

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 15216 by Ewald O. Heitman to Appropriate  
Water from Woods Lateral Drain of Reclamation District No. 70 Tribu-  
tary to Sacramento River in Sutter County for Irrigation Purposes.

oOo

Decision A 15216 D           D 814          

Decided January 12, 1955

oOo

Appearances at Hearing Held at Yuba City on April 15, 1954:

For the Applicant

Ewald O. Heitman

E. L. Gray, Attorney at Law

For the Protestant

Meridian Farms Water Company

Alvin Weis, Attorney at Law

EXAMINER - LESLIE C. JOPSON, Principal Hydraulic Engineer, Division  
of Water Resources, Department of Public Works, for A. D. EDMONSTON,  
State Engineer.

oOo

OPINION

General Description of the Project

The applicant seeks to appropriate 5.0 cubic feet per second,  
from April 1 to October 1, from Woods Lateral Drain of Reclamation District

No. 70, at a point within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, T15N R1E, MDB&M, for the irrigation of 211 acres of rice. Diversion is to be effected by pumping from a sump in applicant's diversion ditch, the latter being some 550 feet long and 15 cubic feet per second in capacity. According to the application, the applicant owns both the land at the proposed point of diversion and the land that he desires to irrigate. As to another water right or source of water supply, he states that he may also obtain water from Meridian Farms Water Company.

#### Protest

Meridian Farms Water Company protests the application, its position in the matter, as stated in the protest and exhibits appended thereto, being as follows:

"Applicant is a member of this protesting corporation, which is a mutual water company, and all of his land described in his application is adequately served with irrigation water under this Company's system, and he has regularly issued certificates of stock in this corporation appurtenant thereto ...."

"... by virtue of said stock and his membership in this corporation applicant already has his pro-rata interest in all appropriative permits and licenses heretofore issued ... and the effect of any favorable action on this application would be to vest in him more water for his land than he is rightly entitled to."

"That protestant has a license (Permit No. 5935) from the Division of Water Resources under which it is entitled to and owns for the benefit of all its members 100 second feet of water which collects and flows in the drainage canals of Reclamation District No. 70; that the water flowing in District 70's drains principally is the run-off or residue from the lands of protestant's farm stockholders, the

water having been previously pumped and supplied to them at upstream or higher elevations, and Permit No. 5935 is therefore a recapture permit."

"That in the early stages of each irrigation season and in seasons of light rice planting it is necessary for protestant to put water in the drains to supply its out-lying pumping plants, using the District 70 drains as a conduit system so to speak; that, therefore, by consolidating its claims and rights under its original permit (Application No. 1074, Permit No. 591) and its recapture permit (Application No. 9737, Permit No. 5935) protestant claims to own all of the water flowing in District 70's drains and there is no available supply out of which applicant might be legally served even if a permit were issued to him."

"That protestant has, at considerable expense to itself, provided the facilities for the irrigation of applicant's said land. Protestant installed a 30 HP booster pump on the District 70 main drain to serve the Heitman and other lands, and in 1947 protestant and Fred Heitman, father of applicant, installed 700 feet of 24 inch metal pipe line to serve the Heitman land. Favorable action on this application would be of assistance to applicant in avoiding his responsibilities to this protestant and protestant therefore represents and states that under all the facts it would be inequitable for applicant to receive a permit."

The protestant asserts that its points of diversion are located as follows:

Under Permit 591

Pumps 1, 2 and 1A -- within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, T15N R1W  
Reitter diversion -- within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, T15N R1W  
Pump No. 3 -- within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T15N R1E  
Pump No. 4 -- within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, T14N R1E  
Pump No. 5 -- within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 16, T14N R1E

Under Permit 5935

- Pump No. 7 -- within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 3, T14N R1E
- Pump No. 8 -- within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, T14N R1E
- Pump No. 9 -- within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 27, T15N R1E
- Pump No. 10 -- within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, T15N R1E
- Pump No. 11 -- within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T15N R1E
- Pump No. 12 -- within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T15N R1E
- Pump No. 14 -- within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T15N R1E
- Pump No. 15 -- within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 35, T15N R1E

The protest bears additional statements as follows:

"Allowance and approval of Application 15216 would contravene protestant's established rights and would not be acceptable to protestant under any conditions."

