

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

oOo

In the matter of Application 7114 of Richvale Irrigation District
to appropriate from Dry Creek tributary to Butte Creek
in Butte County for Irrigation Purposes.

oOo

DECISION A 7114 D-341

Decided *April 11, 1933*

oOo

APPEARANCES AT HEARING HELD AT SACRAMENTO, CALIFORNIA, FEBRUARY 21, 1933.

For Applicant

Richvale Irrigation District

George F. Jones

For Protestant

Drainage District No. 2 of Butte County
and land owners within the District

Jerome D. Peters

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer for
Harold Conkling, Deputy in Charge of Water Rights, Division of
Water Resources, Department of Public Works, State of California.

oOo

O P I N I O N

GENERAL FEATURES OF APPLICATION 7114

Application 7114 of Richvale Irrigation District was filed on
November 3, 1931. It proposes an appropriation of 15 cubic feet per second
from Dry Creek, tributary to Butte Creek in Butte County for irrigation pur-
poses to be diverted from about April 1st to about September 15th of each
season and used for the irrigation of 600 acres of rice within the boundary
of Richvale Irrigation District as shown on map filed with the Division of
Water Resources. There are approximately 4200 acres of land within the
District boundaries which are susceptible of irrigation under Application

7114. The 600 acres referred to will be "floated" around this irrigable area from year to year as the District may elect.

The applicant proposes to construct a collapsible dam at the proposed point of diversion within Lot 4 of Section 6, T 19 N, R 2 E, W.D.B.&M. and divert the water through a ditch approximately three-quarters of a mile in length, southerly to the drainage ditch of Drainage District No. 100 of Butte County. From this drainage ditch the water will be discharged into the canals of the Irrigation District.

Application 7114 was protested by Drainage District No. 2 of Butte County.

PROTEST

Protestant Drainage District No. 2 of Butte County, alleges as follows:

1. That it has acquired the flowage rights for its drainage waters in the natural stream channel known as Dry Creek which has been enlarged for this purpose.
2. That during the period the applicant intends to divert water, the only water available is the drainage waters of the District which is privately owned and controlled and not subject to appropriation by the applicant.
3. That land owners within the District in the past when short of water or when convenient, have diverted water from Dry Creek to augment their regular water supply.
4. That consent of protestant has not been obtained to use the channel of Dry Creek at the proposed point of diversion, nor to use any of the water flowing therein.

At the time of hearing Mr. Peters, attorney for the District, indicated that he represented not only the District as such, but the land owners thereof.

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

Application 7114 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing in accordance with Section 1a of the Water Commission Act on February 21, 1933, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

Dry Creek the source of the proposed appropriation is designated as Ash Creek on the Clear Creek, Dry Creek and Nelson Quadrangle sheets of the United States Geological Survey. While the stream is thus designated this office has been informed that it is not so known locally; that thirty years or so ago it was known as "Little Dry Creek" in distinction to "Dry Creek" which is now known as the "Cherokee Canal" and that in the last ten years the two streams have been referred to as "Cherokee" and "Dry Creeks".

Dry Creek or Ash Creek rises in the foothills of the Sierra Nevada Mountains about nine or ten miles southeasterly of Chico and northeasterly of Drainage District No. 2 of Butte County and flows in a general southwesterly direction to its junction with Butte Creek about six miles northerly from the junction of Butte Creek and the Sacramento River. At a point about nine miles below its source it enters the boundaries of Drainage District No. 2 of Butte County and continues through said District a distance of about two miles to the north line of Section 6, T 19 N, R 2 E, M.D.B.&M. where it leaves the District boundary and passes through the northwest quarter of Section 6. It again enters the District boundary at a point on the westerly line of Section 6, T 19 N, R 2 E, M.D.B.&M. and continues through the Drainage District for

a distance of about six miles to its southerly boundary. At this point an artificial drain has been constructed from Dry Creek westerly to Butte Creek through which and by the means of a dam in Dry Creek the drainage from irrigation above is conveyed to Butte Creek.

The testimony presented at the hearing indicated that the natural flow in Dry Creek ceases during the early part of the season and the flow therein during the period from April 1st to September 15th, the season of diversion named in Application 7114, is composed largely of drainage water from the adjacent irrigated lands, the amount of water varying from about 2 cubic feet per second at the beginning of the irrigation season to about 15 or 20 cubic feet per second during the middle of the summer.

HISTORY

Prior to the year 1920 the land owners who now form Drainage District No. 2 allowed their drainage or return water to pass down Butte Creek through Drainage District No. 100. About the year 1920 an injunction suit was brought against these land owners to prevent further drainage through the lands of the property owners within Drainage District No. 100. In order to avoid the effect of the injunction Drainage District No. 2 was organized under the provisions of "An Act to Promote Drainage", Statutes of 1885, page 204 and easements and flowage rights were acquired along Dry Creek from the northerly to the southerly boundary of the District for the purpose of maintaining a ditch to be constructed within the channel of Dry Creek. The natural channel of Dry Creek which was narrow and clogged with tules was widened and deepened and at the lower end of the District an artificial channel was cut from Dry Creek through which the waste waters were conducted to Butte Slough. In the year 1926 and again in 1929 the channel of Dry Creek became clogged with willows

and tules and it became necessary to widen and deepen the natural water course.

WATER SUPPLY

The waters which the applicant seeks to divert under Application 7114 are largely return waters from irrigation above, the original sources of the return waters being Butte Creek, Feather River and wells.

As stated above, the amount of water which may be available varies from about two second feet at the beginning of the irrigation season to about fifteen to twenty second feet at the height of the season. As the point of diversion proposed by the applicant is within Section 6, T 19 N, R 2 E, about two miles below the northerly boundary line of Drainage District No. 2, a relatively small amount of the total flow at this point is drainage from property within the District more than fifty percent of all available water at the proposed point of diversion being drainage from lands above the district boundaries.

