

STATE OF CALIFORNIA
PROCEEDINGS BEFORE THE
STATE WATER RIGHTS BOARD

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In the Matter of Application 16215 by Dorothy J. Jennings, Appli-
cation 16223 by John Wilhelm Schleicher and Marie Leota Schleicher,
Application 16224 by Charles T. Neary and Margaret Neary, Appli-
cation 16225 by Carl F. Laslovich, Application 16238 by Walter
Albert and Application 16276 by Harold U. Linkins, to appropriate
from Lost Creek, Tributary via Deer Creek to Sacramento River, in
Tehama County, for Domestic Purposes.

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Decision A 16215, 16223, 16224, 16225, 16238, 16276 D 865

Decided November 27, 1956

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In Attendance at Investigation Conducted by the Division of Water
Resources on November 8 and 9, 1955:

Dorothy J. Jennings	Applicant
John W. and Marie L. Sleicher	Applicants
Charles T. and Margaret Neary	Applicants
Harold U. Linkins	Applicant
George Beck)	
B. E. Plott)	Representing the protestant
Roy Joiner)	Stanford Vina Ranch Irrigation
Albert Clark)	Company
Jerome D. Peters, Jr., Attorney)	Representing the protestant Deer
and George Wight)	Creek Irrigation District

Myrtle Dayton)	
William B. Dayton)	Interested parties
Mr. and Mrs. Ernest Fink))	
Walter H. Reed)	Representing Collins Pine Company,
John H. Masson)	an interested party
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 Applications

The applications initiate appropriations from Lost Creek at points within Sections 25 and 26 of T28N R5E, MDB&M, for domestic purposes. Lost Creek is tributary via Deer Creek to Sacramento River. Essential particulars as to the applications are as follows:

Application: number	: Amount*	: Season		: Point of diversion within	
		: From	: To	: Subdivision	Section
16215	3,200	4/1	11/30	SE $\frac{1}{4}$ NW $\frac{1}{4}$	25
16223	100	1/1	12/31	SW $\frac{1}{4}$ NE $\frac{1}{4}$	26
16224	3,000	4/1	12/1	SE $\frac{1}{4}$ NE $\frac{1}{4}$	26
16225	500	6/1	11/1	SE $\frac{1}{4}$ NE $\frac{1}{4}$	25
16238	5,000	1/1	12/31	SE $\frac{1}{4}$ NW $\frac{1}{4}$	25
16276	500	1/1	12/31	SE $\frac{1}{4}$ NE $\frac{1}{4}$	26

* in gallons per day

Under Application 16215 it is proposed to serve 15 people in 6 houses with a total of 1/2 acre of appurtenant garden; under Application 16223 two people in one house; under Application 16224 12 people, two dwellings, outhouses, pond, lawn and garden; under Application 16225 four people, one house and a half-acre garden; under Application 16238 a cafe serving 50 people per day, a motel accommodating 20 people, about 1/4 acre of lawn; under Application 16276 one person, a house and garden, the latter 25 feet square.

Protests

Two protests, filed by the same parties - Stanford Vina Ranch Irrigation Company and Deer Creek Irrigation District - stand against each application. The protestants state that they divert at points within Section 33 of T24N R1W, Section 1 of T24N R2W and Section 23 of T25N R1W, MDB&M. They both claim rights based upon riparian ownership, prior appropriation and a certain Superior Court judgment. They both declare that there is no unappropriated water at their points of diversion between June and October, both inclusive, and that diversions as proposed by the applicants would **deprive** them of water to which they are entitled. They both assert that their protests may under no conditions be disregarded or dismissed.

Answers

The applicants answer the protests by stating in effect that Lost Creek itself is dry in summer, that the flow which they (the applicants) hope to appropriate is supplied by springs and is too small to materially affect conditions at points where protestants divert.

