

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 13952 by James E. Jordan to Appropriate
Water from Poso Creek in Kern County for Irrigation Purposes.

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Decision A. 13952 D. 751

Decided July 31, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources
at the Site of the Proposed Appropriation on August 28, 1951:

James E. Jordan	Applicant
Wilbur Rickett	Applicant's Engineer
Glenn Stockbridge) J. A. Watts)	(Representing Kern County Land Company (and Central Canal Company, Protestants
Harry P. Bowen	Protestant
H. J. Lefler	Representing Protestant C. J. Vignolo
Harry D. West	Protestant
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

Also present: Walter Filmore, Charles West and a Mr. Dewey.

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OPINION

General Description of the Project

The applicant proposes to construct a concrete diversion dam 5 feet high by 40 feet long on Poso Creek at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34,

T25S R30E, MDB&M, to conduct water therefrom through 3500 lineal feet of earth ditch, 3 cubic feet per second in capacity, to "Bear Hollow Reservoir", located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of the same section, and to utilize the water so collected to irrigate 40 acres of pasture lying partly within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and partly within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of the same Section 34. The impounding dam is to be an earth structure 24 feet high by 200 feet long. The amount applied for is 50 acre-feet per annum and collection is proposed from January 1 to May 31 of each year. The reservoir is to have a surface area of 8 acres and a capacity of 50 acre-feet. In addition to the right sought under the application the applicant asserts a riparian right.

Protests

The Kern County Land Company states in its protest:

"We own all the land (except for one quarter section) on both sides of Poso Creek from the point where the stream enters Section 8, T27S R26E, MDB&M, down to the point where it enters the W $\frac{1}{2}$ of Section 18, T26S R25E, a distance of approximately 10 miles. We also own three and one half sections of land traversed by Poso Creek in T26S R24E, MDB&M. By means of wells on these lands, we have been pumping from the underground flow of Poso Creek continuously for over 50 years for stock water and continuously for over 8 years for irrigation. We now have 20 stock watering wells and 55 irrigating wells on these lands drawing approximately 40000 acre feet of water per year from this underground supply, on the average. We use all such water for irrigation and stock watering purposes. This supply depends in part directly upon the flow of Poso Creek, and the proposed diversion, if permitted, would intercept the water and make it unavailable to us."

The protestant bases its claim of a water right upon riparian and overlying ownerships. It states further in its protest:

"We believe the proposed diversion is fundamentally and completely inconsistent with our prior rights and we are unable to state any conditions under which we could consent to the diversion and dismiss our protest."

The Central Canal Company protests that the proposed diversion will intercept water to which it is entitled, from the natural flow of Poso Creek. It claims an appropriative right based on use begun prior to December 19, 1914. In this connection it states:

"The channel of Poso Creek intercepts and crosses the channel of our Calloway Canal in Section 26, T26S R25E, MDB&M. Since long before December 19, 1914, we have been diverting substantial quantities of water from the channel of Poso Creek, when available, into the Calloway Canal for irrigation use. All such water has been used for irrigation purposes."

It states that its diversion heads within Section 26, T26S R25E, MDB&M. It states finally that it believes the proposed diversion is inconsistent with its prior rights and that it therefore cannot state any conditions under which its protest would be withdrawn.

Henry P. Bowen, Helen C. Bowen and Carver Bowen jointly protest the application. They claim ownership of a cattle ranch which includes a part of Section 2 and all of Sections 9, 10, 11, 14, 15, 16 and 17, T26S R30E, MDB&M, and that continuously since about 1870 they and their predecessors have grazed from 200 to 500 head of cattle thereon. They state that Poso Creek flows through the Sections 10 and 15 above mentioned, that their cattle drink directly from Poso Creek in those sections, and that recently works have been built, consisting of "diggings and structures and pipes and troughs", to facilitate stockwatering. They contend that the diversion that the applicant proposes

will injure them irreparably in that it will directly interfere with the exercise of their right to water cattle. They state that when water flows in Poso Creek their point of diversion is the entire course of that stream in said Sections 10 and 15 and that at other times they divert at points near the center of each of those sections, where surface flow and/or ground water supplied by Poso Creek is available. They state that there are no conditions under which their protest will be withdrawn.

