

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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IN THE MATTER OF APPLICATIONS NOS. 1097, 1098, 1389, 2221 AND 2615 BY WALKER RIVER IRRIGATION DISTRICT TO APPROPRIATE WATER FROM WALKER RIVER AND TRIBUTARIES IN MONO COUNTY FOR AGRICULTURAL PURPOSES AND OF APPLICATION NO. 3923 BY C. E. LOOSE TO APPROPRIATE WATER FROM EAST WALKER RIVER IN MONO COUNTY FOR POWER PURPOSES.

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DECISION NO. 1097, 1098, 1389, 2221, 2615, 3923
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Decided February 8, 1926

APPEARANCES AT HEARING HELD JUNE 22nd, 1926:

For Applicant, Walker River Irrigation District:
Wm. M. Kearney, Atty. Reno, Nevada.

For Applicant, C. E. Loose:
L. F. Adamson, Atty. Kearns Bldg.,
Salt Lake City, Utah.

No appearances:

Board of Supervisors of Mono County
C. L. Stewart and G. B. Day.

Examiner: Edward Hyatt, Jr., Chief of Division
of Water Rights

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O P I N I O N

These several applications are for appropriations of water from Walker River and tributaries in Mono County, the first five being on behalf of Walker River Irrigation District to appropriate water for agricultural use by a district wholly within the State of Nevada. As will hereinafter be shown, the only significant protest against any of these applications

is that of C. E. Loose against Application No. 1389. This application filed August 8, 1919, proposes the appropriation of 63,000 acre feet from East Walker River to be collected between September 1st and July 20th in Bridgeport reservoir and to be used between March 1st and November 1st through a large number of existing ditches for the benefit of 160,000 acres, which is the irrigable portion of the district.

These several applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights. Being protested the applications by the District were set for hearing at 1:30 o'clock P.M. on Monday, June 22, 1925, in Room #707 Forum Building, Sacramento, California. Although unprotested Application No. 3923 by C. E. Loose came up for hearing at the same time for reasons which will hereinafter be shown. Of this hearing applicants and protestants were duly notified. Walker River Irrigation District was represented thereat and also C. E. Loose in his dual capacity as applicant and protestant. Other protestants were not represented.

Protests against the District's applications which were in force when the matter came up for hearing were by the Board of Supervisors of Mono County against applications 1097 and 1098 to appropriate from West Walker River and by C. E. Loose against each of the five applications and by C.M. Stewart and G. B. Day against Application No. 1389 only.

Application No. 3923 was filed March 26, 1924 by C. E. Loose and proposes the use for power generation of 250 second feet and 10,000 A.F. the diversion season being throughout the year and the power plant some six miles down stream from Bridgeport Reservoir which is specified as the storage reservoir. No protests were filed against the application No. 3923 up to the time of the hearing.

A letter from Bruce H. Chichester dated March 24th, 1919, was erroneously filed as a protest against Applications Nos. 1097 and 1098. It now appears that Mr. Chichester and his associates did not desire to object to the appropriation as contemplated.

The protest of the Board of Supervisors of Mono County is against the diversion from the County of water from West Walker River otherwise available for irrigation and needed for potential future development within the County. No appearance was made on behalf of these protestants at the hearing and no claim was made to any existing right to the use of water in question. As will hereinafter be shown the District is found to be a qualified applicant and the County cannot be heard to object to a prior applicant on the basis of interference with problematical future developments under a later priority.

C. M. Stewart and G. B. Day foresee that creation of Bridgeport reservoir may cause the entire valley to become a swamp thereby destroying an excellent stock range and also making imperative the removal of the County buildings in the Town of Bridgeport. Any such damage was problematical at the time the protest was filed but since filing thereof the reservoir has been built and operated and no complaints on this score have been registered. If such damage should ever result the District is a responsible entity and redress may be obtained through a court of competent jurisdiction. These protestants did not appear at the hearing.