Field Investigation

Pursuant to notice dated October 24, 1955 a field investigation was conducted on November 8 and 9, 1955, by an engineer of the Division of Water Resources. The applicants, except Applicants Albert and Laslovich, were present or represented at the investigation. All of the parties, with the approval of the Division of Water Resources, stipulated to the submittal of the applications and protests upon the official records.

Records Relied Upon

Applications 16215, 16223, 16224, 16225, 16238 and 16276 and all relevant information on file therewith including especially the report of field investigation of November 8 and 9, 1955 and the report of the Division of Water Resources dated December 21, upon those applications; relevant Water Supply Papers, Part 11 (Pacific Slope Basins in California), United States Geological Survey; "Vina" quadrangle, United States

Geological Survey; United States Forest Service map of Lassen National Forest; relevant reports of Sacramento-San Joaquin Water Supervision, Division of Water Resources.

Information Obtained by Field Investigation

Extracts from the report of field investigation of November 8 and 9, 1955, are as follows:

"The investigation included an inspection of the stream system and existing or proposed works of all applicants and protestants. During the ... investigation ... a conference was held ... with ... interested parties"

"Representatives of (the protestants) ... agreed that although the total amount of water presently sought would have no noticeable effect on their water supply, and that if some assurance could be given that further reduction of the stream would not occur by future applicants they would be agreeable to recommending withdrawal of the protests However they believed that approval of the applications would establish a policy which may encourage upstream development further to the injury of the irrigation interests."

"Mr. Peters was of the opinion that the court action of 1923 entitled 'Stanford Vina Ranch Irrigation Company ... vs. Charles Dicus, et al. ...', Tehama County, which defined the present rights of Deer Creek Irrigation District and Stanford Vina Ranch Irrigation Company, was an adjudication of the rights of the entire watershed and that the Division is without power to grant the subject applications without further court order."

"Deer Creek Irrigation District and Stanford Vina Irrigation Company claim extensive rights on Deer Creek by virtue of the aforementioned court decision. Present use is upon 2160 acres of the District and about 5600 acres of the Company. The Company claims a need during the irrigation season of 100 cfs. Based upon the same proportion, the District would require about 40 cfs. Diversions by these users are at three points as described in their protests. The lowermost dam is a

concrete structure about 8 feet high by about 200 feet long which apparently diverts the entire flow of the Creek into the irrigation canals during most of the irrigation season. The flow measured at the gage 'Deer Creek at Highway 99E' during the irrigation season is, according to Mr. Beck, seepage into the Creek from the canals and beneath the dam and does not represent unappropriated water. The flow available to these two users is measured at the gage 'Deer Creek near Vina' which is located a short distance above the uppermost dam."

"Use of water by the District and Company is primarily upon row crops, alfalfa and pasture and based upon the above cited figures, the duty of water would be about one cubic foot of water per second for each 56 acres. In view of the length of the canal system and type of soil involved such a duty would appear reasonable."

"Use of water under ... (the applications) will be substantially as described therein. The lots to be served are within a few hundred feet of the stream and will be served either by gravity or individual pressure systems. Each diverter will probably require a small dam. Each has individual septic tanks and return flow to the stream will probably be a considerable portion of the amount diverted."

"After the spring snow melt the only flow in Lost Creek available to the several parties originates from several springs on the property of Mike Fink, owner of the St. Bernard Lodge."

Extracts from the report of the Division of Water Resources dated December 21, 1955 are as follows:

"Lost Creek rises in Tehama County in the southern part of T29N R5E, MDB&M, at an elevation of about 6,000 feet ... flows ... southeasterly ... about five miles to Soldier Meadows near Deer Creek Pass (It) ... then turns abruptly to the west and continues about four additional miles to a junction with Deer Creek near the center of Section 21, T28N R5E, MDB&M, in Deer Creek Meadows. Certain ... maps show the reach of the stream between Soldier Meadows and Deer Creek Meadows as Deer Creek."

