

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 15238 by W. L. Ripley and A. F. Ripley
to Appropriate Water from Duck Creek Tributary via French Camp
Slough to San Joaquin River in San Joaquin County for Irrigation
Purposes.

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Decision A 15288 D 811

Decided December 13, 1954

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In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on April 20, 1954:

W. L. Ripley	Applicant
A. F. Ripley	Applicant
David Bush	Applicants' Attorney
Arthur T. Chute	Protestant
Paul S. Sanguinetti	Downstream User
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 3.0 cubic feet per second from April 1 to November 1 of each year from Duck Creek at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T1N R8E, MDB&M, for irrigation

purposes. According to the application, diversion is to be effected by pumping from a sump in the creek bed, "possibly augmented by dam not over 4 feet high". The proposed conduit is a 14-inch diameter reinforced concrete pipe, 4,000 feet long. The capacity of the proposed works is stated to be 3 cubic feet per second. The area irrigated is a pasture, 232 acres in extent, located mainly within the NE $\frac{1}{4}$ of the same Section 15 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of the adjoining Section 14. Irrigation is to extend from about April 1 to about November 1. The application contains the following statement:

"The land to be irrigated has another ... source of water supply The nature ... of the additional supply ... is 4 wells. No certainty that they will be adequate for entire tract however; water level has dropped considerably."

Protest

The application is protested by one Arthur T. Chute, who states as the basis of his protest:

"If subject diversion is made, it will injure me because I am depending upon this irrigation water when my farm leveling and improvement program is completed. There has not been sufficient water in Duck Creek to satisfy both applications during the full irrigation season."

The protestant bases his claim of a right to the use of water from the source in question upon Application 15079 Permit 9279, states that his diversion heads within the NW $\frac{1}{4}$ of Section 12, T1N R7E, MDB&M, states that he first used water in the summer of 1951 for the irrigation of tomatoes, that he plans to proceed

with development substantially as set forth in his application. He states that the protest may be disregarded and dismissed "if at some future time it becomes apparent that there is sufficient water to supply both diversions during the entire irrigation season".

Answer

In answer to the protest the applicants allege that the waters flowing in Duck Creek that reach the protestant's lands during the irrigation season practically all originate below their (the applicants') point of diversion and that the diversion proposed under Application 15288 therefore would not injure the protestant or deprive him of any right to which he is entitled.

Field Investigation

The applicants 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 on April 20, 1954, by an engineer of the Division. The applicants and the protestant were present during the investigation.

Records Relied Upon

Application 15079 Permit 9279, Application 12976 Permit 7732, Application 15288, Application 15360 Permit 9648, "Stockton East" and "Peters" Quadrangles, United States Geological Survey.

Information Secured by Field Investigation

A report submitted April 26, 1954, covering the field investigation of April 20, 1954, contains statements as follows:

"Duck Creek, a tributary of French Camp Slough at the applicants' point of diversion, is one of a myriad of sloughs which drain the land west of Farmington. The area is highly developed agriculturally with the land devoted primarily to pasture and grain crops. Although the area experiences an average annual rainfall of about 14 inches precipitation is limited to the late fall, winter and spring months. Consequently, there is normally no natural flow in any of the drains during the irrigation season. Any water available is runoff from upstream irrigation, most of which originates from wells. Between the Farmington road turnoff from U. S. Highway 99 due east of Stockton to some distance above the applicants' point of diversion it was noted that several pumping installations exist along Duck Creek apparently being operated under the guise of reclaiming their own returned water.

"At the time of the investigation there was no flow in the source upstream from the Farmington road crossing over Duck Creek. In the vicinity of the protestant's point of diversion channel storage in the order of several acre-feet was available but would represent a negligible amount as compared to his permit allotment. Mr. Sanguinetti stated that this water was runoff from a field of clover he was irrigating at that time.

"The applicants' project has been in operation since 1949, having been installed by a previous owner . . . Except for a few holes in the creek bed the channel was completely dry.

"The applicants indicated that since they acquired the property in 1950 no water has flowed in the creek during the irrigation season at their point of diversion from upstream sources and that the pump has been used only to reclaim the return flow from 80 acres of their own clover which is irrigated from a well. It was stated that in 1953 the pump was operated only three times during the entire season for a total of about 10 hours. Pumping experience for the three years previous was similar in

extent to 1953. They contended that the application was filed only in anticipation of additional water being available at some future date through upstream development such as the construction of the proposed Farmington Dam.