The protests of C. E. Loose as filed August 10, 1921, August 18, 1923, and also on April 3, 1925, were against application No. 1389 only. On April 30, 1925, Loose filed a protest against changes then proposed by the District of points of diversion and places of use under their several applications. At the hearing the Loose protests were limited to apply to Application No. 1389 only. As basis of protest he submits the following:

(1) Application No. 1, by C. E. Loose was filed with the State Water Commission on Jan. 7, 1913, proposing to appropriate 230 second feet from East Walker River with about 7200 A.F. of storage in Bridgeport Reservoir for generation of power about six miles down stream. On June 27, 1913, subsequent to a hearing before the State Water Commission permit was issued on this application. From that date applicant Loose was before various federal bodies seeking easement over lands of the public domain until on December 28, 1922, the Federal Power Commission definitely denied the application for an easement on the grounds that there is "no public demand for additional electric power in the territory adjacent" and that the "construction and operation of such project would seriously interfere with the utilization of the waters of the East Walker River for irrigation upon the lands of the Walker River Irrigation District". In view of this order by the Federal Power Commission which makes it impossible for Loose to proceed with his project, the Division of Water Rights on March 15, 1923, to clear the situation, revoked the permit theretofore issued by the State Water Commission to Loose and cancelled same from its records. No appeal was taken from this decision by the Division of Water Rights and it is therefore manifest that the original Loose application to the State body cannot be further entertained as a basis of protest. Protestant's further objection that the land is now withdrawn from entry as a power site is negated by the above quoted pronouncements by the Federal Power Commission.

(2) Protestant claims ownership in fee of certain lands down stream from Bridgeport reservoir which maps filed by him with the Division of Water Rights show to be riparian to East Walker River. No claim is made nor does the Division of Water Rights know of any beneficial use of water from the source in question upon these lands and under section 11 of the Water Commission Act we are forced to the conclusion that such water is subject to

appropriation. We know of no action in condemnation against protestant nor lease by him which could be urged as a reason why the provisions of this section of the Water Commission Act should not apply. It appears clear that the only basis of protestant's right to appropriate water from the source is the inchoate right initiated by his application No. 3923 and therefore subject to the District's rights under their application No. 1389.

(3) Protestant's objection to changes in point of diversion and place of use can only be based on interference with his inchoate right under application No. 3923 which is prior in time to the petition filed for changes proposed by the District. It is not seen, however, wherein this protest, as such, raises any issue other than that raised by the protest against the application as originally advertized and that protestant cannot be injured by consummation of a change in the point of diversion to a point about one mile upstream. The point of diversion originally specified by the district is practically the same as specified by Loose and the petition is to change same to a point about a mile upstream. Since the District area is well down stream from protestant's proposed power house and the places of use as originally specified and subsequently changed are within the area it is equally manifest that protestant's rights under application No. 3923 cannot be affected by the proposed change in place of use.

(4) Throughout the controversy protestant continually offers his contention that an Irrigation District created under laws of the State of Nevada cannot function as such in the State of California either in appropriating water or exercising the right of eminent domain. This is purely a question of law whose settlement lies with a court of competent jurisdiction. No action at law has been taken by protestant in the present case although attorney's opinions from each party at interest uphold their respective con-

tentions. In the absence of a definite decision on this point the Division of Water Rights is guided by the opinion of its own attorney, who on Jan. 28, 1925, submitted his opinion that the District could exercise the right of eminent domain in California. We stand, therefore, without comment, on Sec. 15a of the Water Commission Act which states conditions under which appropriations of water in this state may be made for beneficial use in another state. These conditions appear to exist in the present case.

(5) Protestant alleges that records on file with the General Land Office disclose that there is an insufficient supply of water to irrigate the lands in the Walker River Irrigation District. The District has provided full information on this point covering a 19 year period which shows sufficient water available to make the project feasible and as hereinafter indicated their plan for utilization of stored water throughout the district area is reasonable and consistent with the yield as determined. A report by Nevada State Irrigation District Bond Commission, dated March 19, 1921, indicates the entire feasibility of the project.

The District has recently filed a tentative construction schedule covering total development which shows reservoirs now completed to a capacity of 92,000 Ac.Ft. which includes the total proposed storage capacity of 42,000 Ac.Ft. on the East Fork. Of the storage to be effected on the West Fork 110,000 Ac.Ft. capacity would be completed by June 1930, the final 100,000 being completed by the end of 1934. Adherence to this schedule will, in the opinion of the Division of Water Rights, result in a show of diligence commensurate with the scope and size of the project.

