

STATE OF CALIFORNIA
PROCEEDING BEFORE THE
STATE WATER RIGHTS BOARD

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In the Matter of Application 16183 by Pomponio Ranch to
Appropriate from Pomponio Creek, Tributary to Pacific Ocean,
in San Mateo County, for Domestic, Irrigation and Stock-
watering Purposes.

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Decision A 16183 D 863

Decided October 23, 1956

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In Attendance at Investigation Conducted by the Division of
Water Resources on April 24, 1956:

W. F. Gilpin	Representing the applicant
J. E. Cabral	Protestant
Joseph Baptiste	Protestant
Edson Abel	Protestant's attorney
Kelly Mattei	Representing Willowside Farms, an Interested party
E. C. Johnson	Assistant Hydraulic Engineer, Division of Water Resources, Department of Public Works
K. L. Woodward	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer

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DECISION

Substance of the Application

The application initiates an appropriation of 0.71 cubic foot per second, diverted from March 1 to November 30 of each year, for immediate application to beneficial use, and an appropriation of 210 acre-feet per annum, collected between October 1 of each year and May of the next and temporarily stored. The source is Pomponio Creek, which is tributary to Pacific Ocean, in San Mateo County. There are two points of diversion, one being at applicant's storage dam, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 28, T7S R4N, NDB&M, the other some 3/4 mile farther downstream and within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of the adjoining projected Section 29. At the upper point of diversion water is diverted into applicant's main pipeline and water not required for immediate use is impounded; at the lower point of diversion return flow from applicant's irrigation above that point is either diverted for reuse farther downstream or pumped back into the reservoir and runoff from the watershed tributary to the lower but not the upper point of diversion is handled likewise. The structure at the upper point of diversion is an earth dam 53 feet high by 245 feet long. It creates a reservoir 13 acres in surface area, 262 acre-feet in capacity. The dam at the lower point of diversion is a concrete structure, 10 feet high, 61 feet long. The project works include a pumping plant at the lower

point of diversion, 320 gallons per minute in capacity, and pipelines aggregating 6,140 feet in length and ranging from 8 inches to 4 inches in diameter. The project works are reported complete. The purpose of the appropriation is to provide a supply for domestic purposes at 4 residences with appurtenant gardens, for stockwatering (750 cattle, 13 horses, 150 hogs) and for the irrigation of 124.3 acres of pasture. The applicant asserts ownership both of the land upon which the diversion works are located and of the land upon which the water is to be used.

Protest

E. J. Cabral, Joseph Baptiste, Arata Bros., Antone Brazil, Caughey Bros. and J. E. Cabral protested the application jointly, contending that the proposed appropriation will operate to their injury in that under said appropriation the applicant will divert the entire flow of Pomponio Creek at its points of diversion and thereby reduce the supply in that stream below the amount which they (the protestants) need for irrigation, stockwatering and domestic purposes. They claim riparian rights, assert that their lands have been farmed and water from Pomponio Creek used thereon for over 100 years, assert further that their points of diversion are all located on Pomponio Creek below the point where the applicant proposes to pump. They state that their protest may be disregarded and dismissed if the applicant will agree to share the flow of the stream with them and if the

applicant will confine its pumping to periods extending from December 1 of each year to April 1 of the next.

Caughey Bros. and Arata Bros. subsequently (by documents dated May 18 and May 23, 1955, respectively) withdrew their objections.

Answer

The answer to the protest contains assertions to the effect that no water whatever is being used for irrigation or for garden watering below applicant's property, that there are no established diversion points on that reach of the stream, that the only water which is being used from Pomponio Creek below Pomponio Ranch is water which livestock drink directly from the stream.

Field Investigation

The applicant and the protestants with the approval of the Division of Water Resources stipulated to the submittal of the application and protest upon the official records and a field investigation was conducted on April 24, 1956 by an engineer of the Division. The applicant and the protestants were present or represented at the investigation.

Records Relied Upon

Applications 13876 and 16183 and all relevant information on file therewith; Half Moon Bay quadrangle, Corps of Engineers,

U. S. Army, 1943; Bulletin No. 5 - Flow in California Streams - Division of Engineering and Irrigation, Department of Public Works, 1923.

Information Obtained by Field Investigation

Extracts from "Report of Division of Water Resources on Application 16183" (which includes the information obtained by field investigation on April 24, 1956) are as follows:

"The investigation included an inspection of the applicant's project, the source and drainage area and a conference with all interested parties present."

