STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of Application 15217 by Emma M. Goffinet to Appropriate Water from Jackass Creek and from an Unnamed Tributary thereto, in Amador County, for Irrigation Purposes.

oOo

Decision A. 15217 D. 804

Decided September 22, 1954

oOo

In Attendance at an Investigation Conducted by the Division of Water Resources on December 1, 1953:

Emma M. Goffinet	Applicant
Gladys T. Franklin	Protestant
Fletcher Franklin	Protestant's husband
K. L. Woodward	Associate Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

oOo

OPINION

General Description of the Project

The application initiates an appropriation of 127 acre-feet per annum from Jackass Creek and 70 acre-feet per annum from an unnamed tributary to Jackass Creek, both in Amador County, for the irrigation of a 50-acre pasture. The water is to be collected between November 1 and April 30 behind a storage dam on Jackass Creek, located at a point within the SE¼ NW¼ of Section 16, T6N R10E, MDB&M. The storage dam is to be an earth structure 32 feet high by 585 feet long; the resultant reservoir is to have a surface area of 16.3 acres and a capacity of 197 acre-feet. The water from the unnamed tributary is to be diverted by means of an earth dam 5 feet high by 60 feet long, located within the SW¼ NE¼ of the same Section 16, conducted to the reservoir through 1800 lineal feet of open ditch, 25 cubic feet per second in capacity. The project also includes a steel pipeline 6 inches in diameter and 1500 feet long. Irrigation is to extend from May 1 to October 1. The applicant claims also a riparian right. The applicant asserts ownership of the land at the proposed point of diversion and of the land whereon the water is to be used.

Protest

The application is protested by Gladys T. Franklin who apprehends that in normal years supply will not be enough to satisfy both her own rights and the rights that the applicant is seeking. The protestant asserts that she holds Application 12895, Permit 7483, that she is presently irrigating 15 acres, that her diversion heads on Mule Creek at a point within the

SE¼ NE¼ of Section 12, T6N R9E, MDB&M, that that point is downstream from the applicant. She states that her protest may be disregarded and dismissed if she can be satisfied that Application 15217 will not interfere with her use of water.

Answer

The applicant answers the protest by a letter addressed to the protestant under date of August 4, 1953. The letter reads in part as follows:

> "I received your protest, so I had the district engineer to check and find out if my dam did interfere with your irrigation. Mr. Lawder (the engineer) found out the following facts:
>
> "There is a drainage area of approximately 3,000 acres above the Tregaskis diversion point which will not be affected by my proposed dam. This area has an annual rainfall of 24 inches and there should be at the least a runoff of 25 per cent. This provides an annual yield of 1500 acre-feet which is enough to irrigate 375 acres of land.
>
> "In view of the above fact if you will withdraw your protest before August 12, 1953, it would save us both much time and unnecessary expense ...."

Field Investigation

The applicant and the protestant with the approval of the Department having stipulated to the submittal of the application and protest upon the official records of the Department, a field investigation was conducted at the site of the proposed appropriation on December 1, 1953, by an engineer of the Division. The investigation was preceded by a conference at Ione. Both applicant and protestant attended the conference; the applicant, only, elected to participate in the investigation in the field.

Records Relied Upon

Applications 2575, 12895 and 15217 and all data and information on file therewith; Report on the Irrigation Water Supply of the Preston School of Industry, Division of Water Resources, May, 1948, File 041.320; Bulletin No. 5 - Flow in California Streams, Division of Engineering and Irrigation, 1923.

Information Secured by Field Investigation

According to the report covering the investigation of December 1, 1953, the watershed tributary to the applicant's project is made up of low, sparsely wooded, rolling hills, runoff therefrom is dependent mainly upon rainfall, rainfall at Ione is recorded as averaging 20.84 inches, definite information as to the amount or season of flow is not obtainable, the protestant's main concern centers upon the possibility of interference between applicant's reservoir and the flow of Jackass Creek at times other than the proposed collection period, the protestant's property is under lease to one John Tonzi, the protestant lives in San Francisco and is not acquainted in detail with the use of water upon her property in Amador County, 2 wells on that property provide a supplemental water supply, the applicant's storage dam is under construction, over one-half of the earthfill being in place and completion dependent upon weather conditions, there was no flow in Jackass Creek at the time of the inspection. A passage in the report that clarifies the protestant's main objection to the proposed appropriation reads as follows:

"Henderson reservoir of the California Youth Authority which serves the Preston School of Industry at Ione is located on Jackass Creek a short distance upstream from the applicant's project. The Youth Authority under permits ... also diverts water from Sutter Creek into the reservoir. It was contended ... and conceded ... that up to July 1 of each year an appreciable amount of water is spilled down Jackass Creek from Henderson Reservoir. The protestant claims that as she and her predecessor in interest have been enjoying the use of this water for many years she is entitled to the continuation of such use and insists that adequate arrangements be made to bypass the spill water through the applicant's reservoir after the close of the applicant's storage season .... The applicant on the other hand insists that use of this spill did not begin until sometime after passage of the Water Commission Act (applicant stated that to her knowledge use of water on the protestant's property did not begin prior to 1917), that the entire rights of the protestant are defined by Application 2575, License 455 and Application 12895, Permit 7483, which combined provide for 45 acre-feet of storage between November 1 of each year to July 1 of the succeeding year and that as this is apparently the capacity of protestant's reservoir the applicant contends that the protestant is not entitled to anyof the Henderson reservoir spill once the protestant's reservoir has been filled."