"Protestant's Permit No. 5935 was issued March 12, 1942, and its original Permit No. 591 many years earlier. Under these permits protestant in 1952 irrigated 6900 acres of general crops from five pumping plants on the Sacramento River and 1300 acres from six pumping plants on District No. 70 drains, total 8200 acres. The amount of irrigation and water used varies from year to year due to types of crops grown and the resulting demands of protestant's farmer stockholders."

"Protestant has 10,079.11 shares of its capital stock issued and outstanding appurtenant to 10,079.11 acres of land under its irrigation system and in seasons of maximum use protestant must be prepared to supply each and every acre thereof with water. It is therefore important that protestant should have protection to the water rights now possessed by it as herein described."

Answer

The substance of the answer is contained in the following paragraphs therefrom:

"It is respectfully submitted that the protest alleges no injury to protestant in a legal sense. The application is, of course, for surplus water, if any surplus exists, and is of course, subject to prior rights. If there is no surplus, of course the application will be denied, and protestant will not be injured. If there is a surplus, protestant has no right to prevent the applicant from acquiring appropriative rights thereto."

"Applicant is informed and believes and therefore alleges that on the average protestant does not use more than one-third of the flow of water in District No. 70's main drainage ditch, referred to as "Woods Lateral" in applicant's application. Applicant is also informed and believes that there is more than 100 second feet available most of the time."

"It is respectfully submitted that the matter of rights and obligations between the applicant and MERIDIAN FARMS WATER COMPANY is not relevant to the question of Applicant's right to appropriate surplus water. True, Applicant's right to and use of water under permit might have some effect upon the sale of its own water by the Protestant, but it is submitted that this is not injury of the type contemplated in Section 719(b) of the Code."

Hearing Held in Accordance with the Water Code

Application 15216 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 public hearing under the provisions of the California Administrative Code, Title 23, Waters,

on Thursday, April 15, 1954, at 10:00 o'clock a.m., in the City Council Chamber, City Hall, Yuba City, California. Of the hearing the applicant and the protestant were duly notified.

Substance of Hearing Testimony

Applicant Heitman testified (pages 5 to 9 of transcript) to the effect that the drain ditch is 25 feet wide, that the depth of water in it has never in summertime been less than 3 feet and has ranged up to between 6.5 and 7.0 feet, that "our" cost of pumping water back into the river has increased in the past five to ten years, that there are about 2,000 acres to the north under irrigation that have no connection with the water company, that the drainage from that land enters the drain ditch upstream from his proposed point of diversion, that the flow in the drainage ditch has increased since completion of Shasta Dam, that his land lies within Reclamation District No. 70, that the operations of Meridian Farms Water Company are centered in Reclamation District No. 70 also, that he (the witness) owns 221 acres, all of which is suitable for irrigation, that he owns stock in Meridian Farms Water Company, that that company has a system that supplies him with water, that the District No. 70 drainage pump is  $4\frac{1}{2}$  to 5 miles below him, that it is located on the river near the southern end of the Reclamation District, that prior to completion of Shasta Dam drainage could be discharged by gravity when the river was low but not when it was high, that now pumping to discharge drainage

is continuous, that the district drainage pumps handle not only drainage from the District's own lands but also drainage from Newhall Land Farming Company which is outside of the District boundaries.

W. T. Berndtson testified (pages 9 to 15 of transcript) to the effect that he is a registered civil engineer, that he has been employed by the Meridian Farms Water Company to check water conditions in the canal that passes the applicant's property, that he made flow measurements on September 7, 1953, that flow at the applicant's northwest corner on that date was approximately 50 cubic feet per second, of which amount Lateral 5 was carrying about 9 cubic feet per second, Lateral 4 was carrying about 6.3 cubic feet per second and the main canal above the junction of Laterals 4 and 5 was carrying about 35 cubic feet per second, that these three channels unite at the applicant's northwest corner, that continuing downstream from that corner there is just one channel (the main canal of the drainage district) that that canal skirts the northerly boundary of the applicant's land, that about 0.5 mile downstream (easterly) from applicant's northwesterly corner there is an operating plant of Meridian Farms Water Company, that that plant is known as the Burkhardt Pump, that about a mile farther downstream along the main canal there is another facility known as the Dinsmore Pump, also operated by Meridian Farms Water Company, that a little farther down the canal there is a

check-gate, that still farther down the canal there is another Meridian Farms Water Company pump known as Pump No. 7, that pump being about two miles south of the Dinsmore Pump, that "about a week ago" he again examined the main canal, finding a flow therein of not more than 4 cubic feet per second, that all his measurements were float measurements.