"Details of the distribution system are contained in 'Report of Inspection of Application 13876, Permit 8602, on April 28, 1955'."

Pomponio Creek heads on the west slope of the Coast Range in the SW portion of T7S R4W, MDB&M, and flows in a westerly direction a distance of about 6 miles to the Pacific Ocean. The watershed is grass covered, moderately steep hillsides with a runoff area of about 345 acres above the storage dam. Average annual rainfall ... at Half Moon Bay ... is 22.80 inches. This precipitation station is about ten miles north of the applicant's project."

"Runoff of Pomponio Creek above the storage dam amounts to very little except during periods of precipitation. An engineer of this office reported that there was no surface flow into the reservoir on April 28, 1955. On April 24, 1956, the writer estimated the surface inflow to be about 10 gallons per minute. According to Mr. Gilpin there are a few perennial springs in the reservoir area and limited seepage through the dam occurs continuously. Allegedly this latter water, which is normally less than 0.01 cubic foot per second, comes from sidehill seepage or springs which are covered by the dam."

"Water also originates from numerous side tributaries below the storage dam. On April 24, 1956,

flow of water at the applicant's diversion dam ... was measured to be 0.2 cfs and a flow of 0.3 cfs was measured at Protestant Baptiste's place about 1.5 miles below the first measurement. All of the parties present who were acquainted with the area were of the opinion that water conditions were about normal for that time of the year, that the flow never entirely ceased during the summer and fall months and that to date the existence of the Pomponio Ranch dam and past use of water had not materially affected the water supply through the lower reach of Pomponio Creek."

"The applicant's project is complete and has been in operation since the winter of 1952-53. The main purpose of (the lower) point of diversion ... is to pump water into the reservoir in those years when runoff above the dam is not sufficient to fill the reservoir. During the irrigation season this lower point is used to divert runoff from the applicant's upstream irrigation or to divert water which is released directly from the reservoir."

"Between the applicant and the Pacific Ocean ... ranches ... border on Pomponio Creek All of these owners (of said ranches) use the land for cattle grazing and the cattle are allowed access to the Creek. According to Mr. Baptiste, however, each has an alternate or independent water supply from wells or springs and none rely upon the Creek entirely for a water supply. It is further understood from the conference ... that (the parties present) have no concern over present use of water by Pomponio Ranch but that they claim riparian rights to the Creek and do not wish to lose or jeopardize their rights should at some future date one or more elect to make fuller use of the water they claim."

Other Information from Office Files

A report covering an inspection made on April 28, 1955 in connection with Application 13876 (filed with that application) contains among other statements the following:

"Application 13876 ... assigned to the Pomponio Ranch, to appropriate from Pomponio Creek ... was

approved ... and Permit 2602 was issued allowing a diversion to storage of 60 acre-feet per annum to be collected from about October 1 ... to about May 1"

"There was no surface flow from Pomponio Creek entering the reservoir at the time of visit however seepage from a few small springs defrayed the effect of seepage and evaporation losses. These springs flow the year around according to Mr. Gilpin (ranch manager)."

"Permittee has built an earth fill dam"

"The dam has been raised ... so that the pond ... has ... a capacity of 264 acre-feet of which 60 acre-feet are covered by this permit. The remaining storage is covered under a later filing Application 16183 which includes storage and direct diversion."

"This later filing includes a recapture of drainage of stored waters by means of a regulatory dam located below or downstream from some ... pasture ... irrigated under the permit. At this point permittee has constructed a wingwall dam A 6 feet wide spillway or center opening may be closed when irrigating ... or when all dangerous floods are over, by means of flashboards. Permittee uses a 4-inch Jacuzzi pump ... either to serve the sprinkler system or to return water to the Pomponio Reservoir."

"The season of collection ... has extended from October 1 ... to May 1 In 1955 the runoff was considerably below normal and reservoir did not fill with the high water mark approximately 23 inches below crest. ... according to (Mr. Gilpin's) notes the reservoir was first filled in 1953 to about ... 17 inches below the crest In 1954 the reservoir filled to greatest height to date, approximately 12 inches below the crest At time of visit irrigation season had just started and water had been drawn about one foot below the high water mark."

According to the Halfmoon Bay quadrangle, the watershed tributary to the applicant's upper point of diversion (Pomponio Dam) is some 384 acres in extent and some 563

additional acres are tributary to the applicant's lower point of diversion.