Information Secured from Other Sources

Application 12895, Permit 7483, now standing in the name of Gladys T. Franklin, formerly held by L. M. Tregaskis, covers an appropriation of 30 acre-feet per annum on Mule Creek, at a point within the SE¼ NE¼ of projected Section 12, T6N R9E, MDB&M, the water to be collected between November 1 and July 1 and used for irrigation. The application describes a storage reservoir about 4 acres in surface area and 45 acre-feet in capacity. The reservoir is said to be off-stream and to be supplied at a maximum rate of 1 cubic foot per second. Application 12895 was not protested. According to the application the land to be irrigated is also supplied under License 455. The project under

Application 12895 was inspected by an engineer of the Division on June 24, 1953. Extracts from memorandum covering that inspection are as follows:

> "Watershed is rolling hill country sparsely wooded. Season of runoff dependent on heavy rainfall."
>
> "Place of use consists of 15 acres of pasture .... About 30 head of cattle are watered incidentally."
>
> "Mr. Tonzi has 2 wells which supplement reservoir water."
>
> "The season of collection to storage has extended from Nov. 1 to April 1 .... Reservoir was emptied in 1951, filled in 1952 and then emptied again. Mr. Tonzi said it filled in Feb. this year ...."

License 455, mentioned in the preceding paragraph, relates to approved Application 2575. It stands currently in the name of L. M. Tregaskis and represents an appropriation of 15 acre-feet per annum to be collected between November 1 and July 1 from Mule Creek at a point within the SE¼ NE¼ of projected Section 12, T6N R9E, MDB&M, and used for the irrigation of 10 acres of pasture within Section 14 of the same township. In the report of an inspection of the project under Application 2575 on August 29, 1924, the writer of that report states, in part:

> "Mule Creek rises in the low Sierra Nevada Foothills near the town of Amador .... The runoff is made up almost entirely of surface waters and occurs only during the rainy seasons ....
>
> "There are about 10 square miles of watershed contributory to the applicant's point of diversion. The mean annual rainfall for this section is about 25 inches.
>
> "There was no flow in the creek at the time of the inspection."

Application 12427, Permit 7458, held by Youth Authority, State of California, authorized the diversion of 10 cubic feet per second, year-round, from Sutter Creek at a point within Section 1, T6N R10E, MDB&M (Empire Diversion Dam) for power purposes at Preston School of Industry, the conduit leading first to Henderson Reservoir which is on the course of Jackass Creek about 3/4 mile above Applicant Goffinet's point of diversion, thence to forebay and on to powerhouse on the Preston school property.

Application 12428, Permit 7459, also held by the Youth Authority, authorizes the diversion of 4.5 cubic feet per second, year-round, also 817 acre-feet per annum collected between November 1 and May 1 in Henderson Reservoir (on Jackass Creek) and Preston Reservoir (off Jackass Creek, down conduit several miles from Henderson Reservoir), the water to be used for domestic, irrigation and recreation purposes at Preston School of Industry. The source, point of diversion and conduit are the same as described in Application 12427.

According to the Sutter Creek quadrangle, U. S. Geological Survey, the area tributary to Henderson Reservoir scales about 0.94 square mile, the area tributary to the applicant's two proposed dams about 1.54 square miles, the area tributary to the protestant's intake about 6.90 square miles. The applicant's proposed dam across Jackass Creek scales roughly 0.6 mile downstream from Henderson Dam, 3.5 miles upstream from the protestant's intake.

According to Bulletin 5 — "Flow in California Streams" — estimated seasonal runoff from the so-called Sutter Creek Group of streams ranges from zero to 971 acre-feet and averages 327 acre-feet per square mile. The Sutter Creek Group of streams drains the portion of the area tributary to Dry Creek and Willow Creek lying east of longitude 121°00'. It drains a total of 285 square miles and includes Jackass Creek which is tributary via Mule Creek to Dry Creek. According to the same reference the percentage of seasonal runoff by months that occurs, on average, during the applicant's proposed collecting period is as follows:

November	1.6%
December	5.2%
January	34.2%
February	25.2%
March	23.7%
April	5.5%
Total	95.4%

Extracts from "Report on the Irrigation Water Supply of the Preston School of Industry," Division of Water Resources, May, 1948, are as follows:

> "There are not any water measuring facilities or meters in the irrigation water system. There are not any usable gage boards on any water reservoirs. There are not any paper records available on water diversion, storage, distribution or consumption."
>
> "Henderson Reservoir, capacity said to be 460 acre-feet, is the only reservoir of any size and is entirely dependent upon the Empire Ditch for a source of supply."
>
> "The Empire Ditch with a length of nearly 8 miles takes water from Sutter Creek Diversion Dam to Henderson Reservoir and from that reservoir to Forebay Reservoir."

