

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 Applications 15267, 15268 and 15269 by William and Grace Heckman to appropriate water from three unnamed streams within the Tule Lake Drainage Area in Modoc County for irrigation purposes.

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Decision A 15267, 15268, 15269 D 826

Decided March 29, 1955

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In Attendance at Investigation Conducted by the Division of Water Resources at the Sites of the Proposed Appropriations on May 27, 1954:

William Heckman	Applicant
William Heckman, Jr.	Applicant's son
Michael Fayne	Protestant
V. G. Reinmiller	Representing the Neva Haskins Estate
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

Application 15267 contemplates the accumulation each year of 50 acre-feet by means of an earth dam 10 feet high by 850 feet long located across an unnamed stream at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of

Section 35, T48N R6E, MDB&M; Application 15268 contemplates the accumulation each year of 50 acre-feet by means of an earth dam 6 feet high by 600 feet long on another unnamed stream at a point within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of the same section; Application 15269 contemplates the accumulation, each year, of 50 acre-feet at one point and 40 acre-feet at another on a third unnamed stream by constructing earth dams 11 feet high by 400 feet long at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and 16 feet high by 160 feet long at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26 of the same township. The water is to be collected between January 1 and May 31 in each instance; it is wanted for the irrigation from June 1st to August 31st of 320 acres of grain, potatoes and general crops. The applicants assert ownership both of the diversion sites and of the place of use, the latter being the entire east half of Section 35, T48N R6E. They also assert rights under Applications 8925 and 12840.

Protests

One Neva Haskins (since deceased) protested each of the applications as did also Michael and Mary L. Fayne. As to anticipated injury Protestant Haskins wrote:

"It will deprive me of the use of water which has always flowed in said stream to my lands in Section 4, T46N R6E and Section 33, T47N R6E, where the water has been used in reservoirs, for watering stock, viz.: sheep in the spring months, February to May, and cattle in the summer and fall months, all of the water flowing to my

said property in said stream, except in unusually wet seasons, being necessary for said uses. There is no other water supply on said lands."

As to use of water she wrote:

"As far as known first date of use was 1916 by my predecessors in interest; since 1929 the owners of my land have continuously used the water from said source by collecting same into reservoirs by means of dams and diverting all the water from January through May of each season, and any later flow, the water being used as follows: for stock water for sheep, approximately 2,000 head of ewes with lambs during season from February 1 to May 1; for stock water for sheep, approximately 1,000 head from May 1 to June 15; for stock water for cattle from May until end of January; all of the water being consumed for said purposes in ordinary seasons."

Protestant Haskins asserted both a riparian right and an appropriate right to the use of the water in question. She claimed to divert at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T47N R6E and at a point within Lot 4 of Section 4, T46N R6E. She contended that there is no unappropriated water, mentioned no terms under which her protests may be disregarded.

Michael and Mary L. Fayne represent that the proposed appropriations will deprive them of their water supply for stock and domestic use, assert a water right based on a "claim" dated September 17, 1914, assert use by themselves or their predecessors, year-round, since 1900. They assert further that their diversion heads at a point within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T47N R6E, MDB&M, and that their protests may be disregarded and dismissed "if we are allowed full capacity of reservoir every year".

Answer

Extracts from the applicants' answer to the Haskins' protests are as follows:

" ... applicants deny that the water they propose to use is required by Protestant for her sheep and cattle. Applicants desire to use the run-off for irrigation purposes of approximately two square miles of land, 99% of which they either own or lease. Protestant's holdings are approximately five miles away from applicants' land, and protestant would still have the joint use of run-off water from approximately 20 square miles of land, which would be sufficient for watering the live-stock mentioned in her protest."

" ... applicants state that as far as they know, protestant has no water rights to the water applicants desire to use. Her application appears to be for only part of her holdings. As to her riparian rights, applicants' proposed use of this water would not violate protestant's riparian rights, if she has any."

Extracts from answers to the Fayne protests are as follows:

" ... applicants deny that their proposed diversion of water would deprive protestants of all or sufficient water for stock and domestic use. The waters applicants would have (if their application is granted) would be the run-off water from approximately two square miles of land. Protestants' reservoir is about $4\frac{1}{2}$ miles away and they would still have the joint use of the run-off water from approximately 20 square miles of land, and they would still have ample water for stock and domestic use."