Carl J. Watson testified (pages 16 to 58 of transcript) to the effect that he has been with the Meridian Farms Water Company off and on since 1923, having been Manager from 1923 to 1940 and from 1947 to date, that under the direction of a Board of Directors he has full charge of the entire system including maintenance and operation, that the Meridian Farms Water Company operates a number of river pumps including 3 above Meridian that total 300 HP and others designated as No. 3 of 60 HP, No. 4 and No. 5 of 100 HP each, that besides the river pumps the company operates the "Burkhart" Pump, the "Dinsmore" Pump and "Pump No. 7", capable of pumping 20, 15, and 21 cubic feet per second respectively. With respect to the three last named pumps he testified:

"These 3 pumps are permanent pumps. And ... almost every year we are forced to put in temporary pumps -- run by tractors -- in the drains and canals at different points to augment our river supply to the rice load and double crop load. In other words, when double cropping comes in it takes a little more of water for a short period of time so we have had those temporary pumps ... installed at different places. Almost every year we have one 6-inch pump and one 10-inch pump that we move



around considerably. ... this hundred horsepower down at Number 5, up until last year, pumped entirely out of the main drainage canal and that has a capacity of about twenty-seven second feet. Now that is below all three of these. But last year we used it about half the season which would be approximately three months. The other three months, approximately, we used it out of the river."

Witness Watson testified further to the effect that Meridian Farms Water Company is a mutual company, that the described pumping system has been used to irrigate the lands of farmer stockholders, that Applicant Heitman is one of the stockholders, that his entire acreage is under the company's system, that the company irrigated it in 1953 and in previous years and is prepared to irrigate it in 1954 and thereafter, that the company has incurred considerable expense in providing facilities for irrigating the Heitman lands. As to the flow in the district canal passing the Heitman lands, he testified that he was with Engineer Berndtson when the flow of 50 cfs was observed in September 1953, that the flow at that time was as much as there had been at any time during that season or at any time within his experience. Amplifying that statement he testified:

"The reason I say that, there was approximately 2000 acres of rice runoff above that point last year, which was the greatest amount of rice ever planted above the river. In fact, rice has only been grown in that area the last three or four years. Prior to that time there was no rice and the only runoff would be the natural river seepage from the upper county."

In the same connection Witness Watson testified further that the irrigation of these 2,000 acres of rice caused the runoff past the

Heitman property, that about 1,000 of those 2,000 acres were supplied by the company's system and the remainder by individual pumps, that in 1954 rice plantings in the same area will amount to but 580 acres and that as a result runoff will probably be about one-fourth of what occurred in 1953. As to the Woods Lateral Witness Watson testified that one of the irrigation ditches of the company is so named, that it has nothing to do with the drainage problem, that there is no Woods Road Canal, that the point at which the applicant proposes to divert in correct terminology is No. 4 Lateral, that in reality the applicant proposes to pump water that has been led away from the main drain of District 70. With further reference to the company's facilities he testified that the Dinsmore Pump and the Burkhart Pump are electric; as to how these pumps are supplied he testified:

"A couple of days ago, anticipating the start of the irrigation season, we went down to Wilbur Road where we own a check gate in the main drain of District 70 .... ... the water company has bought and installed a check gate at that point where there is a flash gate riser .... So we went down there a couple of days ago and installed the flash boards in that river up to a certain safety height. And we're now backing the water in the reservoir in anticipation of the start of these two pumps. And I happened to be there with Mr. Berndtson the other evening when we ... anticipated some four or five second feet coming down the main drain .... It would take considerable time to fill up this long lake ... and all these drainage canals to the necessary height to operate these two pumps. What I am getting at is that within a very few days or so, or when the time comes, we'll have to purposely spill a small amount of water out of what we call the railroad ditch, from the river into the main drain, just above the highway in order to ... supply water to the Burkhart and Dinsmore Booster, back up from the Wilbur Road check."

