion exceeds the protestants' entitlement of 3 cubic feet per second. Such flow apparently occurs rarely. The investigator found it to be but 0.25 cubic foot per second on June 22, 1951. The protestants' progress report points to the probability that it averaged much below 3 cubic feet per second from May to October of 1951, both inclusive, but that flood stages obtained during the preceding November and December. That report is somewhat vague as to conditions from January to April, 1951, though it intimates that supply during those months was insufficient. Nowhere in the record is there a positive indication of the existence of unappropriated water except during two months of presumably stormy weather. Rain storms and floods that result therefrom, as a matter of common knowledge, may occur at any time from late fall until early spring. When such a flood occurs the need for irrigation is apt to be least, the farm lands of the vicinity already having been wetted by the same storm that produces the flood.

Summary and Conclusion

The source filed upon drains about 1 square mile of the floor of San Joaquin Valley. It is fed during wet months by runoff from rain storms and during dry months by return flow from irrigation. Except during stormy periods supply is less than the amount necessary to satisfy the protestants' prior right. An irrigation supply that consists only of runoff from rain storms, in the locality under consideration, is insufficient

to meet the needs of growing crops. It is of doubtful benefit when it exists and it fails before and is non-existent during the period of maximum need. It is the opinion of this office that unappropriated water, in the source filed upon under Application 13807, does not exist often enough or long enough, in an average season, to warrant the approval of an application to appropriate it and that Application 13807 should therefore be denied.

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ORDER

Application 13807 for a permit to appropriate water 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 13807 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 31st day of October, 1952.


A. D. Edmonston
State Engineer