" ... applicants admit that protestants have water claim dated September 17, 1914; but state that the water has never been used by protestants except for watering about 35 head of cattle."

" ... applicants believe and state that the water has not been and is not now being used by protestants for irrigation purposes, as protestants have no irrigation system on their land."

Field Investigation

The applicants and the protestants, with the approval of the Department having stipulated to the submittal of the applications and protests upon the official records of the Department, a field investigation was conducted on May 27, 1954, by an engineer of the Division. The applicants and protestants were present or represented during the investigation.

Records Relied Upon

Applications 8925, 12840, 15267, 15268, 15269, and all data and information on file therewith.

Information Secured by Field Investigation

The report covering the field investigation of May 27, 1954, contains among other statements the following:

"The parties met at the Fayne Ranch ... and from there inspected the Heckman and Fayne projects and intervening watershed. (The writer made an unaccompanied visit to the Haskins project prior to the meeting)."

"The sources under these filings are three intermittent streams heading in the hills along the Oregon-California state line. The three streams converge on the applicants' land and flow southerly thence southwesterly to Copic Bay of Tule Lake (a dry lake bed presently farmed). The watershed is about 8 miles in length with the terrain being low, rocky, rolling hills. The elevation ranges from about 4,300 feet at Haskins and Fayne ranches to around 5,500 feet at the upper end some 2½ miles north of the applicants. From recent U.S.G.S. quadrangles of the area ... the watershed is about 16 miles in extent above the Fayne ranch with

about 4 square miles above the applicants' points of diversion. An additional stream originating some 5 miles south of the Fayne ranch flows north and joins the stream in question a short distance above the Haskins ranch and thus provides the latter with an additional watershed of about 14 square miles. There was no flow in any of the streams observed at the time of the investigation. The watershed is sparsely wooded at the higher elevations with about the major area at the lower elevations covered only with sage brush and range grasses."

"The climatological bulletins of the U. S. Weather Bureau show precipitation at Tule Lake over 22 years of record as a mean annual of 9.97 inches."

"The Estate of Neva Haskins maintains two small reservoirs for use during the spring and early summer (the upper reservoir is shown as "Mason Reservoir" on the Tulelake Quad). The reservoirs each hold an estimated 3-acre feet and are used entirely for stock water. Although both reservoirs were reportedly filled by March 1 of this year, at the time of the investigation the lower reservoir was completely empty and the upper reservoir held an estimated one-half acre-foot. It was estimated by Mr. Reinmiller that the supply would be exhausted by July 1. Stockwatering requirements may vary somewhat from year to year with present needs being for six head of cows and 500 sheep."

"Mr. Reinmiller stated that it is his opinion precipitation thus far during 1953-54 season is above average and indicated that conditions have not every year in the past been so favorable. He claimed that although the Haskins purchased the property in 1929, he has observed water conditions only since 1947 and that during that period the reservoirs were completely filled each year since 1951 but were short of spilling during 1947-48, - 1949, and 1950."

"The Fayne reservoir is located about 1 mile upstream from the upper Haskins dam and according to Mr. Fayne, the dam was constructed to a capacity of 32 acre-feet by his predecessor in interest around 1900. . . . At the time of the investigation, water stood some 2 feet below spillway level. The reservoir shows evidence of having silted considerably since construction "

"The dam is equipped with a timber box-type gate for irrigation but reservoir has not been used for this purpose for several years. The gate is so located that at most the reservoir could be lowered only a few inches below spillway level through this outlet."

"Use of water in the reservoir has been restricted for several years to stockwatering purposes. In former years 150 to 180 head of Hereford beef cattle have had access to the reservoir, but according to Mr. Fayne, this herd has been reduced to about 35 head due to an insufficient supply of water. Even with the present use it is anticipated that the reservoir will be completely dry by fall. He stated that to his knowledge the reservoir spilled about March 1, 1954, and continued spilling for approximately 2 weeks with water reaching a depth of 2 feet over the spillway. Using the equation for a broad-crested weir, this condition would indicate that the flow may have reached 50 c.f.s. Mr. Fayne agreed with Mr. Reinmiller that the past year was a better than average season so far as runoff was concerned, although the area experienced an unusually dry spring. Mr. Fayne recalled however that only about 3 years out of 10 did the reservoir not spill."