He explained that the water pumped on occasion from the river comes down past the Heitman property, that it cannot go anywhere else, that it is backed up by the Wilbur Road check, that if Applicant Heitman was granted a permit he would be tapping that same supply, and he then stated:

" ... prior to 1953, each and every year, we have had to put water into that main drain with the exception that ... due to the exceptionally large rice acreage in 1953 we didn't have to spill any water into the main drain -- using our figures of a while ago, fifty second feet in '53; and a quarter of that in '54 from the natural rice run-off, we'll certainly have to send water down that main drain to supply those people which have a combined capacity of about thirty-five second feet."

As to operations farther downstream he testified:

"Below the Wilbur Road check gate -- again on the main canal -- we have what we call our Pump Number 7. This year we have just recently installed a new ... plant ... which is capable of twenty-one second feet. That's just been completed and ready to operate. Now in order to get water to our Pump Number 7 we again have to control our pumps down to what we call our Girdner Road check."

With reference to operation at the main drainage plant of Reclamation District No. 70 he testified to the effect that there used to be gravity flow in the Sacramento River, that the operation of Shasta Dam has caused higher river stages in summer months, that 1953 was a year of heaviest pumping by the drainage district, that the district has two 200 horsepower pumps and two 100 horsepower pumps at the plant at the river, that the district runs one or more of those pumps as necessary. In that connection he testified further:

"Last year, our users had some twenty-six hundred acres of rice. There was probably fifteen hundred or two thousand acres of rice outside of our system, all of which had been flooded at the time of the leaf miner damage. And I think I can safely say that at least ninety percent of that acreage was drained purposely in order to spray the leaf miner in the rice fields. It was very serious. Then the rice fields were all reflooded to their necessary height. And ... at some later ... date ... parts of these rice fields were lowered and drained off possibly so that men like Maroni, Sanborn and others again dropped their water level. ... spilled it purposely in order to get the water low enough so they could spray their rice fields for lillies and tules .... And I might also state that during this season there was a large percentage of water that spilled .... I'm only trying to state why there was such a large pumping cost to the district. Ordinarily, any year prior to 1953 ... a one hundred horsepower plant with a capacity of twenty-seven second feet was about all the district needed to run or to discharge water into the river during the irrigation season . . . I worked for the district myself and handled all these operations with a one hundred horsepower pump that ran combined with a capacity of twenty-seven cubic feet and would discharge all we didn't use for irrigation purposes."

On cross-examination Witness Watson testified that runoff from beans is "nothing" as compared with that from rice, that probably less than 2,000 acres of crops other than rice lie above the Heitman property, that drainage from crops other than rice probably does not exceed two cubic feet per second, that there are a number of individual pump operators above the water company who could discharge surplus water into the drainage canal, that the flashboards in the drainage canal are in operation until about the end of September and then removed so that the canal can empty, that in 1953 some ninety per cent of the rice land was drained to

facilitate spraying operations for leaf miner and then reflooded, that all of the company's river capacity and booster capacity was required for reflooding, that much water nevertheless had been pumped by the drainage district, that the company never entirely ran out of water, that besides its appropriative rights the company claims riparian rights to 12 or 15 cubic feet per second, that the company does not measure but instead charges a flat rate per acre based on the requirements of the different crops. As to the months when it is necessary to introduce river water into the drain to supply certain pumps he testified:

"Most generally in June, July and August. During the hotter season. And also due to our crop planting -- in other words, we flood rice land early -- we pre-flood generally speaking the crop land early. Then we hold off for a month and then we have what we call a double crop or second crop land that we have to pre-flood before working in them or planting. And that comes along from the, oh, 15th of June, we'll say, until the 15th of July and then immediately after that we take on all these thousands of acres of bean land for sub-irrigation."

In the same connection he testified further that beans are sub-irrigated after they are up but that most bean land is pre-flooded before planting, that most of the land is double cropped but some is single cropped, that of late years the pre-flooding of single crop land has become prevalent. As to the manner of sub-irrigating he testified:

"... what we really do is put these check gates at a given height to hold the water table within an area up to a certain elevation. Then each individual pumps from what we call sub-ditches out there in the

field. And we supply water into those field ditches which might be a hundred feet apart or two or three hundred feet apart."