C. J. Vignolo protests that the flow of Poso Creek during the period when he uses water is seldom enough to satisfy his right, and that additional upstream diversions would reduce that flow still further. He claims rights based upon use begun prior to December 19, 1914, upon riparian ownership and upon prescription. He states that first use of water on his property was made in about 1900, and that he currently uses about 1500 acre-feet annually and that use extends through the entire period of stream flow. His point of diversion, he states, is located within Section 22, T27S R26E, MDB&M.

Harry D. West states that he owns a cattle ranch which comprises all of Sections 2 and 22, T26S R30E, MDB&M, that since about 1870 he and his predecessors have used water continuously for stockwatering, that the number of cattle watered has varied between 200 and 300, that Poso Creek flows through said Sections 2 and 22, and constitutes a necessary and substantial source of water supply, that cattle have unrestricted access to Poso Creek, that diversionary works have been provided to supply water for cattle at times when water does not flow freely in the creek, said works including points of diversion near the center of each of the said sections, the water so diverted being

supplied by the surface flow or underflow of Poso Creek. He protests that the diversion proposed by the applicant will interfere directly with and tend to prevent use of water on his (West's) property and will thereby cause irreparable damage and injury.

No answer to any of the protests against Application 13952 is of record.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on August 28, 1951 by an engineer of the Division. The applicant was present and the protestants were all present or represented during the investigation.

Records Relied Upon

Application 13952 and all data and information on file therewith; also U.S. Bureau of Reclamation records of discharge of Poso Creek near Famoso and Poso Creek one mile upstream from Mon's Station.

Discussion

The flow of Poso Creek has been gaged and recorded at various locations and at various times by the United States Bureau of Reclamation. Data supplied by that agency indicate that monthly mean flows in cubic feet per second at two key locations for the years for which figures are available have been as follows:

Table I

Poso Creek, One Mile Upstream from Mon's Station

<u>Year</u>	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>
1940	70.9	148.4	140.3	127.1	30.8
1941	59.8	223.0	222.0	197.3	128.6
1942	45.6	38.1	60.8	62.3	31.7
1943	109	80	1207	543	185
1944	33.52	67.41	114.02	65.45	65.43
1945	30.77	132.08	183.05	163.64	74.40
1946	54.5	42.3	64.8	59.9	25.7
1947	35.1	20.7	27.0	22.4	6.2
1948	6.7	7.7	24.7	55.2	21.8

Table II

Poso Creek near Famoso

<u>Year</u>	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>
1944	7.2	24.8	56.2	15.6	14.2
1945	0.0	78.0	143.4	128.6	18.5
1946	12.5	8.6	7.3	9.0	0.0
1947	0.6	1.6	0.3	0.2	0.0

It is apparent that flows during the months for which data are of record for both stations (Mon's and Famoso) are consistently larger at the former station than at the latter. For example in January 1944 the flows above Mon's and near Famoso were 33.5 and 7.2 cubic feet per second respectively, indicating a loss of 26.3 cubic feet per second or 78.5% of the flow entering the reach between the two stations. Losses (expressed as percentages) during each of the months (during which the applicant seeks to divert) for which data are available are as follows:

Table III

Percentage of Loss between Gaging Stations

<u>Year</u>	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>May</u>
1944	78.5	63.1	50.7	71.3	78.2
1945	100.0	40.9	21.7	21.4	75.2
1946	77.1	79.6	88.8	85.1	100
1947	98.3	92.3	98.8	99.2	100

From "Poso Creek above Mons" to "Poso Creek near Famoso" the scaled distance is about 17.5 miles and from "Poso Creek above Mons" to the lower limit of the holdings of the lowermost protestant (Kern County Land Company) the scaled distance is about 25.7 miles. The former of those two partly coincident reaches therefore is $17.5/25.7$ or 68% of the latter.

