

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

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In the matter of Application 6769 of Jake Rechsteiner to Appropriate from Cedar Creek in Modoc County for Agricultural Purposes.

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DECISION A. 6769 D. 297

Decided *November 30, 1931*

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APPEARANCES AT HEARING HELD AT CEDARVILLE, MARCH 19, 1931

For Applicant

Jake Rechsteiner

In Propria Persona

For Protestants

M. W. Rinehart)
H. E. Rinehart)
J. L. Toney)
W. E. Hill)
Harry L. Hill)
H. O. Hughes)
Thos. B. Sizer)
Grace L. Beebe)
L. L. Hays)
Norton and Marsh)

Oscar Gibbons

EXAMINER: Gordon Zander, Hydraulic Engineer, Division of Water Resources,
Department of Public Works, State of California

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O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Application 6769 was filed August 19, 1930, by Jake Rechsteiner. It proposes an appropriation of 1.10 cubic feet per second from Cedar Creek in Modoc County, during the period from February 15th to May 15th of each year. The proposed use of the water is for the irrigation of 65 acres, the water to be diverted at a

PHYSIOGRAPHY AND HYDROGRAPHY

Cedar Creek has its source on the east slope of the Warner Range of mountains and its channel has a general easterly course to Middle Alkali Lake to which it is tributary.

The elevation at the head of the Cedar Creek watershed is about 7,000 feet and the land served with irrigation water therefrom on the floor of Surprise Valley has an average elevation of about 4600 feet. The watershed covers an area of about 9.6 square miles. The east slope of the Warner Range of mountains is quite precipitous with an average grade of about 1000 feet per mile.

The records of stream flow of Cedar Creek that have been collected by the Division from 1926 to 1929, inclusive, and in 1931, indicate that the total run-off is largely confined to the four month period from March to June. As is characteristic of the streams rising on the eastern slope of the Warner Range, the flow during the spring is flashy due to alternate freezes and thaws.

At no time during the period of records in 1926, 1928, 1929 and 1931, was the net flow of Cedar Creek available for diversion in excess of 23.9 cubic feet per second. In 1927, the net flow available for diversion varied from about 25 to 35 cubic feet per second from April 24th to April 30th. The run-off in 1927 was considered to be nearly normal and that during the other four years was subnormal.

USE OF WATER BY PROTESTANTS

The decree of Hill vs. Acty specifically adjudicates 23.9 cubic feet per second to the parties in that action for the irrigation of 1195 acres of land. The water master reports on Cedar Creek on file with the Division show that the entire run-off of Cedar Creek during the irrigation seasons of 1926 to 1929, inclusive, and of 1931 was diverted and utilized by the parties under the decree. Although there was water in Cedar Creek in excess of 23.9 cubic feet per second from April 24th to 30th in 1927, the protestants diverted the surplus under the provision of the decree

point within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 43 North, Range 16 East, M.D.B. and M.

H. E. Rinehart

The application was protested prior to the hearing by M. W. Rinehart, J. L. Toney, W. E. Hill, Harry L. Hill, H. O. Hughes, Thos. B. Sizer, Grace L. Beebe, L. L. Hays, and Norton and Marsh.

PROTESTS

The protestants all joined in protesting the application. They own land both above and below the applicant and allege that all of the waters of Cedar Creek have been appropriated by them as is evidenced by decree of the Superior Court of California, in and for the County of Modoc, dated February 15, 1923, in the case of Hill vs. Acty, under which their rights in and to the use of the waters of said creek have been adjudicated. In addition to the specific rights adjudged and decreed to protestants under said decree, they rely upon the further provision in the decree as follows:

"It is further ordered, adjudged, and decreed, that whenever there is flowing in said stream any water in excess of the aggregate amounts hereinbefore decreed to said plaintiffs and said defendants, that such excess water over and above the necessary amount to supply all of said plaintiffs and defendants the rights hereinbefore decreed to be owned by them, shall be owned diverted and used, by the said plaintiffs and defendants jointly, pro rata according to their several rights hereinbefore set forth."

Protestants allege that they are dependent upon surplus waters during short periods of excess, if any, to compensate for the usual occurrence of shortage of water during the irrigation season.

HEARING HELD IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 6769 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with the provisions of Section 1a of said Act on March 19, 1931, at 9:00 o'clock A.M. in the Community Hall at Cedarville, California. Of this hearing applicant and protestants of record were duly notified.

hereinbefore mentioned. The testimony at the hearing showed that some of such surplus could be beneficially used by protestants due to the flashy character of the stream flow. Utilization of the surplus tended to compensate for the use during periods of smaller flows.

The gross use of water from Cedar Creek during the two months of maximum run-off, April and May, of the four seasons 1926 to 1929, inclusive, follows:

	<u>Total Acre Feet</u>	<u>Acres per Cu. Ft. per Sec.</u>
1926	896	161
1927	2199	68
1928	1889	77
1929	1351	107

The decree of Hill vs. Acty is based upon average water requirements of one cubic foot per second to 50 acres of irrigated land. The above tabulation shows that utilization of the entire flow of Cedar Creek during the two months of heaviest run-off, April and May, resulted in a higher average duty than that provided in the decree. The hydrographic data for the 1931 season have not yet been prepared in detail, but it can be stated that the run-off of Cedar Creek was more deficient in 1931, than during the above mentioned four years.

Applicant has set up a claim for domestic and stock water as a riparian owner on Cedar Creek. This contention is not relevant to the allegation of existence of unappropriated water. The applicant admitted at the hearing that since 1919, unappropriated water occurred in Cedar Creek at infrequent periods of short duration. Under these conditions the applicant would be inviting litigation if an attempt were made to skim off the surplus at the peak of occasional large freshets on account of the difficulties that would be encountered in observing the vested rights. These difficulties could be largely obviated under water master service, but it is impractical to commence water master service on Cedar Creek until the latter part of March, whereas applicant seeks to appropriate from February 15th to May 15th of each year.

SUMMARY

The records of the Division collected under water meter service, as summarized hereinabove, show an inadequate water supply available to justify the issuance of permit to the applicant; and it is concluded that it would be unreasonable and unwarranted to issue applicant a permit upon the ground that there might be some water available during infrequent periods of short duration.

ORDER

Application 6769 for permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and said Division now being fully informed in the premises:

IT IS HEREBY ORDERED that said application be rejected and cancelled 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 30 day of Nov 1931.

EDWARD H. HATT, State Engineer

BY Harold Corbly
Deputy.