He next testified that the Wilbur Road check backs water up the drain as far as the highway leading east of Meridian and that the Girdner Road check backs water from Girdner Road to Wilbur Road, that any water coming down Lateral No. 4 would go into the main drain and then be backed up by Wilbur Road, that the water in No. 4 drain at the proposed point of diversion is affected some but very little by the Wilbur Road check, that if the boards were removed at Wilbur Road check No. 4 drain would be dry except for such flow as might be passing down it, possibly 3 or 4 cubic feet per second, the continuity depending upon drainage from rice lands and from other conditions, that practically all of Newhall Lands and Farming Company's water comes back onto "our" land, that there is always water against the Girdner Road check gate. When asked how much passes the Girdner Road check he replied:

"Oh, I don't know how much would go over that point. Last year, at times, due to the drain of the rice fields, quite a little bit went over. And at other times very little. And ... we spill water into these drains purposely."

When asked if the company has means of spilling water into the drain he replied:

"Oh, yes. ... we never run water through our river ditches to the fields in the exact amount of gallons needed. We always carry a surplus and spill some at the end of every line so that the ditch man can come by at

any time and put more water into the adjoining field. In other words, we can't regulate right down to minute gallons. We always carry a little overflow. And when I say a little, I mean one or two second feet in different points. And the combination of those probably add up to some ten or fifteen second feet that we purposely spill in there."

As to whether or not spilling normally occurs past Girdner Road check he testified:

"Well, naturally, you have -- would have spillage at the Wilbur Road point. That's done purposely. . . . In other words, we try to work with the Reclamation District and if this amount of spillage at this point becomes too high sometimes we try to cut it down. In other words, we're the ones that are practically manipulating the whole area, water table and all."

As to the amount of drainage that comes from the Newhall area he testified that in that area 580 acres are to be in rice in 1954 and that there has been some rice every year. As to whether the Burkhart Pump, Dinsmore Pump and Pump Number 7 are used continuously he testified:

"They are, for if there's any rice on their particular system they run a hundred and fifty days, day and night. And if there didn't happen to be rice on any of them, they'd only run during the particular season. In other words, they'd run, maybe, for flooding of rice land and reflooding of rice land and preflooding of bean land . . . ."

As to the company's ability to restrict the flow in the drainage canal to amounts needed and to minimize pumping of excess drainage he testified:

"That's right. In fact, some years we've been pretty hard-put to back enough water up to supply these pumps."

" ... we've got three pumps."

" ... and any time we're short of water we just put another pump on the line, whichever one we may need; and last year we ran all three of them almost the entire season."

Further testimony by Witness Watson was to the effect that some rice land in the upper end of the district lies outside of the area served by the company and is supplied by individual pumps on Sacramento River and Butte Slough, that Applicant Heitman is a stockholder in the company and as such is entitled to his proportionate share of the company's supply of water, that his entitlement would probably suffice for beans or ordinary crops, that stockholders who raise rice actually use surplus resulting from non-use or limited use by other stockholders, that supply is insufficient to allow all lands served by the company to raise rice at the same time, that assessments of company stock are not based upon use of water, that a stockholder pays assessments whether he uses his share of water or not, that the company does not claim to own all the water that flows in the drainage canal but does claim all such flow up to 100 cubic feet per second, that the company has not used 100 cubic feet per second but intends to eventually, that "we protest any possible application for any amount of water out of the drains until our amount has been satisfied". As to procedure in including and excluding lands within the company's service area he testified to the effect that lands may be included on approval by the Board of Directors of the company when there is a surplus of water stock in the company's treasury, and he testified further:



"But to my knowledge there's no way a man can get out of the water company. Once he's in it, he's a shareholder. He's a partner in the whole deal. . . . As far as I know he has to pay those assessments, yes."

He testified finally to the effect that the stock is appurtenant to the land at the rate of one share to each acre, that no more than one share per acre may be sold.