"Forebay Reservoir, located at the lower end of Empire Ditch ... is used ... for fire protection and ... as an equalizing basin ...."

"Diversion from Sutter Creek may be materially reduced by the closing of the gold mines and sale of sewage effluent."

"There is a single 24-inch diameter outlet pipe from the (Henderson) Reservoir."

"The lower ditch has a capacity of 8 cubic feet per second and extends from the outlet of Henderson Reservoir to the inlet of Forebay Reservoir ... a distance of 4.04 miles."

"The ditch channel is all in side hill cut."

"In a letter dated May 12, 1944, Mr. W. Muntz ... advised ... that the leakage of the old outlet pipe (at Henderson Dam) was 15 gallons per minute; also that the leakage from the old overflow pipe was 4.75 gallons per minute."

"The possibility of the closing down of the gold mines and resultant discharge of mine pumpage water together with the probable construction of a sewage disposal plant by the town of Sutter Creek and proposed sale of the plant effluent for irrigation would seriously affect the amount of water flowing in the channel of Sutter Creek and diverted into the Empire Ditch .... It is quite possible that all flow in the creek would cease or become too small to ... reach Henderson Dam. Should this condition occur the irrigation supply ... would be entirely dependent upon flood flows."

"The Allen ranch site on Jackass Creek ... was proposed in 1928. This damsite is located about one-half mile upstream from the inlet to Henderson Reservoir."

"The Sibole site on Jackass Creek ... was also proposed in 1928. The damsite is located about three-fourths mile downstream from Henderson Dam."

A report covering an inspection on March 4, 1953 by an engineer of the Division in connection with Application 12427, Permit 7458 (State of California Youth Authority) contains statements relating to the ditch leading to Lake Henderson (Empire Ditch) as follows:

"Situated along the ditch at Mile 0.3, Mile 0.5, Mile 1.0, Mile 2.0 and Mile 2.3 are 5' wide, 10' long spillways or wasteways with 1' freeboard which protect ditch or flumes from local drainage."

"Beyond the tunnel for about a half mile the ditch water passes via the natural channel of Jackass Creek which is fairly steep, but beginning at about Mile 3.0 it meanders through a meadow with several small channels augmenting the flow after a rain. One such channel had an estimated flow of 0.25 cfs."

"On February 28 about 1 inch of rain fell in the vicinity. Measured flow entering Henderson Reservoir was 9.6 cfs or a net gain of 0.9 cfs in 1.6 miles."

Discussion

If the runoff from Jackass Creek watershed averages 327 acre-feet per square mile as reference to Bulletin No. 5 suggests, the watershed above the applicant's two dams, exclusive of the area above Henderson Dam, may be supposed to yield about 0.954 (1.54-0.94) 327 or about 187 acre-feet per normal collection period, an amount not far short of the 197 acre-feet that the applicant seeks to appropriate. Also, the yield from the watershed above the protestant's dam on Mule Creek, exclusive of the watershed above the applicant's on-stream dam, may be of the order of 0.954 (6.90-1.54) 327 or 1870 acre-feet in the same six months of an average season, an amount many times, volumetrically, the protestant's entitlement of 45 acre-feet per annum. In a normal year therefore, or even in a year of considerably less than normal runoff, it is apparent that the appropriation that the applicant seeks would not injure the protestant, provided the latter is able to collect the runoff as it occurs. Inasmuch

as the reservoirs under Application 2575, License 455 and Application 12895, Permit 7483, upon both of which the protestant relies, are one and the same, are located off-stream, and are fed by the same ditch which is only 1 cubic foot per second in capacity, the protestant cannot avail herself of flood flows but must depend on flows within the capacity of her ditch, over a correspondingly longer period. If her ditch operated at full capacity it would take approximately 45/2 or 22½ days to fill her reservoir. She is entitled under approved Applications 2575 and 12895 to divert up to July 1, which is two months later than diversion could be authorized under pending Application 15217. She asserts having utilized the flow of Jackass Creek, including spillage from Henderson Reservoir, up to July 1 for many years. Aside from the probability that gross runoff from the watershed above her point of diversion, exclusive of the watershed above the applicant's proposed dam, would fill her reservoir she contends that she is entitled to continue to use the late flow emanating from Jackass Creek. Her apprehension that the applicant will interfere with late flow in Jackass Creek appears to be her main reason for protesting Application 15217; and she is insistent that "adequate arrangements be made to bypass the spill water through the applicant's reservoir after the close of the applicant's storage season".