In the absence of more detailed information it must be assumed that channel losses vary, roughly, with length of reach. That assumption points to the probability that when 68% of the flow at "Poso Creek above Mons" disappears in the 17.5 miles between that station and "Poso Creek near Famoso", little if any of the same flow may be expected to carry through to the lower limit of the lowermost protestant's lands. It is to be noted that losses between the two gaging stations exceeded 68% in January, April and May of 1944, in January and May of 1945 and in January, February, March, April and May of both 1946 and 1947. It follows therefore that unappropriated water was probably non-existent in those particular months.

A comparison of the figures of Table I with corresponding figures of Table III indicates that a loss of 68% of the flow entering the 25.7 mile reach corresponds on average with a flow of about 65 cubic feet per second at "Poso Creek above Monk". Monthly mean flows substantially in excess of 65 cubic feet per second occurred in one or more months in 1940, 1941, 1943, 1944 and 1945. It is not apparent that diversion as proposed by the applicant made during those months of relatively abundant supply would have injured the 3 lowest protestants (Vignolo, Kern County Land Company and Central Canal Company).

With reference to the objections of the upper protestants (Bowen et al. and West) the existing stream flow records are of little significance because of the possibility that some of the flow reaching the gaging stations is supplied by tributaries entering Poso Creek below those protestants. In connection with water supply in the reach of Poso Creek on which the applicant and the upper protestants are located the report of the field investigation of August 28, 1951, contains entries as follows:

"The watershed above the valley floor has an area of around 350 square miles with about 25 square miles, 7%, of it being above applicant's proposed diversion point, ranges from barren hills in the lower portion to moderately wooded in the upper portion and has an average annual rainfall of about 10 inches ranging from about 8 inches in the valley to about 12 inches in the upper reaches."

* * * *

"At the time of this investigation there was no surface flow - - - and the upper users present stated that such flow ceased for 1951 during June. They also stated that in most years the flow ceased by April 1. It also appeared from statements by the upper users that during a considerable portion of the winter months there was so called "mountain water" present in the Glennville-Woody area with no surface flow from the area to the valley."

Since the upper protestants use water for stockwatering only, a use which requires relatively small quantities, and since floods may be presumed to occur repeatedly, on Poso Creek, as they do on other similarly situated streams, it is not apparent that the upstream protestants (Bowen et al. and West) will be injured by diversions to storage at times of plentiful supply.

One more aspect of the situation on Poso Creek remains to be considered, viz. pending Applications 9355 and 11659 by Southern San Joaquin Municipal Utility District. Those applications initiate appropriations of 100 cubic feet per second, year-round, and 20,000 acre-feet per annum, respectively, for irrigation purposes, which amounts, together, exceed the usual flow of Poso Creek. Applications 9355 and 11659 are senior to Application 13952. If they are maintained and come into operation any diversions that may have begun under Application 13952 may be obliged to cease. However, Applications 9355 and 11659 are incomplete, have been pending for several years and may not come into operation for a considerable time if at all. They do not constitute a bar to the approval of Application 13952 for such use as may be made thereunder until such time as the Southern San Joaquin Municipal Utility project becomes operational.

Summary and Conclusion

Unappropriated water exists at times in Poso Creek. The diversion of such water in the manner and in the amount proposed under Application 13952 will not injure the protestants or other downstream users unless at some time in future the projects under Applications 9355 and 11659

come into operation. The bases of the protestants' objections are deemed insufficient. The possibility of interference with Applications 9355 and 11659 is deemed too remote to warrant disapproval of Application 13952.

For the reasons above summarized it is the opinion of this office that Application 13952 should be approved and permit issued, subject to the usual terms and conditions.

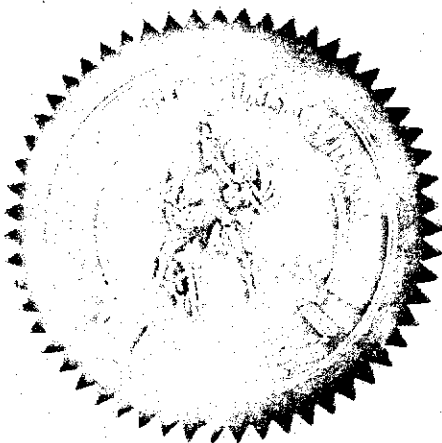
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ORDER

Application 13952 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13952 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 31st day of July 1952.



A. D. Edmouston

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State Engineer