### Closing Statements

Extracts of closing statements by the parties' attorneys are as follows:

#### On Behalf of the Protestant

"... our position with reference to Mr. Heitman's application has three phases. . . . The first is the question of policy involved. . . . That's this issuance of a permit and putting Mr. Heitman in a position to irrigate from a privately owned and operated system, separate and distinct from the water company's. Would it aid him in avoiding his responsibility to the water company? And aside from any question of ethics, or fair play, that may be involved in that particular point, I'll say to you that if that was carried too far it would destroy the water company.

"We have here an application for a permit -- that's granted -- and if his next-door neighbor next week starts the same thing then next year, maybe, you'll have twenty such applications. And pretty soon you'll have a number of privately owned and operated irrigating systems operating out of a water supply that starts with and from the Meridian Farms Water Company. Now if we encourage too many breaks from the family, pretty soon you're putting the water company out of business. And then where are they? All of their privately owned systems have no water.

"Two. We say that the granting of a permit in this case would not conserve the public interests. I am using that term kind of loosely. And there's another term that

seems to me would better conserve the public interests -- and I'm quoting from one of our sections in the Water Code -- Section 1255 -- because for this reason: That a proportionate share or interest in the water company's appropriative permits exists in Mr. Heitman's favor. And for his benefit right now. In other words, he already owns his share of the water company's water.

"Now let's say you'll allow him a permit. An individual permit. And that gives him an added supply -- put the two together and he's got too much water. And we'll say there, again, that if that's carried on and on, then -- then your policy of conservation of water isn't going to work properly because it would reach the point where some poor chap in the future who didn't have a double water supply wouldn't have any source from which to get water. And yet here would be Mr. Heitman, as I say, with a double supply.

"Now the third phase to our argument is -- and this bears down on what Mr. Gray suggested a while ago -- that just under the evidence that has been introduced here this morning -- there just isn't any water available. The Meridian Farms Water Company already has a permit for one hundred cubic feet per second to be diverted out of those drains of Reclamation District Number 70. Now what do we do? We have to recapture. We have to conserve the supply. And we have to back it up by check gates to operate those existing facilities. And ... we have the right to recapture and use the water that we have originally produced even without a permit provided we recapture other than within the area of our own company, or where our district is located. So whether you consider -- whether you consider the operative permits for a hundred cubic feet per second, or whether you consider the authority of an actual irrigation district case -- as I say, there just simply isn't any water available out of which a permit can be granted to Mr. Heitman."

On Behalf of the Applicant

" ... that I do not believe that points one and two are within the issues that the application is made for surplus water, if there be surplus water. . . . We expect to be bound by the facts as properly established as to whether there be or whether there not be surplus water there. The matters within the company, of course,

we submit have no bearing upon that. And we submit that our position is one within the general policy of the law to make use of water by everyone within a reasonable basis. We think that the statement in the protest that they own all the water in the ditches of District 70 doesn't reflect the attitude of the greatest and most reasonable use of the water. But I won't go beyond that. We feel it is a matter of determination of whether the water is there or not. Certainly they've never used up their full one hundred cubic inches. Admittedly they've been operating for a number of years. And we believe that's also a factor to be taken into consideration."

#### Other Available Information

Application 1074, Permit 591 is the basis of an appropriation by Meridian Farms Water Company and Newhall Land and Farming Company of 142 cubic feet per second from Sacramento River for irrigation, from April to October, of 8,613 acres, approximately half of that acreage to be in rice and the remainder in other field crops, diversion to be effected by pumping at locations near Meridian, about 0.5 mile above Grimes and about 1.5 miles below Grimes. According to permittees' latest progress report 7,095 acres, of which 2,562 acres were in rice, were irrigated during 1953.

Application 9737, Permit 5935 is the basis of an appropriation by Meridian Farms Water Company of 100 cubic feet per second from Long Lake and various drainage canals of Reclamation District No. 70, tributary to Sacramento River, for the irrigation of 6,700 acres from March 1 to November 1, diversion to be effected by pumping

at 9 described locations along the main drain and certain laterals of Reclamation District No. 70. A supplement to the application contains the following statements:

"The water in the various drainage canals and Long Lake is an accumulation from irrigation canal seepage from the canals of the Meridian Farms Water Company; spill water from the pumps and canals of the Meridian Farms Water Company; waste water from lands throughout Reclamation District No. 70; and water percolation from all the lands in District No. 70. The water in these drainage canals would be return flow to the Sacramento River."