"Mr. Heckman's diary showed that the first significant runoff during the past season occurred on February 2, 1954 and (he) was adamant in his contention that the major portion of the water originating on or above his ranch never reaches the protestants. Both of the protesting parties present took exception to his statement and claimed that the major supply reaching their ranches originates in the higher elevations of the watershed. Young Heckman stated that on February 2 he walked the entire length of the water course from the Fayne Ranch upstream He pointed out a grain field (estimated 100 acres in extent) in the northeast corner of Section 15 ... where he claimed water was standing over the entire field to a depth which would possibly average 1 foot. At the same time he claimed no water was escaping downstream from the field. At a point near the south boundary of the Heckman property ... he pointed out a similar condition where the water had allegedly ponded over an extensive area and while about 15 cubic feet per second were entering the field upstream, only about 1 cubic foot per second was leaving the property some 1/4 mile below."

"A rather detailed inspection of the channel between the protestants and applicants revealed the existence of several small onstream stockwatering reservoirs, apparently constructed only recently by the Johnson Cattle Company. . . . The combined capacity of the reservoirs would probably not exceed 5 acre-feet but would reduce the protestants' supply by the like amount. From the writer's observations, the contention of Mr. Heckman that a considerable quantity of runoff never reaches the protestants has some merit. The accompanying photograph is a view of the water course looking south immediately below the above-mentioned grain field in Section 15. It will be noted that no distinguishable channel exists and the sagebrush through which the water would have to flow shows no evidence of erosion which would normally be expected. A second photograph shows the water course immediately below the applicants' property. Again evidence of any appreciable flow is lacking. The soil being of light silty loam, it is reasonable to assume that a considerable quantity is dissipated into the ground and thus unavailable for use by the protestants.

Information from Other Sources

Under Application 8925 Permit 4963 License 2920, William and Grace Heckman may divert 5 acre-feet per annum at a point located 100 feet north from the northwest corner of Lot 1 of Section 2, T47N R6E and 10 acre-feet per annum at a point located north 660 feet from the south quarter corner of Section 26, T48N R6E, MDB&M.

Under Application 12840 Permit 7666, William and Grace Heckman may divert not to exceed 60 acre-feet per annum, collected from January 1 to about May 30 at a point 300 feet west and 200 feet south or at a point 1,540 feet west and 200 feet south from the southeast corner of Section 26, T48N R6E, MDB&M.

Extracts from a report covering an inspection on September 27, 1946, by an engineer of the Division in the matter of Application 8925 are as follows:

"Both streams were dry at the time of this inspection."

"At diversion (2) there has been constructed an earth fill dam"

"The reservoir behind the dam has ample capacity and ... it would appear that the capacity was considerably in excess of 10 acre-feet."

"In view of the situation a survey of the reservoir to determine its capacity is proposed The survey will disclose whether or not Permittee should file a second application"

"The reservoir was filled in 1944 and 1945 and to the extent of about two-thirds of its capacity in 1946."

"It appeared ... that unquestionably the full 15 acre-feet by storage covered by the permit had been beneficially used and probably an amount considerably in excess thereof since ... Reservoir (2) may have a capacity of several times the amount covered by the permit."

A report by an engineer of the Division covering an inspection on September 25, 1951 in the matter of Application 12840 Permit 7666 contains statements as follows:

"The period of runoff ... is very short. According to Mr. Heckman's diary the 1951 runoff started on February 14 and ceased March 14."

"... the capacity of this reservoir is approximately 100 acre-feet"

"Mr. Heckman is contemplating the construction of a storage dam"

"Mr. Heckman was advised that if such procedure is followed an additional application should be filed for the amount of water in excess of that covered by the licenses."

Discussion

The projects described in the applications at issue evidently are an expansion of the earlier development under Applications 8925 and 12840. That an expansion of that nature was contemplated by the applicants as early as 1946 is apparent from the report upon the inspection of September 27 of that year. That more water is physically available to the applicants than the amounts appropriated under Applications 8925 and 12840 was indicated by the report of inspection just mentioned and by the report of inspection made on September 25, 1951.

