

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 15107 by Everett J. Smith, Texas Smith and John L. Wilson to Appropriate Water from an Unnamed Stream Tributary to Miners Ravine in Placer County for Irrigation and Stockwatering Purposes.

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Decision A. 15107 D. 791

Decided May 7, 1954

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In Attendance at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriation on October 8, 1953:

Everett J. Smith	Applicant
Frank Crossley	Protestant
George Carpenter	Protestant
Joe Fredricksson	Son of Protestant Fanny Fredricksson
William Tudsbury	Upstream Diverter
William & Ora Crossley	Parents of Protestant Crossley
K. L. Woodward	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

The applicants seek to appropriate 0.44 cubic foot per second year-round from an unnamed stream tributary to Miners Ravine in Placer County, for irrigation and stockwatering purposes. Diversion is to be effected by pumping from a sump in the channel of the unnamed stream at a point within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, T11N R8E, MDB&M. The water is to be used for the irrigation of 5 acres of alfalfa and 30 acres of pasture, also for watering 20 head of cattle. The place of use is described as lying within the same quarter-quarter section as the point of diversion. According to the application the applicants jointly own both the site of the proposed diversion and the land which is to become the place of use. The applicants claim no other water right or source of water supply.

### Protests

Frank Crossley protests the application, apprehending that the appropriation sought therein will result in shortage of water in summer for stockwatering. He asserts that his diversion heads at a point within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18 of the township mentioned above, claims an appropriate right based upon use prior to the effective date of the Water Commission Act, states that his is the second ranch immediately below the applicants' intake.

Fanny Fredricksson protests for the following stated reasons:

" ... the cattle is depending on this water. Also my household water comes from a well close to this creek and would go dry without water in it.

" ... this creek runs through my property and I have used water from it in 35 years.

"Water has been used for cattle and household in 35 years by me and my family and about 12 years before my time and it would be a great handicap if it now would be stopped."

Protestant Fredricksson reports that her property is 90 acres in extent and lies within Section <sup>24</sup> \* of T11N R7E, MDB&M. She states that under no conditions may her protest be disregarded.

George Carpenter protests as follows:

"There is an insufficient amount of water in the stream during the summer to satisfy prior rights as the main supply is from a spillway of a P.G.&E. ditch, otherwise the entire creek would be dry from 5 to 6 months during the summer.

\* \* \*

"I feel positive that this small stream depends almost entirely on the spill from the P.G. & E. ditch all during the summer as the seepage is practically nil during the dry season.

"For ten years or more I have worked many hours ... trying to keep a ditch open ... so we as well as others below us could get some of this vital water supply.

" ... the P.G.&E. does spill water at this point otherwise we would have no water all during the summer months, and at other places it could be spilled and we all would lose the use of it.

"Personally I believe ... that if any part of any water right on this stream is granted it would be a natural thing for the P.G.&E. to eliminate this spill for their own protection.

"The P.G.&E. has offered to sell water to customers located along this creek and in 5 years or less there may be several added

homes that will need the service but if Mr. Smith is to get his .44 cubic foot per second first there will not be any delivery to anyone."

Protestant Carpenter claims an ancient appropriative right, asserts use for watering 10 to 15 head of dairy cows and calves, 500 to 800 chickens, domestic use including garden watering, states that seepage from the source supplies his well and that supply therein is an important factor in fire protection. He states that he diverts at a point within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, T11N R8E, and that his protest may under no conditions be disregarded.

Aster Kondo protests that the flow in the source during the summer is insufficient to satisfy prior rights. He bases his claim of a right to the use of water upon use prior to December 19, 1914, states that his use is for the watering of approximately 10 head of beef and dairy cattle, describes his diversion point as being located approximately one-fourth mile downstream from the applicants' and states that his protest may be dismissed and disregarded under no conditions.

#### Answer

In answer to the protests a letter signed Everett J. Smith et al. and dated April 1, 1953, reads in part as follows:

"In answer to protests filed against water right we are endeavoring to secure, in order to divert a portion of water for irrigation purposes from the creek which is commonly known as Poverty Ravine and which flows across our property:

"After careful study we have come to the conclusion that approximately 95 per cent or more of this water flows past points on

the protestants' property and by determination we find that the protestants make a very small use of this water. The remaining volume of water is simply not used and permitted to go to waste.

"It is very apparent the protestants have never intended to use this water for irrigation purposes ....

"There is no source, or any way, that we can secure water, other than this aforementioned creek ....

"Our intention is to use sprinkler system for irrigation because of its economy....

"Three of the protesting parties own property below the junction of Poverty Creek and ... Miners Ravine. Miners Ravine has twice the volume of water that Poverty Ravine has, consequently, the protestants are not dependent on the water flowing through Poverty Ravine. Also, Miners Ravine has a longer flowing period each year than does Poverty Ravine."