Drainage District No. 2, following the example of Drainage District No. 100 has obtained a permanent injunction against the owners of lands above the District which if invoked would appreciably decrease the amount of water available for appropriation under Application 7114.

USE OF WATER FROM DRY CREEK

It appears from testimony presented at the hearing that when Drainage District No. 2 was organized there was an understanding or mutual agreement that land owners within the Drainage District would be permitted to take water from the enlarged channel of Dry Creek whenever they saw fit or found it necessary to augment their water supply and that prior to the last few years a number of such diversions were made. (Transcript, page 49.)

Frank S. Robinson, engineer for Drainage District No. 100 and for Richvale Irrigation District and a witness for the applicant testified that during the last four years he had never seen any water diverted from Dry Creek during the period from April 1st to September 15th. (Transcript page 8.)

Glen R. Harris, a rice grower and one of the directors of Richvale Irrigation District, testified that to his knowledge no diversions had been made from Dry Creek within the past five years. (Transcript, page 32.)

John Craig, a mining engineer and property owner within Drainage District No. 2 and a witness for the protestants testified that the only use of the waters of Dry Creek by anyone for the irrigation of rice during the past five years so far as he knew, was made by a Mr. Adams in 1931 when about 70 acres were irrigated (Transcript, page 43) and no testimony was presented to indicate that any other crop had been irrigated during this period.

Reference was made at the hearing to a permit issued by this office to Mrs. A. A. Bradford, a property owner near the south line of Drainage District No. 2. On May 17, 1923, Mrs. Bradford filed Application 3422 with this office to appropriate from Dry Creek. There being no protest against the approval of the application, it was approved on November 29, 1924, by the issuance of Permit 1895, allowing an appropriation of 47.65 cubic feet per second from about March 1st to about October 31st of each season for agricultural purposes. According to progress reports submitted about 300 acres of rice were irrigated in 1924 and 90 acres of rice were irrigated in 1926. No further use of water was made under Application 3422, Permit 1895, however, and on October 25, 1930, the permit was revoked at permittee's request.

Reference was also made to the use of water by Harvey C. Adams who filed Applications 6699 and 6700 with this office to appropriate water from

the artificial cut or drain leading from Dry Creek to Butte Slough at the southerly end of Drainage District No. 2.

Under Application 6699 Mr. Adams proposed to divert 17.5 cubic feet per second from about March 15th to about October 1st of each season for the irrigation of 700 acres of land within Sections 27 and 28, T 19 N, R 1 E, which lie to the south of Drainage District No. 2. Objection to the approval of Application 6699 was made by Drainage District No. 2 upon the grounds that the ditch was privately owned and right of access would not be granted. The District finally granted Mr. Adams the right to pump from the ditch upon condition that Application 6699 be withdrawn, such permission to pump to be revocable at the pleasure of the District. As it appeared that right of access could only be obtained under those conditions the demand of the District was complied with and Application 6699 was cancelled at the request of Mr. Adams on August 12, 1931.

Under Application 6700 Mr. Adams proposed to appropriate three cubic feet per second from the same ditch at a point within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28, T 19 N, R 1 E, M.D.B.&M. for the irrigation of 120 acres within Section 28, T 19 N, R 1 E, M.D.B.&M. The season of diversion was from about March 15th to about October 1st of each season. The application was not protested and was approved by the issuance of Permit 3663 on March 9, 1931. It appears from the progress reports submitted by Mr. Adams that although water was pumped for the irrigation of rice in 1930, no use has been made subsequent to issuance of permit.

GENERAL DISCUSSION

That there is unappropriated water in Dry Creek which may be diverted and applied to beneficial use by the applicant is clearly indicated by testimony presented at the hearing.

Drainage District No. 2 of Butte County was organized for the express purpose of ridding itself of return waters which collected upon the property of land owners within the District and we find nothing in the Act under which the District is created and organized which can be construed to authorize an appropriation by the District of these drainage waters or any other water. So far as we can see, the District could occupy no other position as a protestant than that of agent for the land owners as individuals and there is neither any evidence of its authority to so act nor of the nature of any valid and existing rights of such land owners which might be infringed by the proposed appropriation.

Whether or not the District has an exclusive easement in the natural waterway of Dry Creek, thereby being in a position to prevent others from appropriating therefrom is a matter which this office has not the jurisdiction to determine. An opportunity has been afforded contestants to seek a determination of this issue before a competent tribunal if they so desire but apparently no move has been made toward that end.

It has been shown that the diversions which have been made along the banks of Dry Creek within the boundaries of Drainage District No. 2 have been relatively small as compared with the total flow in recent years and that for the last few years no diversions have been made from this source.

The water which applicant proposes to appropriate is to be used to augment its regular supply from the Feather River and for the irrigation of lands at the extreme end of its irrigation system which may be more quickly and more economically served under Application 7114 than from the waters of the Feather River. The use proposed is beneficial and the applicant has secured options and rights of way from property owners necessary to divert the water and conduct the same to its own ditches.

While the amount of water now available at applicant's proposed point of diversion may be materially decreased in the future should protestant enforce its injunction against the land owners above Drainage District No. 2, it is the opinion of this office that at the present time there is sufficient unappropriated water in Dry Creek to warrant the approval of Application 7114.

O R D E R

Application 7114 for a 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 the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 7114 be approved and that a permit be issued to the applicant 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 *11th* day of *April*, 1933.

EDWARD HYATT, State Engineer

BY *Harold Corbly*
Deputy

WES:MP