The protestants' contention that the water that passes the applicants' proposed points of diversion is already appropriated and necessary to satisfy their own (the protestants') prior rights is not supported by the data. According to the report of field investigation of May 27, 1954, the Haskins reservoirs have a total capacity of but 6 acre-feet, the Fayne reservoir not over 32 acre-feet; the Fayne reservoir spilled in 1954 and spilled for about 2 weeks, spillage attaining a rate, estimated, of up to 50 cubic feet per second; upstream from the protestants' reservoirs William Heckman, Jr. found one 100-acre inundated grain field with no water escaping downstream

therefrom and another into which 15 cubic feet per second were entering and but 1 cubic foot per second was leaving; the investigator's observations and photographs indicate that much of the runoff passing the applicants' points of diversion becomes dissipated before reaching the protestants' reservoirs.

Summary and Conclusions

The applicants seek to appropriate a total of 190 acre-feet per annum from 3 unnamed streams within the Tule Lake drainage area in Modoc County. The water is to be collected between January 1 and May 31 of each year in a total of 4 reservoirs and used for the irrigation from June 1 to August 31 of grain, potatoes and general crops.

Two protests were filed against the applications, one by Neva Haskins (deceased) and the other by Michael and Mary L. Fayne; the protestants claiming that they are themselves dependent upon the sources from which the applicants seek to appropriate and that they will be injured by any interruption of flow therefrom. In answer to the protests the applicants deny that the water they seek to appropriate is needed by parties downstream, assert that the runoff from approximately 20 square miles of watershed is available to the protestants, argue that the protestants' riparian rights, if any, are not a bar to approval of the applications.

The applicants and protestants stipulated to proceedings in lieu of hearing and a field investigation was conducted on May 27,

1954. According to the report of that investigation the sources from which appropriation is sought are 3 intermittent streams heading along the Oregon-California line; some 4 square miles of watershed lie above the applicants' proposed points of diversion, some 16 square miles lie above one of the protestants' intakes and some 30 square miles above the other's; there are two 3 acre-foot reservoirs on the Haskins property and a reservoir of not over 32 acre-foot capacity on the Fayne property; Fayne is upstream from Haskins, the Fayne reservoir spilled about March 1, 1954 and continued spilling for about two weeks, discharges ranging up to about 50 cubic feet per second. According to the same report Protestant Fayne states that his reservoir has spilled in 7 of the last 10 years and considers runoff in 1954 to have been somewhat above average; Applicant Heckman maintains that most of the runoff from above his ranch never reaches the protestants; the applicants' son cited a 100-acre grain field below the applicants, above the protestants, where he claimed water stood 1 foot deep yet did not escape downstream and another field similarly located where 15 cubic feet per second entered and but 1 cubic foot per second escaped downstream. Also, according to the same report, no distinguishable watercourse exists in Section 15, T48N R6E, nor, apparently, in the adjoining Section 10; the soil is a light silty loam and, apparently, considerable water is dissipated into the ground.

According to the files of the Division the applicants already hold Application 8925 Permit 4963 License 2920 for 5 acre-feet

per annum at a point within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35 and 10 acre-feet per annum at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26; also Application 12840 Permit 7666 for 60 acre-feet per annum at either or both of 2 points located 300 feet west and 200 feet south and 1,540 feet west and 200 feet south, respectively, from the southeast corner of Section 26. The proposed point of diversion under Application 15268 is the same as one of the points at which diversion was authorized under Application 12840; one of the proposed points of diversion under Application 15269 is the same as one of the points at which diversion was authorized under Application 8925. The projects outlined in the applications at issue evidently represent expansion of the projects under the applicants' earlier filings. The reports of inspection in connection with Applications 8925 and 12840 indicate that more water was physically available than had been applied for under those applications.

The circumstances above outlined point to the conclusion that unappropriated water exists at times in the sources from which appropriation is sought under Applications 15267, 15268 and 15269 and that such unappropriated water may be taken and used in the manner proposed without infringement upon the rights of lower users. In view of those circumstances it is the opinion of this office that Applications 15267, 15268 and 15269 should be approved and permits issued subject to the usual terms and conditions.

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ORDER

Applications 15267, 15268 and 15269 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 Applications 15267, 15268 and 15269 be approved and that permits 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 29th day of March, 1955.



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