"Six thousand seven hundred acres have been shown as the area to be irrigated under this application. This area is that portion of the area under Application 1074 over which the supply would be supplemented by this application."

According to permittee's most recent progress report a total of 1,405 acres was irrigated under this filing in calendar year 1953. A report of an investigation August 25, 1941, by an engineer of the Division in connection with Application 9737, contains passages as follows:

"This application was filed for the purpose of establishing a right to use the water accumulating in drainage canals and Long Lake as a result of seepage, spill, waste and percolation from canals and irrigated lands of Reclamation District No. 70, which district is served by applicant from Sacramento River."

"Long Lake is a natural slough about  $2\frac{1}{2}$  miles long and averaging some 125 feet wide and 10 feet deep."

"According to protestants, when the lake is drawn down a considerable inflow is to be noted from the bottom near their pumps .... The bulk of the flow, however, is derived from irrigation and canal seepage

runoff in R. D. 70 with probably some surface and underground increment from irrigation within Butte Slough I. D. on the north and seepage from R. D. 1660 on the east. The lake is also used as a conduit at times by applicant for direct diversion from the river. The only outlet is a 50-foot wide canal with control gates at Plant No. 7 and thence to the river at Plant No. 5."

Monthly mean flows of Reclamation District No. 70 drain at Mile 68.8L from April 1 to September 30, 1952, according to the latest published report of Sacramento-San Joaquin Water Supervision, in cubic feet per second, were as follows:

April	15.1
May	68.5
June	65.5
July	54.1
August	47.6
September	70.6

A footnote relating to the table from which these figures are taken reads:

"This is the drainage from Reclamation District No. 70 returned to the Sacramento River at Mile 68.8L. This is a combination irrigation and drainage plant and discharges both to the Sacramento River and to an irrigation canal. The above flow includes gravity as well as pumped drainage."

#### Discussion

The applicant's presentation does not establish the existence of unappropriated water. The protestant under Applications 1074 and 9737 respectively may and does divert from Sacramento River and

from the Reclamation District No. 70 main drain. It apparently requires, for service to its stockholders, more water than ordinarily flows in the District drain, during irrigation seasons. It pumps somewhat more water from Sacramento River than strictly necessary to make up deficiencies in that drain. Such excesses pumped from Sacramento River do not fall within the category of unappropriated waters. They serve distinct purposes in ensuring that deficiencies of flow in the District drain are covered and in enabling changing requirements of irrigation along the conduits that head on Sacramento River to be met promptly. They do not attain the status of abandoned waters until they have reached the District drain and have passed all points upon it at which they might be needed.

#### Summary and Conclusions

The applicant seeks to appropriate 5.0 cubic feet per second from a branch of the main drain of Reclamation District No. 70, in Sutter County, for the irrigation of 211 acres of rice.

The application is protested by Meridian Farms Water Company which represents that the applicant is already served adequately with water as a stockholder of that company, that it (the company) uses the main drain of Reclamation District No. 70 as an element of its distribution system, that it holds rights to divert the entire flow of that drain, that it supplements the usual

flow therein by pumping water into it from Sacramento River, that the appropriation that the applicant seeks would infringe upon the rights that it holds and exercises.

The applicant answers the protest by stating in effect that the appropriation of unappropriated water cannot injure the protestant, that the flow of the main drain of Reclamation District No. 70, most of the time, exceeds the amount that the protestant is entitled to divert therefrom.

The application was the subject of a hearing at Yuba City on April 15, 1954, at which both the applicant and the protestant were present or represented. At the hearing the applicant testified that the drain from which he seeks to appropriate is 25 feet wide and that the water in it ranges from 3 to 6.5 or 7 feet in depth, that some 2,000 acres that lie upstream drain into the ditch and have no connection with the water company, that the flow in the drainage ditch has increased since completion of Shasta Dam, that the District's pump on Sacramento River is 4.5 to 5 miles below him, that pumping to discharge drainage is now continuous; W. T. Berndtson, a registered civil engineer, testified to the effect that on September 3, 1953, the flow of the drainage ditch at the applicant's upstream corner measured 50 cubic feet per second, that the protestant's Burkhardt Pump is located about 0.5 mile downstream from that point, that about a mile farther down the ditch is located the protestant's Dinsmore plant, that