"From Deer Creek Meadows, Deer Creek flows southwesterly about 45 miles to a junction with Sacramento River 1 1/2 miles west of the town of Vina"

"After the spring snow melt there is no surface flow past the applicants from the upstream reach of Lost Creek. The only water available to the applicants during the summer months rises from several springs in and adjacent to the streambed opposite Applicant Jennings' place. It is understood that the flow from the springs is rather uniform throughout the summer. On August 10, 1955, the writer measured the flow of the creek by current meter immediately above the Childs Ranch diversion dam to be 1.70 cubic feet per second. The flow on November 9, 1955, was estimated to be about 2.0 cubic feet per second."

"The water supply available to ... (the protestants) is gaged at the U. S. Geological Survey and State Division of Water Resources cooperative station 'Deer Creek near Vina' located about 0.8 mile upstream from the District's point of diversion."

"The State ... and ... Bureau of Reclamation maintain a cooperative stream gaging station on Deer Creek at the Vina Highway 99E Bridge a short distance below the Stanford ... main dam"

"It is understood that during periods of low flow Stanford Vina ... Company diverts all of the water reaching its main dam in Section 1, T24N R1W ... a short distance above the Highway 99E gage and that water passing that gage is return flow from the Company's canal system or rising water below the dam."

"Limited use of water is presently being made from Lost Creek by some of the applicants. However, such use is primarily for maintenance of small offstream fish raising ponds Should the applications be approved, diversion of water possibly would increase up to the amounts named therein"

"As all of the applications are for domestic use near the channel of Lost Creek it may be anticipated that a considerable portion of the water diverted will return thereto"

"Irrigable land owned by stockholders of Stanford ... Company consists of 5,706.55 acres. An additional 191.96 acres ... owned by other parties to the ... court action ... are irrigated with water carried through the Company's canal system. Deer Creek Irrigation District is comprised of 2,185.78 acres of which the average yearly irrigated acreage is said to exceed 1,800 acres."

"Allegedly the decree ... granted to the users of Company system 66.72% of the flow of Deer Creek. The Company claims that during the irrigation season the land served under its system has beneficially used 150 cubic feet per second or more when available. Assuming that the use of water by the Company and the District is proportionate to their decree rights, the District would require a continuous flow of about 75 cubic feet per second."

Other Information from Office Files

Monthly mean discharges passing the gaging stations mentioned in the passages quoted above, in cubic feet per second, during the months of April through October of recent years, are of record as follows:

Deer Creek near Vina

Year:	April	May	June	July	Aug.	Sept.	Oct.
1950	706	400	178	106	87.2	85.6	159
1951	509	444	176	123	106	95.5	120
1952	1086	1018	433	221	165	130	124
1953	575	583	379	180	139	120	121
1954	<u>1020</u>	<u>388</u>	<u>196</u>	<u>134</u>	<u>119</u>	<u>112</u>	<u>110</u>
Average	779	567	272	153	123	108.6	127

Deer Creek at Highway 99E

Year :	April :	May :	June :	July :	Aug. :	Sept. :	Oct.
1950*	560	291	71.7	7.8	7.3	6.9	91.0
1951*	373	326	77.8	16.0	8.3	2.9	68.5
1952	911	848	323	79.7	20.3	12.3	38.2
1953	427	441	206	21.9	3.5	4.2	21.4
1954	<u>874</u>	<u>248</u>	<u>46.4</u>	<u>4.4</u>	<u>3.7</u>	<u>3.3</u>	<u>49.5</u>
Average	629	431	144.9	26.0	8.6	5.9	53.7

* Until October 21, 1951 measurements were made about two miles below Highway 99E.