"Protestant Chute holds Permit 9279 for year around diversion from Duck Creek for 3 cubic feet per second. Although he claimed to have diverted from the creek in years past no water has been used under the permit. An extensive area shows evidence of having only recently been leveled in anticipation of irrigating from the creek. His position regarding the subject application is that although permits are issued subject to prior rights and thus he could not be legally affected, a permit issued in the absence of available water gives the holder a feeling of false security and furthermore the subsequent permittee may not exercise due caution in respecting prior rights.

"Mr. Sanguinetti, although recognizing that his permit is subsequent in priority to the Ripley filing, argued that no water is available for appropriation. He stated that he is operating 2 pumps in the creek, one under his own filing and one under a filing in the name of his mother, and to date he has been unable to operate the lower pump due to a shortage of water.

"About one mile downstream from the applicants' point of diversion Wesley F. Fowler holds a permit to appropriate to the extent of 3 cubic feet per second either from Duck Creek or from an unnamed stream about one mile to the north. Mr. Fowler in all of his progress reports has complained of insufficient water in either stream to satisfy his requirements. His installation on Duck Creek was noted during the course of the investigation. Immediately upstream from his pump he has placed a concrete culvert (about 12 inches in diameter) in the creek bed and covered with earth to form a low crossing for his farming equipment. In view of the limited head which could be placed on the culvert without overtopping possibly not more than 1 cubic foot per second could be carried through the pipe. The stream above and below the crossing is choked with tules, moss, water cress, etc., which would further indicate that the flow at this point is undoubtedly less than the Fowler permit allotment.

"The latest map of the area (Peters Quad 7 $\frac{1}{2}$ ', Edition of 1952) shows that several of the drains north of Duck Creek in the vicinity in question flow in a general westerly direction to a confluence with Mormon Slough. The map is not correct in every respect. In the NW $\frac{1}{4}$ of Section 7, T1N R8E, MDE&M, an earth dam has been constructed (according to Mr. Sanguinetti in 1938 under the WPA program) on the north drain which diverts the water south to Duck Creek. According to Mr. Sanguinetti it is from these northerly drains that the major supply of water during the summer originates."

Extracts from a letter received May 10, 1954, from the applicants' attorney are as follows:

"We are satisfied that ... investigation will show that practically all of the water which flows through Protestant Arthur T. Chute's place in Duck Creek comes from branches of said creek and diversions from other creeks lying to the north of the branch of Duck Creek which runs through Ripley Brothers' property and from which they propose to pump. Hence, Mr. Chute actually will not be injured in any way by the granting of Ripley Brothers' Application, and we feel that Mr. Chute's protest is without merit.

"However, it also appears from the evidence developed at the investigation that at the present time there is not enough water in the south branch of Duck Creek, which runs through the Ripley property, to actually provide enough water for the existing permit of Wesley L. Fowler (downstream and to the west of Ripleys), and the proposed application of Ripley Brothers . . .

"... we do not think it would be fair to deny the application of Ripley Brothers on account of lack of available water at the present time for the following reasons:

1. We understand that this has not been the policy of the Division of Water Resources in the past. It is our understanding that when an application has been made and no valid protests have been received, the Division has granted the request without making an actual survey as to the available water.

2. The question of there being adequate water actually available for Ripley Brothers' application at this time would never have arisen save for the Chute protest, which we feel is wholly without merit.

Wesley Fowler, the only person who could be affected, has not protested the Ripley application.

3. The permit which the Division gives specifically provides that the permit is approved "subject to vested rights"; and therefore, with Fowler's permit being already granted, the application of Ripley Brothers would only be granted subject to Fowler's rights anyway, and so would not adversely affect Fowler.

4. In view of the general development of the land in the area to irrigation, it is quite possible that in the near future there will be enough water in the south branch of Duck Creek to supply Fowler's present permit and provide water for Ripleys also. In this case, it would seem foolish to deny Ripleys' application at the present time, and force them to file another application just as soon as additional water was actually available.

5. Should the Division desire to change its present policy and adopt a new policy of refusing to grant an application to appropriate water until it had made a check of the available water supply on the spot, it does seem that some advance notice of such change should be made. Otherwise, Ripley Brothers, and anyone else in their present position, are the victims of a change in policy which they would not foresee or of which they had no notice.

"We respectfully ask that the above matters be given consideration when the Division passes upon Ripley Brothers' application."