Insofar as spillage from Henderson Reservoir has been an act of abandonment by the holder of rights to the use of water stored in that reservoir, that spillage may be supposed to be available to downstream users insofar as the rights of those users extend; and after senior rights are satisfied any remaining spillage may be supposed to be available to a junior appropriator insofar as the rights of that appropriator extend.

The applicant, if Application 15217 is approved, cannot legally collect waters of Jackass Creek including spillage from Henderson Reservoir, under that application, after April 30. The protestant, on the other hand, may collect up to a total of 45 acre-feet at any time from November 1 to July 1. The protestant desires to collect spillage from Henderson Reservoir between April 30 and July 1. She apprehends that the applicant's proposed dam across Jackass Creek will prevent that spillage from reaching her point of diversion on Mule Creek. In view of these circumstances it is desirable that any permit issued in connection with Application 15217 provide that the applicant in operating her proposed reservoirs shall not interfere with the exercise by the protestant of rights under Applications 2575 and 12895.

Summary and Conclusion

The applicant seeks to appropriate 127 acre-feet per annum from Jackass Creek and 70 acre-feet per annum from an unnamed tributary of that stream, in Amador County, for the irrigation of 50 acres of pasture, the water to be collected between November 1 and April 30 and stored behind a dam already partially constructed on Jackass Creek.

The application is protested by one Gladys T. Franklin who diverts at a point about 3.5 miles below the applicant's dam. Protestant Franklin is supplied from Mule Creek, to which Jackass Creek is tributary. She irrigates under two appropriations aggregating 45 acre-feet per annum, water in that amount being collected between November 1 and July 1 in an off-stream reservoir. The ditch leading to the reservoir has a capacity of 1 cubic foot per second. The protestant apprehends that supply in normal years will not be enough to satisfy both her own rights and the right the applicant is seeking.

A field investigation conducted December 1, 1953, disclosed among other things that the protestant is mainly concerned about the possibility of interference by applicant's proposed dam after the proposed collection period, that she for many years has been benefiting by spillage from Henderson Dam which is on Jackass Creek above the applicant's project, and that she desires assurance that the applicant's dam will not in future prevent that spillage, which she says has extended to July 1, from reaching her. During that investigation however the protestant's reservoir was said to have filled and emptied in 1952 and to have filled in 1953 in February.

According to office references, 95.4% of the average annual runoff from the Sutter Creek Group of streams, which includes Jackass Creek, occurs between November 1 and April 30; annual runoff from the area drained ranges from zero to 971 and averages 327 acre-feet per square mile. Office records also indicate that the area tributary to Henderson Reservoir is 0.94 square mile, the area tributary to the applicant's

proposed reservoir 1.54 square miles, the area tributary to the protestant's intake 6.90 square miles in extent; and that Henderson Reservoir is some 460 acre-feet in capacity, is fed via Empire Ditch from Sutter Creek, serves Preston School of Industry near Ione. The figures as to rates of runoff and size of watersheds indicate that runoff apparently available to the applicant may be of the order of 187 acre-feet per normal collection period and the runoff reaching the protestant's intake during the same period approximately 1,670 acre-feet.

From the data, it is apparent that the flow reaching the protestant's intake in a normal collection period probably exceeds greatly the protestant's requirements but that since the capacity of her ditch is only 1 cubic foot per second, flows in excess of that amount are of no benefit to her; that what she needs to fill her 45 acre-foot reservoir is a flow of 1 cubic foot per second for 22.5 days or a lesser flow for a correspondingly longer time. From the data it appears feasible, ordinarily, for the applicant to collect runoff reaching her proposed dams, in the manner proposed and in the approximate amount sought in the application, without injury to the protestant. It appears that in 1 year at least (1953) it was possible for the protestant to fill her reservoir without recourse to the spillage from Lake Henderson.

The circumstances point to the conclusion that unappropriated water exists at times in the sources from which appropriation is sought under Application 15217, that such water may be taken and used beneficially

in the manner that the applicant proposes without injury to the protestant and that the application should therefore be approved and permit issued, subject to the usual terms and conditions and subject to a special term and condition to the effect that the permittee shall operate her proposed reservoirs in such manner as not to interfere in any way with the exercise of rights under Applications 2575 and 12895.

oOo

ORDER

Application 15217 for a permit to a propriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15217 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject also to the following special term and condition to wit:

> Permittee shall operate her proposed reservoirs in such manner as not to interfere in any way with the exercise of rights under Applications 2575 and/or 12895.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 22nd day of September, 1954

A. D. Edmonston
State Engineer