farther down the ditch there is a check gate, that still farther down the ditch is the protestant's Pump No. 7, that about a week before the hearing the flow of the drainage ditch measured about 4 cubic feet per second; Carl J. Watson, protestant's manager, testified to the effect that the protestant water company operates several pumping plants on Sacramento River, that it also operates three permanently installed pumps -- of 20, 15 and 21 cubic feet per second capacity -- on the District's main drain, that tractor-operated pumps are also used temporarily in most seasons to augment installed pump capacity, that the applicant's lands are under the protestant's irrigation system and have been irrigated by the system heretofore, that the flow in the drainage ditch has never to his knowledge exceeded 50 cubic feet per second, that by means of the Wilbur Road check the protestant raises the water level of the drainage ditch to facilitate operations of pumps above that point, that the protestant pumps water from Sacramento River to augment the flow in the drainage ditch, that the water so pumped passes the applicant's property, that if the applicant diverts as he proposes to he would be tapping that same supply, that the Girdner Road check is used in conjunction with protestant's Pump Number 7, that the protestant does not measure deliveries to irrigators but charges a flat rate per acre, that it is usually necessary to introduce river water into the drainage canal when the rice checks are filling and again in June, July and August,



that it is not attempted to pump exactly the amount that has to be supplied from Sacramento River, that an excess is pumped deliberately to insure that shortages in deliveries do not occur.

Upon the conclusion of testimony closing statements were made on behalf of each party. The statement on behalf of the protestant was to the effect that the issuance of permits to individual users, if carried too far, would destroy the water company in which event those same individuals would be without a water supply, that such procedure is contrary to the public interest, that in view of the rights held by the protestant there is no unappropriated water in the source from which the applicant proposes to divert. The statement on behalf of the applicant was to the effect that the application is for unappropriated water, that a determination is necessary as to whether unappropriated water exists, that the protestant company has been operating for many years and never has used the amount it claims to be entitled to, that matters such as the effect upon the protestant company resulting from the development by a stockholder of an independent supply are irrelevant.

Records of the Division indicate that Meridian Farms Water Company et al. are entitled under Application 1074, Permit 591 to divert up to 142 cubic feet per second from Sacramento River from April to October, both inclusive, for the irrigation of 8,163 acres within a designated area; and that Meridian Farms Water Company under Application 9737, Permit 5935 is entitled to divert up to 100 cubic feet per second from various drainage canals of Reclamation District

No. 70, from March 1 to November 1, for the irrigation of about 6,700 acres within the same general area. According to progress reports for 1953, 7,095 acres were irrigated in that year under the former of the two applications and 1,405 acres under the latter.

The information relating to Application 15216 points to the conclusion that unappropriated water at the point at which and during the period within which the applicant seeks to appropriate water is ordinarily non-existent; that the protestant introduces more water into the main drain of Reclamation District No. 70, by pumping from Sacramento River, than is strictly necessary; that it does so both to ensure that supply in that drain will at least equal its own demands thereon and to enable changing demands upon those of its conduits that head on Sacramento River to be met promptly; and that such excesses are not subject to appropriation until they have passed the lowermost point on the main drain of the District at which they might be needed. In view of the non-existence, ordinarily, of unappropriated water at the applicant's proposed point of diversion it is the opinion of this office that Application 15216 should be denied.

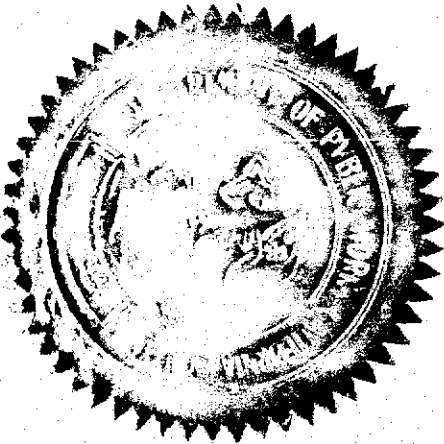
oOo

ORDER

Application 15216 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest 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 15216 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 12th day of January 1955.



*A. D. Edmonston*

A. D. Edmonston  
State Engineer