Subsequent to the field investigation of April 20, 1954 the locality was visited from time to time by one of the Division's engineers and flows in various channels were estimated, in cubic feet per second, as follows:

Locations*	A	B	C	D	E	F	G	H
June 11	5.0	4.0	1.25	0	0	-	-	-
June 25	2.0	4.5	0.11	0	0.38	0.5	2.0	-
July 9	3.5	1.75	0.29	0	0	1.25	0	0.11
July 26	3.5	4.0	0.17	0	0	1.0	1.0	0.02
Aug. 4	2.5	2.0	0.0	0	0	1.0	0	0.01
Aug. 20	1.25	2.0	0.11	0	0	1.5	0	0.01
Sept. 3	2.5	1.0	0.22	0	0	0.5	0	0
Sept. 17	0.5	1.5	-	0	0	1.0	0	0

* Locations at which flows were observed:

- A: Duck Creek at Jack Tone Road; about 1 mile above Chute intake.
- B: Duck Creek at U. S. Highway 99; about 4.5 miles below Chute intake.
- C: Duck Creek at Fowler intake (Fowler not diverting).
- D: Unnamed tributary to Mormon Slough at Drais Road; about 1.6 miles north and 0.6 mile east of Fowler intake on Duck Creek.
- E: North Branch of Duck Creek at Drais Road; about 0.7 mile upstream from Fowler intake on that branch.
- F: Duck Creek at Mariposa Road; about 4.3 miles below Chute intake.
- G: Drainage canal from east, contributing to Duck Creek just below F.
- H: Side drain just north of E.

Filings with the Division to appropriate from Duck Creek at points downstream from the applicants' project include the following:

Application 15079 Permit 9279, Arthur T. Chute (protestant against Application 15288), 3.0 cubic feet per second, year-round, to be diverted at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 12,

TLN R7E, MDB&M, for irrigation and stockwatering purposes. The application was not protested. According to progress report for 1953 construction is in progress but is incomplete; works will be complete and the water fully applied by December, 1956.

Application 12976 Permit 7732, Wesley F. Fowler, 3 cubic feet per second, from about May 1 to about October 31, to be diverted from Duck Creek at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16 and/or from a branch of Duck Creek at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, TLN R8E, MDB&M, for irrigation. The application was not protested. According to progress reports the permittee has used water from April to and including September, utilizes practically all the water that comes to him, expects to use more, when and if it reaches him.

Application 15360, Permit 9648, Paul S. and Elsie M. Sanguinetti, 3 cubic feet per second, from about April 15 to about October 31, water to be diverted at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, TLN R7E, MDB&M, for irrigation. The application was not protested. Under the permit terms construction is to be completed by December, 1956, application of water to the proposed use by December, 1957.

Discussion

The applicants' statements during the field investigation, to the effect that no flow has occurred in Duck Creek at their point of diversion since they acquired their property in 1950 other than

return flow from a portion of their own lands that they irrigate with well water, that their pump has been used only to recover the return flow mentioned, that their pump was operated only about 10 hours altogether during 1953 and that the extent of its operation in each of the 3 previous seasons had been about the same, indicate non-existence of unappropriated water. The investigator's observation on April 20 and observations by Division personnel during June, July, August and September indicate that unappropriated water was probably non-existent during 1954.

Inasmuch as Fowler has been authorized under Application 12976 Permit 7732 to divert 3 cubic feet per second at a point about 1.1 miles downstream from the Ripley intake and Chute has been authorized under Application 15079 Permit 9279 to divert 3 cubic feet per second at a point some 4.7 miles farther downstream it is apparent that if, as the applicants anticipate, the flow of Duck Creek is larger in future than it is at present or has been recently, as a result of increases in area of upstream irrigated lands and correspondingly increased return flow, such increased flow necessarily will inure to Permittees Fowler and Chute, insofar as it is needed to satisfy their prior rights, before it can be available to the Ripleys. The information at hand does not indicate that any increases in the flow of Duck Creek that may result from increased irrigation of tributary lands will be enough to create unappropriated water at the point where the Ripleys seek to appropriate.

Summary and Conclusion

The applicants seek to appropriate 3.0 cubic feet per second from Duck Creek in San Joaquin County from about April 1 to about November 1 of each season for the irrigation of 232 acres of pasture.

The application is protested by one Arthur T. Chute who alleges that he depends upon Duck Creek for his irrigation supply and that the flow of that source is insufficient to satisfy both Application 15288 and his own Application 15079 Permit 9279.

The applicants answer the protest by alleging that the flow of Duck Creek insofar as it supplies the protestant originates below their intake and that their proposed diversion therefore would not deprive the protestant of any right to which he is entitled.