\* \* \*

" ... we have 15 head of cattle on our property at present and we see no reason why thousands of acre feet of water flowing through our property in Poverty Ravine should be allowed to go to waste ...."

#### Field Investigation

The applicants and the protestants with the approval of the Department, having stipulated to the submittal of the application and protests upon the official records of the Department, a field investigation was conducted on October 8, 1953, by an engineer of the Division. The applicants and the protestants were present or represented during the investigation.

#### Records Relied Upon

Applications 13080, 13419, 14525 and 15107 and all data and information on file therewith.

Information Secured by Field Investigation

The report of the field investigation of October 8, 1953, contains among others the following statements:

"The source under this application is an unnamed waste ditch which heads on the Pacific Gas & Electric Company Mammoth Canal at a point within the SE $\frac{1}{4}$  of Section 12, T11N R7E, MDB&M. The outlet from the canal is a 5' wide concrete wing wall head-gate with plank flashboards. The ditch flows in a southern direction a distance of approximately 1.5 miles and empties into Miners Ravine near the SW corner of Section 18, T11N R8E, MDB&M. During the irrigation season the only water flowing in the ditch besides P. G. & E. spill is probably some drainage water from upstream irrigation.

"According to the information gathered shortage of water in the ditch normally begins around June 15 of each year. After that date the only water of any concern is P. G. & E. spill, the amount and frequency of which is extremely erratic depending upon the flow of water in the Mammoth Canal and the demands of P. G. & E. customers. It was stated that the source has been dry for several weeks at a time during the summer. Whereas at other times the flow is of a considerable quantity.

"At the time of this investigation it was estimated that 0.25 c.f.s. was being discharged into the ditch of which about 40 gallons per minute was reaching Miners Ravine. Miners Ravine was flowing an estimated 2.0 c.f.s. immediately upstream from the confluence with the ditch.

"All of the protestants use water from the source for stock-watering purposes only. No actual diversions are made from the ditch as the stock drink directly therefrom. Each protestant owns from 10 to 30 head of cattle which have access to the ditch. They also believe that any upstream diversion affects the level of their domestic wells.

"As yet no use of water from the stream has been made by applicants as they are awaiting the outcome of the subject application.

"According to ... the P. G. & E. the Mammoth Canal was constructed about 1850. Originally the canal was used for mining purposes and later obtained by the company for the uses presently being made. It was the belief of that office as

well as the parties at the investigation that excess water has been discharged down the unnamed ditch beginning many years prior to passage of the Water Commission Act and the claims of the protestants of all appropriative rights for stockwatering purposes are uncontested.

"Protestants Kondo and Fredricksson are located on Miners Ravine below the confluence of the source with that stream and therefore do not rely entirely upon the source for a water supply. Protestants Carpenter and Crossley are located on the ditch upstream from the confluence with Miners Ravine.

"The land which the applicants seek to irrigate ... is pasture located immediately adjacent to the source. The property can also be served by an existing well. Applicant Everett J. Smith indicated that he recognized that stockwatering rights below him on the ditch had to be recognized but that he believed in spite of the uncertainty of the amount and frequency of occurrence of unappropriated water he was in position to place such water to beneficial use when available.

"The Auburn office of the P. G. & E. advised the writer that none of the owners along the ditch are purchasers of water from its system and consequently disclaims any interest in the water once spilled.

The investigator summarized his report as follows:

1. The source is a waste ditch used for spill of excess water from Pacific Gas & Electric Mammoth Canal.
2. There was ample water for all at the time of the investigation.
3. Normally after June 15 of each year until beginning of fall rains shortage of water is periodically experienced.
4. The frequency and quantity of available water in the source after June 15 of each year is extremely erratic. At times, depending upon the needs of Mammoth Canal users, the spill in the ditch is considerable.
5. Pacific Gas & Electric claims no interest in the water once spilled as it has no purchasers of water along the ditch.

Information Secured from Other Sources

Filings on Miners Ravine below the junction therewith of Unnamed Stream include the following:

Application 13080, Permit 7786, Leason, 1.0 cubic foot per second at a point within Section 2 of T10N R7E, MDB&M, for the irrigation of 80 acres of pasture from about May 1 to about September 15 and for the watering of 30 head of cattle year-round. The application was unprotected. According to progress reports by permittee some 8 acres have been irrigated, 30 head of cattle watered; more construction is to be done, a larger pump installed, more land cleared. The permittee makes no mention of insufficiency of water supply. His intake scales roughly 5 miles below that of the applicant.

Application 13419, Permit 7692, Beek, 0.65 cubic foot per second by direct diversion from April 15 to October 15 and 72 acre-feet per annum by collection in storage between November 30 and April 15, at a point within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, T11N R7E, MDB&M, for the irrigation of 50 acres of pasture. The application was unprotected. By progress report for 1953 the permittee reports that the project is incomplete, that some 30 acres have been irrigated, that the reservoir has been filled but not emptied, that completion of the project is anticipated by 1956. No mention is made as to insufficiency of water supply.