Distances via Deer Creek and Lost Creek, in miles, scale on maps of the locality approximately as follows:

Deer Creek at mouth	0.0
Gaging Station - "Deer Creek at Highway 99E"	2.6
Diversion Dam, S. V. Co., lower	4.3
Diversion Dam, S. V. Co., upper	7.3
Diversion Dam, D.C.I.D.	10.3
Gaging Station - "Deer Creek near Vina"	11.1
Lost Creek at junction with Deer Creek	48.1
Schleicher (lowermost of the applicants)	50.5
Albert (uppermost of the applicants)	51.5

Discussion

Since the protestants deny the existence of unappropriated water during June, July, August, September and October only, their protests are not an obstacle to approval of the applications insofar as the latter relate to diversions during the seven remaining months of the year. The data indicate that supply during those seven months is abundant.

Whatever amounts the protestants claim to be entitled to divert from April inclusive through October, whether by court decree or otherwise, those amounts evidently cannot exceed the flows reaching their uppermost intake as reflected by the records of flows at "Deer Creek near Vina", nor can they include amounts which after being diverted are not used beneficially. The amounts which the protestant Company and the protestant District use beneficially, according to the report of December 21, 1955, may be of the order of 150 and 75 cubic feet per second respectively, or 225 cubic feet per second altogether. Flows passing "Deer Creek near Vina" during April and May appear to have been much in excess of protestants' needs and this the protestants concede. Flows passing "Deer Creek near Vina" during June, July, August, September and October are prevalently less than 225 cubic feet per second but confirmation is lacking that protestants utilize these flows in their entirety. The flows at the intersection of Deer Creek with Highway 99E may be so rewritten as to show said flows as percentages of flows passing "Deer Creek near Vina", thus:

Year	: April	: May	: June	: July	: Aug.	: Sept.	: Oct.
1950	79.3	72.8	40.3	7.3	10.1	8.1	57.1
1951	73.3	73.3	44.2	13.0	7.8	3.0	57.0
1952	83.8	83.4	74.6	36.1	12.3	9.5	30.8
1953	74.3	75.6	54.4	12.2	2.5	3.5	17.7
1954	<u>85.7</u>	<u>63.8</u>	<u>23.7</u>	<u>3.3</u>	<u>3.1</u>	<u>3.0</u>	<u>45.0</u>
Average	79.3	73.8	47.4	14.5	7.2	5.4	41.5

The explanation of a representative of the protestant company to the effect that flows at "Deer Creek at Highway 99E" during irrigation seasons represent seepage from the canals and leakage under the dam and do not represent unappropriated water is unconvincing. Unless exceptional conditions obtain - and none are reported - seepage losses are unlikely either to peak so early or to decline as diversions for irrigation increase, and leakage past a serviceable dam is unapt to be either considerable or widely variable. The data appear to indicate rather that flows reaching Highway 99E during irrigation seasons represent not only unavoidable losses but also represent such flows passing "Deer Creek near Vina" as might have been diverted by the protestants but were not so diverted and consequently are subject, at least for the time being, to appropriation.

The aggregate of the amounts the applicants seek to appropriate varies somewhat according to the time of year but

never exceeds 12,300 gallons per day, equivalent to about 0.019 cubic foot per second. It is not apparent that the abstraction by the applicants of an amount so small in comparison with either protestants' claimed rights or protestants' probable diversions will affect the protestants perceptibly. The data establish that unappropriated water usually exists in all months except July, August and September and suggest strongly that it exists at times, in small amounts, in July, August and September also. The possibility that unappropriated water may at times be nonexistent in July, August and/or September is an insufficient bar to the approval of the applications.

Conclusion

The information indicates that unappropriated water exists in the source from which the applicants seek to appropriate and that such water may be taken and used beneficially in the manner proposed by the applicants without perceptible 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 Applications 16215, 16223, 16224, 16225, 16238 and 16276 should be approved and that permits should be issued to the applicants, subject to the usual terms and conditions.

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ORDER

Applications 16215, 16223, 16224, 16225, 16238 and 16276 for permits to appropriate unappropriated water 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 Water Rights Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 16215, 16223, 16224, 16225, 16238 and 16276 be approved and that permits be issued to the applicants, subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 27th day of November, 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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