The parties stipulated to proceedings in lieu of hearing and a field investigation was conducted on April 20, 1954. According to the report of that investigation Duck Creek is one of many sloughs draining a highly developed agricultural area west of Farmington, rainfall is limited mainly to late fall, winter and early spring, streamflow during irrigation seasons results from return flow from irrigation supplied from wells, numerous pumps have been installed along Duck Creek for the recovery of such flow, flow at time of field investigation above the Farmington Road crossing over Duck Creek (about 7 miles below the applicants' intake) was zero, the applicants and/or their predecessors in interest have pumped at their proposed point of diversion since 1949, supply other

than return flow from their own irrigation has been non-existent since 1950, Application 15288 was filed in anticipation of increase of summer flow resulting from further development upstream, Protestant Chute has not yet diverted under his permit, Sanguinetti asserts that unappropriated water is non-existent, supply at Fowler intake (1.1 miles below the applicants' intake) appears to have been less than the 3 cubic feet per second to which Fowler is entitled, a dam in the NW $\frac{1}{4}$ of Section 7, T1N R8E turns water normally tributary to Mormon Slough into Duck Creek above Protestant Chute's intake.

By letter received subsequent to field investigation of April 20, 1954 the applicants' attorney argues that Protestant Chute is supplied from drainage that bypasses the applicants and therefore would not be injured by the applicants' diversion, and that the Fowler entitlement should not be considered a bar to the approval of Application 15288 because that application is not for the water necessary to satisfy Mr. Fowler's rights but for the increased flow that is expected to result from future upstream development.

Flows in channels of the locality were observed by engineers of the Division at intervals between June 11 and September 17, 1954. Maximum and minimum observed flows in cubic feet per second were as follows:

Duck Creek about 1 mile above Chute intake but below point at which water diverted from Mormon Slough drainage enters Duck Creek:

Maximum 5.0 -- Minimum 1.25

Duck Creek about 4.3 miles downstream from Chute intake:

Maximum 1.5 -- Minimum 0.5

Duck Creek at Fowler intake (Fowler not diverting):

Maximum 1.25 -- Minimum 0.0

Channels naturally tributary to Mormon Slough but said to be connected artificially with Duck Creek above Chute intake, in all:

Maximum 0.38 -- Minimum 0.0

Under Application 15079 Permit 9279 Protestant Chute may divert 3 cubic feet per second, year-round, for irrigation and stock-watering, at a point on Duck Creek which scales some 6 miles below the Ripley intake. Under Application 12976 Permit 7732, Wesley F. Fowler may divert 3 cubic feet per second, for irrigation, from about May 1 to about October 31 from Duck Creek at a point that scales about 1.1 miles below the Ripley intake and/or from another, parallel channel of Duck Creek at a point nearly a mile to the north.

The information above summarized points to the conclusion that the flow of Duck Creek during the late spring, summer and early fall months is limited mainly to return flow from the irrigation of upstream and adjacent lands, that little if any flow has occurred at the Ripleys' proposed point of diversion, aside from return flow from their own irrigated lands, during the irrigation months of any year since 1950, that any flow that might occur within that reach, up to 6 cubic feet per second, other than return flow from the Ripleys' lands, might be required for the satisfaction of rights under

Application 12976 Permit 7732 (Fowler) or Application 15079 Permit 9279 (Chute), that there is no evidence at hand that the flow of Duck Creek during the irrigation months will increase to that extent or at all. In view of these circumstances it is the opinion of this office that unappropriated water at the point at which the applicants seek to appropriate is ordinarily non-existent and that Application 15288 should therefore be denied.

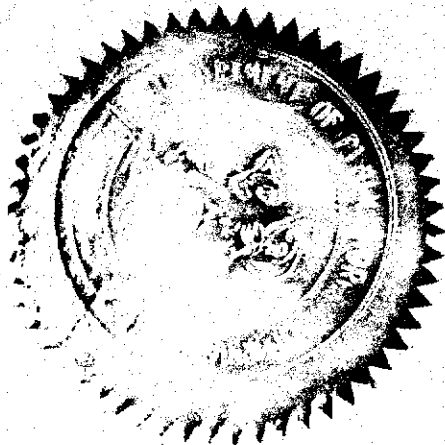
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ORDER

Application 15288 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a stipulation 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 15288 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 13th day of December 1954.



A. D. Edmonston
A. D. Edmonston
State Engineer