The permittee's intake scales about 3.5 miles below the applicants'.

Application 14525, Permit 8892, Beek, 0.56 cubic foot per second by direct diversion from about April 1 to about October 15 and 18 acre-feet



per annum to be collected from an unnamed tributary between October 15 and April 1; points of diversion to be within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, T11N R7E, MDB&M, respectively; purpose, irrigation of 120 acres of pasture, also recreation (bathing and fishing). The permittee reports that the project is expected to be complete in 1956, that some clearing and construction has been accomplished, some 3 acres irrigated. He mentions no inadequacy of water supply but does mention an auxiliary supply, viz. "such water from P. G. & E. as may be necessary." His point of diversion on Miners Ravine scales about 4 miles downstream from the point at which the applicants Smith and Wilson seek to appropriate.

#### Discussion

From the fact that protestants' use of water is limited to the watering of small herds of livestock it follows that the protestants' requirements are quite small. In this connection the investigator asserted that on October 8, 1953, when some 0.25 cubic foot per second was entering "the ditch" and 40 gallons per minute were carrying through to Miners Ravine "there was ample water for all." Such rate of flow apparently sufficing for the protestants' stockwatering needs, it is not apparent that the protestants would benefit materially by the occasional flows of greater magnitude that occur when large releases are made from Mammoth Ditch. It is not apparent either that the occasional flows of considerable magnitude contribute materially to the maintenance of water level in the protestants' domestic wells. The applicants recognize that

the protestants are entitled to a supply for stockwatering; presumably, if their application is approved, the applicants will bypass such amounts as are necessary for that purpose. The diversion and utilization of the intermittent flows that are in excess of the protestants' needs evidently may be made without injury to any protestants, and, according to information contained in certain progress reports, without injury to diverters from Miners Ravine.

#### Summary and Conclusions

The applicants seek to appropriate 0.44 cubic foot per second, year-round, from an unnamed tributary to Miners Ravine for the irrigation of 35 acres of alfalfa and pasture and the watering of 20 head of cattle, the water for irrigation to be pumped and applied by sprinkler system.

The source filed upon is described as a waste ditch, heading on the Pacific Gas and Electric Company's Mammoth Canal, discharging into Miners Ravine and about 1.5 miles long. During irrigation seasons it probably carries some water from upstream irrigation but mainly it carries spill from Mammoth Canal. The flow in the source is variable. The bed is said to have been dry for several months at a time but at other times flow is said to have been considerable. On October 8, 1953, according to the investigator, the source was carrying 0.25 cubic foot per second at its head and it was discharging 40 gallons per minute into Miners Ravine; at the same time Miners Ravine was carrying about 2 cubic feet per second just above the source's mouth.

The application is opposed by 4 protestants, 2 of them on the unnamed stream, the others on Miners Ravine, a mile or less below the unnamed stream's mouth. The protestants each water from 10 to 30 head of cattle, divert for no other purpose. The protestants on unnamed stream contend that the full flow of that stream is necessary to maintain the water in their domestic wells at a satisfactory level.

The flow of unnamed stream on October 8, 1953, was said by the investigator to be "ample for all." The information does not indicate that the intermittent increased flows in unnamed stream due to releases from Mammoth Ditch have any marked effect upon protestants' wells. The applicants recognize the protestants' rights to water for stockwatering and may be presumed to bypass enough water to satisfy such rights.

From the information summarized it is concluded that the flow in the source from which the applicants seek to appropriate is variable and uncertain, but is greater at times than necessary for the satisfaction of existing rights, that the excess of supply over demand, when such excess occurs, is subject to appropriation and that said water which is subject to appropriation may be taken and used beneficially in the manner proposed by the applicants without injury to the protestants. In view of the circumstances it is the opinion of this office that Application 15107 should be approved and permit issued, subject to the usual terms and conditions.

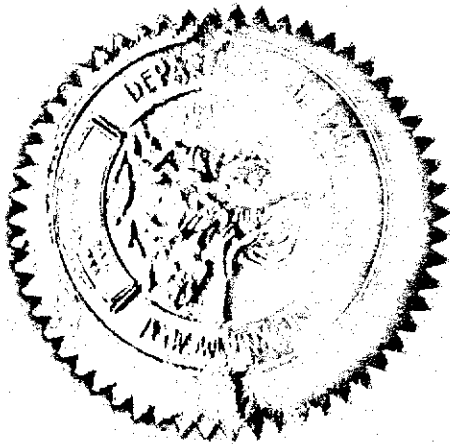
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ORDER

Application 15107 having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15107 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 7th day of May, 1954.



*A. D. Edmonston*

A. D. Edmonston  
State Engineer