According to the capacity curve shown on the map filed in connection with Application 16183, the amount stored in Pomponio Reservoir when the water surface is 1 foot below spillway crest elevation is approximately 257 acre-feet.

By calculation, one cubic foot per second from October 1 to May 1 (the applicant's collection period) amounts to approximately 420 acre-feet, and a total runoff of 257 acre-feet in that period of time is equivalent to an average flow for the same period of about $257/420$ or about 0.61 cubic foot per second.

According to Bulletin No. 5 - "Flow in California Streams"- Division of Engineering and Irrigation, Department of Public Works, 1923, the percentage of annual runoff that is likely to occur each month in streams of the "Pescadero Creek Group", which includes Pomponio Creek, is as follows:

<u>Month</u>	<u>Percentage</u>
January	38.1
February	30.5
March	13.2
April	4.4
May	2.3
June	1.5
July	0.9
August	0.7
September	0.6
October	1.2
November	1.3
December	5.3

Discussion

The statement in the report covering the inspection of April 28, 1955 to the effect that Pomponio Reservoir filled in 1954 to within 12 inches of its spillway crest affords a basis of estimating what flow may have been available at applicant's lower point of diversion in March and April of the year 1954. The reservoir when filled to an elevation of within 1 foot of the crest of its spillway contains approximately 257 acre-feet. That amount apparently represents roughly the runoff that occurred from the watershed above Pomponio Dam during the October 1953-April 1954 collection period. During the same seven months the additional watershed tributary to the applicant's lower point of diversion, because of its propinquity and topographic similarity, probably produced runoff at about the same rate per unit of area, or a total of $563/384 \times 257$ or 377 acre-feet. According to the percentages of annual runoff likely to occur in various months, quoted in the last preceding paragraph, 94% of annual runoff may be supposed, on average, to occur in the collection period (October through April), 13.2% in March and 4.4% in April. Hence the additional watershed tributary to the applicant's lower point of diversion may have produced some $13.2/94 \times 377$ or 53 acre-feet in March and $4.4/94 \times 377$ or 17.6 acre-feet in April. These figures are equivalent to average flows of about 0.86 cubic foot per second in March of that year and about 0.3 cubic foot per second in April.

Inasmuch as the amount impounded in 1954 appears to have nearly equaled the amount authorized under Application 13876 Permit 8602 plus the amount sought for storage under Application 16183; inasmuch further as the flow at the applicant's lower point of diversion emanating from the watershed tributary to that point but not to Pomponio Reservoir appears to exceed in March the amount that the applicant seeks to divert at that point for immediate use, and to persist, even if in much lesser amount, through spring, summer and fall, no conditioning of any permit that may be issued appears warranted, as to either amount or season.

It is an established principle that riparian use which is prospective only cannot be urged as a basis for the denial of an application. In view of that fact and in view of statements in the report covering the field investigation of April 24, 1956 to the effect that the applicant's project has been complete since the winter of 1952-53, that the flow below the applicant's lower point of diversion was substantially greater at the time of field investigation than the flow at a point farther downstream, that use of water below the applicant's project is limited to drinking by livestock directly from the creek, that the parties in attendance at the investigation express no concern over applicant's present use of water, state that conditions existing at time of investigation are normal and that the flow of Pomponio Creek never entirely ceases in summer or fall, that their objection

to the application is based primarily upon apprehension that the appropriation sought thereunder may result in the loss or jeopardizing of their claimed riparian rights, the protest against the application appears insufficient to bar its approval.

Conclusion

The information indicates that unappropriated water exists in the source from which the applicant seeks to appropriate and that such water may be taken and used in the manner proposed by the applicant without injury to parties downstream. It is the opinion therefore of the State Water Rights Board (successor in jurisdiction to the Division of Water Resources on July 5, 1956 in matters relating to the appropriation of water) that Application 16183 should be approved and that a permit should be issued to the applicant, subject to the usual terms and conditions.

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ORDER

Application 16183 for a permit to appropriate unappropriated water **having** been filed with the Division of Water Resources as above stated, a protest having been filed, stipulations having been submitted, a field investigation having been conducted and the State Water Rights Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16183 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 23rd day of October, 1956.

/s/ Henry Holsinger
Henry Holsinger, Chairman

/s/ John B. Evans
John B. Evans, Member

/s/ W. P. Rowe
W. P. Rowe, Member

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