From the foregoing it will be clearly evident that the only significant protest is that of C. E. Loose, based on interference with protestant's power project and incident use of Bridgeport Reservoir. As heretofore stated the Loose project has been definitely rejected by the Federal Power Commission. Pursuant to this rejection by the Federal Power Commission the General Land Office dismissed Loose's protest to that office against their grant of right of way to the District on lands of the public domain whose use is entailed by the Bridgeport Reservoir project. The Land Office decision in due course was made the subject of ^{by Loose to the} appeal.

U. S. Secretary of the Interior, appellant alleging that the district is unable to secure rights to divert water in the State of California. The district having been found to be a qualified applicant and the Division of Water Rights now being in a position to approve the District's application, it is manifest that the appeal, as submitted, is without weight. It is further noted that any decision on appeal can affect only a small percentage of the reservoir area - about 300 acres, or slightly over 10% of the total reservoir area - and that of the balance all but 165 acres is now owned by the district. We are, therefore, forced to the conclusion that since the District, in effect, controls the reservoir that the decision on appeal cannot have any effect on the action of the Division of Water Rights on the Loose application.

As the situation now stands, therefore, the District already controls the major portion of the lands which are necessary for the reservoir proposed by Mr. Loose. The District also has the earlier priority by virtue of having filed first for these waters. It may be, however, that some plan may be worked out by which Mr. Loose could proceed with an altered project using the waters enroute from the storage reservoir of the District to the District lands. For this purpose it appears reasonable that action should be withheld for the time being on the Loose application until Mr. Loose has had an opportunity to modify his project if he so desires, and place an application in proper form with the Federal Power Commission for necessary easements upon the federal lands.

The five applications of Walker River Irrigation District are for a total of 298,000 acre feet per annum of which 235,000 acre feet would be stored on West Fork and 63,000 acre feet on East Fork. Of the total area of 160,000 acres to be irrigated within the district boundary approximately 75,000 acres are susceptible of irrigation from West Fork alone, approximately 37,000 acres from East Fork alone, and the remaining 48,000 acres may be irrigated from either

fork of Walker River. In view of the irregular seasonal and annual flow of the stream and the desirability of carry-over storage the amounts sought to be appropriated do not appear to be excessive.

We are however somewhat impressed with the excessive replenishment which is contemplated. With a storage capacity of only 42,000 acre feet in Bridgeport Reservoir applicant proposes the storage of 63,000 acre feet per annum under Application No. 1389. Our own studies of this matter would indicate that such an amount of replenishment could only be approached in a year of far more than normal run-off such as 1911 when perhaps as much as 35 per cent replenishment might have occurred. It would appear therefore that this application should be approved for only 57,000 instead of 63,000 acre feet per annum as it is the well established practice of the Division not to approve an application for an amount grossly in excess of the estimated capacity of the diversion works.

Under Application No. 1097 it is sought to appropriate 35,000 acre feet per annum by storage at Leavitt Meadows Reservoir which is to have a capacity of only 25,033 acre feet. There is of course only very meager data upon which to base an estimate of what replenishment may reasonably be expected in this case but such information as we have available indicates that 30 per cent or even as much as 37 per cent is possible in years of heavy precipitation and run-off. Accordingly it appears that we may accept the application as being for an amount not grossly in excess of the estimated capacity of the diversion works.

The applicant should however be required to keep and furnish to the Division an accurate record of gauge heights in the various reservoirs to the end that adequate data may be available upon which to base the amounts to be allowed if and when license may be issued.

ORDER


Applications Nos. 1097, 1098, 1389, 2221, 2615 and 3923 for permits to appropriate water having been filed with the Division of Water Rights, as above stated, protests having been filed against applications 1097, 1098, 1389, 2221 and 2615, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:-

IT IS HEREBY ORDERED that applications 1097, 1098, 2221 and 2615 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate and the further condition that the applicant shall keep and furnish to the Division of Water Rights upon demand an accurate record of gauge heights in the Leavitt Meadows, Pickle Meadow and Topaz Reservoirs.

IT IS FURTHER ORDERED that application No. 1389 be approved for an amount not to exceed 57,000 acre feet per annum and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and the further condition that the applicant shall keep and furnish to the Division of Water Rights upon demand an accurate record of gauge heights in the Bridgeport Reservoir.

IT IS FURTHER ORDERED that action on Application No. 3923 by C. E. Loose be withheld until further order is entered.

Dated at Sacramento, California, this 8th day of February 1926.


(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS