

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 14582 by H. B. Wolfson and L. C. Wolfson
to Appropriate Water from Salt Slough, Tributary to San Joaquin
River, in Merced County, for Irrigation and Stockwatering Purposes.

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Decision A. 14582 D. 786

Decided February 15, 1954

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Appearances at Hearing Held at Merced on April 21, 1953:

For the Applicants

H. B. Wolfson
L. C. Wolfson

W. E. Craven,
Attorney at Law

For the Protestants

Westover Company

Butler Noble

H. Moffat Company

L. B. Raab and George Raab,
Civil Engineers

San Luis Canal Company

J. E. Wooley, Attorney at Law

State of California
Department of Fish and Game

(Roy Wattenbarger
(Robert Paul

EXAMINER - L. C. JOPSON, Supervising Hydraulic Engineer, Division of
Water Resources, Department of Public Works, for A. D. Edmonston,
State Engineer.

Also present - Mark Nosler, Senior Attorney, Division of Water
Resources, Department of Public Works.

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OPINION

General Description of the Proposed Development

The applicants seek to appropriate a total of 50 cubic feet per second from Salt Slough, tributary to San Joaquin River, year-round. The water is to be diverted by pumping at 3 points as follows: 25 cubic feet per second at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, 15 cubic feet per second at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17 and 10 cubic feet per second at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T9S R11E, MDB&M. The uses proposed are irrigation and stockwatering. The place of use is described as comprising all or parts of Sections 25, 26, 35 and 36 of T8S R10E, Sections 1, 2, 12, 13 and 24 of T9S R10E, and Sections 6, 7, 8, 15, 16, 17, 18, 19, 21 and 22 of T9S R11E, MDB&M, and totaling 4380 acres. Of this total 600 acres are to be in rice, 500 in alfalfa, 800 in general crops and 2480 in pasture. Besides year-round irrigation, 2400 head of cattle are to be watered. The applicants claim in addition to the appropriative right sought in the application a prescriptive right in the amount of 30 cubic feet per second. They also claim riparian rights. In connection with these claimed rights, the applicants state:

"In filing this application, Applicants do not waive or relinquish any right or rights whatsoever that they may now have in or to any water heretofore used or now being used or to which they may have the right to use upon the said lands herein referred to."

Protests

The Westover Company, successor to Pacific Rolling Mill Company, protests, alleging:

"We believe that at low water period there will not be sufficient water to take care of our Permit No. 7262, for 71.7 cubic second feet and Application of H. Moffat Company No. 11688."

It states that its diversion heads within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T9S R11E, MDB&M.

The H. Moffat Company protests, stating:

"The Protestant will be deprived of water from Salt Slough as the applicants' three points of diversion are upstream from the protestant's points of diversion. There is not sufficient water in Salt Slough during normal years and always during the summer months to take care of lawful diverters or vested rights.

"The protestant has a right to 20.2 cubic feet per second under Application 11688, Permit 7263, and has in addition riparian rights and prescriptive rights. The protestant is in the process of completing use under Application 11688 and in the past has used water in the flooding of pasture lands.

"Attention is called to the protestant's application and supporting maps on file in your office in Sacramento for details"

The San Luis Canal Company protests, alleging:

"The San Luis Canal Company is the owner of the right to divert a maximum of 500 C.F.S. of water from the San Joaquin River and is the owner of the right to receive a like quantity of water from the Delta-Mendota Canal under certain conditions. A portion of this water may from time to time be in Salt Slough for the use of its consumers."

As to the extent of its use of water the protestant states:

"Notice of appropriation filed in 1913 for 1100 C.F.S. of water for use on both crop and pasture lands. Water has been continuously diverted since that time. The company is the owner of the right to divert 500 C.F.S. of water. Water is used throughout the year. The right under the Delta-Mendota Canal is based on an agreement with the United States entered into in 1939."

This protestant states that its diversions head within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 12, T11S R15E, and within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T13S R15E, MDB&M. It states further:

"This protest may be disregarded and dismissed if applicant stipulates that any permit or license issued hereunder shall be made subject to the superior right of the San Luis Canal Company to take, divert, and use any waters flowing in Salt Slough whether above or below applicant's proposed diversion points, and whether such waters originate in the San Joaquin River, Kings River (Fresno Slough), Sacramento River, Sacramento-San Joaquin Delta, or any other source from which waters are transported through the Delta-Mendota Canal or any other canal hereafter constructed as part of the Central Valley Project, including waste, seepage and return flows from irrigation on lands of higher elevation."

State of California, Department of Fish and Game protests

the application, alleging:

"Lands of the Pacific Roller Mills Company (E. B. Noble) covered by ... Permit 7262 are now being acquired for public purposes by the State of California as a water-fowl feeding and management area under condemnation proceedings pending in the Superior Court The rights of Permit 7262 will run with this land and the water will be used by the State according to the terms of said permit. At times there is insufficient water for the permittee under Permit 7262 and the applicant under Application 14582. Unless this water is available for use, the State cannot irrigate and raise crops."

As to the extent of present and past use of water this protestant states:

"E. B. Noble, operating the lands covered by Permit 7262 has pumped water to irrigate crops during the seasons 1950-1951, and all of the water pumped by said Noble has been and is needed for the purposes specified in said Permit No. 7262 and will be needed by the State of California for similar purposes when it acquires title to said lands."

It states further that the protest may be disregarded and dismissed "if there is definite assurance that all water granted by Permit 7262 is supplied at all times and that Wolfesen cannot divert water until after such waters are supplied"

Answers

No answers to protests against Application 14582 are of record.

Hearing Held in Accordance with the Water Code

Application 14582 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, on Tuesday, April 21, 1953, at 10:00 o'clock a.m., in the Conference Room, New Courts Building, Merced, California. Of the hearing the applicants and the protestants were duly notified.

Gist of Hearing Testimony

Witnesses at the hearing testified in substance as follows:

H. B. Wolfesen, applicant, testified (pages 6 to 16 of transcript) that he and his brother own in excess of 5000 acres on both

sides of Salt Slough, of which land from 2500 to 3000 acres have been irrigated from Salt Slough each year since 1940, that diversion has been made at a point approximately one-half mile below diversion point No. 1, that he has maintained approximately 2500 head of cattle on the property, that the property was bought from one Cyrus Sheppard in 1940, that the appropriation sought under the application is for water in addition to that which he has pumped and to which he claims a right, that his claimed right amounts to about 6 second feet.

Thomas C. Mott testified (pages 17 to 30 of transcript) that he is Chief Engineer, San Joaquin Canal Company, that measurements of the flow of Salt Creek are kept by the United States Geological Survey, that such measurements are set forth in Applicants' Exhibit No. 1, that it is difficult to predict whether or not the flow of Salt Creek will increase in future years because of the many factors that enter into that matter, that there will be pumping into the creek for drainage as well as pumping out of the creek for irrigation, that "last year" was a "big water-year," flow in Salt Slough at San Luis Ranch bridge ranging from 30 or 40 up to 2000 or 3000 "feet", that the San Luis Canal Company claims the right to control all of the water that it sends down Salt Slough.

Howard Stoddard testified (pages 31 to 40 of transcript) to the effect that he is a civil engineer, that in his opinion there is unappropriated water in Salt Slough.

Cyrus J. Sheppard testified (pages 42 to 46 of transcript) to the effect that he was the previous owner of the property now

owned by the Wolfesen brothers, that he owned that property from November 1, 1933 to November 1, 1940, that during the period of his ownership he used water from Salt Slough for irrigation or other purposes, that he irrigated up to about 2500 acres, that he did not farm the land himself, that he had tenants on a cash rental basis, that in most years there was ample water for everyone to use.

L. B. Raab testified (pages 47 to 48 of transcript) to the effect that he does not know how much water the H. Moffat Company has diverted from Salt Slough, that he believes the Westover Company has diverted some water and that pumps installed by Mr. Noble were to be used to irrigate both the Moffat Company and the Westover Company properties.

Butler Noble testified (pages 49 to 58 of transcript) to the effect that some water has been diverted from Salt Slough for use on the H. Moffat Company property in 1950, 1951 and 1952, that he doesn't know how much, that the pumping plant on the Westover Company property will pump 35 second-feet, that pumping starts in April and continues until late October or into November, that it is attempted to run the plant continuously, that in 1950 it was necessary to cut one pump off because of insufficiency of water, that 1952 was so wet a year that pumping was unnecessary, sufficient water being supplied by San Luis Canal, that Westover Company irrigates between 2000 and 2500 acres, that that land is natural pasture, that in 1951 Westover

Company started pumping in April, that when flow exceeds pumping capacity the excess continues on downstream, that the Westover Company considers itself entitled to 71.7 second-feet, that due to a condemnation suit filed by the Department of Fish and Game no reason was seen to operate a second pump during 1951, that the H. Moffat Company had cattle on the Westover Company land and the Westover Company allowed water to go on down to the Moffat Company land, that the Westover Company's present pumping capacity is 35 second-feet, that its plans provide for a third pump that will double present capacity, that the Westover Company does not feel that there is sufficient water in Salt Slough to supply the amount sought under the Wolfsen Brothers' application.

George Raab testified (pages 60 to 70 of transcript) to the effect that he is a civil engineer, that he made an investigation of the flow of Salt Slough, that he platted the data recorded by the United States Geological Survey, that flow data recorded by that agency are available from December, 1940 to present date, that the data indicate the flow of Salt Slough to be very erratic, to have been as little as 9 cubic feet per second and as much as 2390 cubic feet per second, that he wrote a report (entered in evidence as Protestant H. Moffat Company's Exhibit No. 1) upon his investigation, that his report contains, among others, the following:

"At the present time, the following permits to divert water from Salt Slough have been granted by the Division of Water Resources: Application number 11687, permit number 7262, in the amount of 71.7 cubic feet per second of water; application number 11688, which is permit number 7263, in the amount of 20.2 cubic feet per second of water; and application number 13503, which is permit number 8324, in the amount of 3 cubic feet per second of water.

"These permits allow the diversion of a total of 94.9 cubic feet of water per second. All of these permits are located downstream from the water stage recorder and from the three proposed points of diversion listed in application number 14582 to appropriate unappropriated water. Under application number 14582, the applicants propose to divert 50 cubic feet per second from January 1 to December 31 of each year.

"An examination of the data shown on the graphs of daily stream flow of Salt Slough for the period of from January 1, 1948 to September 30, 1952, will show that there is not sufficient water to accomplish this.

"Since there were only about 630 days out of this period of four years and nine months in which the flow exceeded 95 cubic feet per second, it is evident that this proposed diversion of 50 cubic feet per second could not be made without harm to the holders of the three permits listed above. In addition to these permit holders, there are hundreds of other downstream diverters who have valid rights to the water.

"Since there is not usually sufficient water flowing in Salt Slough to supply the permits already granted and the amount asked for in Application Number 14582 is not available, we feel that this application should be denied."

Witness Raab testified further that in the 1730 day period from January 1, 1948 to September 30, 1952 the daily average flow of Salt Slough exceeded 95 cubic feet per second on 630 days or about 630/1730 or 37% of the period considered. He also testified that the period when irrigation is necessary depended upon the season,

that May, June, July and August are irrigation months, that in his opinion the flow of Salt Creek is unequal to demands made upon it for irrigation, that the length of an irrigation season depends upon the crop that is being grown, that rainfall also affects the time when irrigation is necessary, that pasture requires early irrigation, that the 1730 day period was chosen for analysis because during that period permits were being applied for or had been granted, that the 1730 day period includes 1952, a very wet year.

Robert Paul testified (pages 71 to 75 of transcript) to the effect that he holds the position of Water Projection Coordinator, Department of Fish and Game, that the Department of Fish and Game has acquired no proprietary interest in property bordering on Salt Slough, that eminent domain proceedings have been filed, hearings have been held and an early decision is anticipated, that if as a result of those proceedings title is acquired to the Westover Company property the Department of Fish and Game will be dependent upon Salt Slough for water, that that Department seeks to acquire land on Salt Slough in order to utilize it as an additional waterfowl area, such being considered essential both to preserve the flyway and to keep ducks away from farmers' crops. He testified that when the application was filed by Wolfsen Brothers, the Department of Fish and Game reviewed the available data, that review being made because:

"At that time it ... appeared to us that the amount of water that might be available in the future would be so small as to impose a real hardship on our possibility of future operation in the area, if the 50 second-foot application was granted and a diversion of that magnitude was made."

Hearing Exhibits

The following hearing exhibits were introduced in evidence:

Applicants' Exhibit No. 1 - Unpublished Records, United States Geological Survey, of discharge of Salt Slough near Los Banos, for calendar years 1946, 1947, 1948, 1949, 1950, 1951 and 1952; also tabulation of monthly runoffs, at same station from August to December, 1939 and from December 1940 to December 1949, inclusive (in all instances).

Applicants' Exhibit No. 2 - "Second Supplemental Report on Water Conditions and Adequacy of Supply on 6,678 Acre Tract Located on San Luis Rey Island Proposed for a Waterfowl Management Area to be Acquired by the State."

Applicants' Exhibit No. 3 - Wolfson Bros. General Project Map, revised April 1, 1952.

Protestants' Exhibit No. 1 - Report on the Stream Flow of Salt Slough ... by L. B. Raab, Civil Engineer.

Other Information

Other filings before this office to appropriate from Salt Slough are as follows:

Application 11687 Permit 7262, Westover Company, 71.7 cubic feet per second, year-round, for the irrigation of 5737.7 acres and for the watering of 11,000 head of stock; and Application 11688 Permit 7263, H. Moffat Company, 20.2 cubic feet per second, year-round, for the irrigation of 1622.7 acres and for the watering of 3,300 head of stock. These two applications have equal priority and a common point

of diversion, that point being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T9S R11E, MDB&M. Neither application was protested. The time within which these applicants shall complete construction and apply the water to complete beneficial use has been extended to December 1, 1955.

Application 13508 Permit 8324, George T. Devaney, 3 cubic feet per second, year-round, at a point within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T8S R10E, MDB&M, for the irrigation of 240 acres and for stock-watering. The application was unopposed. According to the permit construction is to be completed by December 1, 1953 and the water is to be completely applied to the proposed use by December 1, 1954.

The flow of Salt Slough has been measured since December, 1940 at a gaging station termed "Salt Slough near Los Banos." That station is about 7 miles north of Los Banos. The results of the measurements have been published, both in Water Supply Papers of the United States Geological Survey (to include September, 1950) and in Division of Water Resources Reports of Sacramento-San Joaquin Water Supervision (to include December, 1951). Monthly and annual mean flows, abstracted from the publications mentioned and from unpublished records are arrayed in an accompanying table.

Table I — Mean Flows, in Cubic Feet per Second,
of Salt Slough near Los Banos.

Year	Monthly Means												Yearly Means
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	
1941	870.	1470.	1822.	1538.	1844.	2282.	1198.	179.	122.	58.1	160.	590.	1007.
1942	878.	1120.	573.	843.	975.	1850.	695.	68.9	61.6	61.3	256.	385.	642.
1943	416.	913.	1321.	1257.	1098.	849.	129.	81.9	97.6	60.8	77.6	146.	534.
1944	131.	101.	104.	137.	132.	141.	116.	96.4	91.5	74.6	95.7	113.	111.
1945	125.	633.	300.	443.	892.	596.	251.	222.	190.	143.	152.	235.	346.
1946	445.	234.	138.	226.	439.	268.	130.	133.	208.	134.	118.	178.	221.
1947	218.	104.	125.	155.	165.	114.	96.7	99.0	127.	63.9	43.8	51.5	114.
1948	57.3	35.9	34.3	77.1	92.1	95.9	85.9	104.	196.	104.	60.7	44.0	82.2
1949	60.0	54.4	127.	138.	176.	104.	49.1	43.8	29.9	17.2	25.7	40.7	72.3
1950	44.7	34.0	58.0	94.4	75.5	55.1	44.5	35.6	57.0	47.3	71.2	344.	80.1
1951	314.	453.	103.	117.	93.4	62.1	78.0	79.2	71.6	29.1	35.8	52.5	124.1
1952	155.	619.	538.	1119.	1279.	1192.	235.	110.	73.3	44.	49.	88.	458.4

n.b. Data for months from October, 1950 to December, 1952, both inclusive, are taken from unpublished records and are subject to revision.

Discussion

Approved Applications 11687, 11688 and 13508 authorize diversions aggregating $71.7 \div 20.2 \div 3.0$ or 94.9 cubic feet per second. By reference to Table I it may be seen that flows averaged 94.9 cubic feet per second or more during 93 of the 144 months considered, or during about 65.8% of those 144 months. It is apparent from the same table also that flows averaged $94.9 \div 50$ or 144.9 cubic feet per second -- enough to supply the 3 prior filings under consideration and also to supply the applicants Wolfesen -- during 58 of the 144 months considered, or during about 40.2% of the total number of months.

The flow of San Joaquin River has been measured and recorded since 1912, at a point about 300 feet below the point of entrance of Merced River and 3.5 miles northeast of Newman. That point scales about 15 miles southwest of the gaging station on Salt Slough and commands a watershed of 9,990 square miles. According to the Water Supply Papers, USGS, discharge of San Joaquin River near Newman, during the period from 1941 to 1952, both inclusive, averaged 97.8% of the average discharge at the same gaging station over the 38 year period of published record. This relationship suggests that the average flow of Salt Slough based on the 12 years of record may not depart widely from the average flow over a longer period.

While Applications 11687, 11688, 13508 and 14582 all contain statements to the effect that irrigation is to extend year-round the inference appears warranted that comparatively little irrigation will

be practiced before April or after October. In that connection the progress reports from Westover Company (Application 11687) and from H. Moffat Company (Application 11688), for 1952, state that irrigation in that year extended from about April 1 to about October 15 but may in future commence in March and extend into November.

In the months when irrigation demands are minor and stock watering is the main consideration, i.e. from November 1 to March 31, the tabulation of mean flows indicates that supply usually exceeds probable demand. During the months when irrigation as well as stock watering is in progress, the excesses in Salt Slough each month, over the flow (94.9 cubic feet per second) necessary to completely satisfy Applications 11687, 11688 and 13508, have been as shown in Table II.

Table II -- Mean Flows, in Cubic Feet per Second, of Salt Slough
near Los Banos diminished by 94.9 Cubic Feet per Second

Year	Apr.	May	June	July	Aug.	Sept.	Oct.
1941	1443	1749	2187	1103	84.1	27.1	* 0
1942	748	880	1755	600	* 0	* 0	* 0
1943	1162	1003	754	34.1	* 0	2.7	0
1944	42.1	37.1	46.1	21.1	1.5	* 0	* 0
1945	348	797	501	156.1	127.1	95.1	48.1
1946	131.1	344	173.1	35.1	38.1	113.1	39.1
1947	60.1	70.1	19.1	1.8	4.1	32.1	* 0
1948	* 0	* 0	1.0	* 0	9.1	101.1	9.1
1949	43.1	81.1	9.1	0	0	0	0
1950	* 0	* 0	0	0	0	* 0	0
1951	22.1	* 0	0	0	* 0	* 0	0
1952	1024	1184	1097	140.1	15.1	* 0	0

According to Table II, aside from years of abnormally deficient stream-flow, such as 1948, 1949, 1950 and 1951, supply has been usually abundant in April, May and June, often substantial in July, August and September, scanty and intermittent in October. In certain months (starred in the table) flow on certain days exceeded 94.9 cubic feet per second and such excesses might have been diverted by the applicant without ^{apparent} injury to the protestants. Also, at times when the protestants divert less

than the 94.9 cubic feet per second that their permits and Permit 8324 authorize, the unused portion of their entitlements may be supposed available to the applicant. In that connection the progress reports indicate that the protestants have never, thus far, diverted the full amounts authorized under their permits.

The San Luis Canal Company's described points of diversion are far upstream from the applicants'. While that protestant states that a portion of the water to which it is entitled "may from time to time be in Salt Slough for the use of its customers" it does not state that any portion of said water has actually been in Salt Slough thus far, and it does not assert any point of diversion on that stream. The basis of the protest by the Department of Fish and Game is that the Department may acquire the property now owned by the protestant Westover Company. Its protest therefore raises no issue that has not been raised by the Westover Company; it is in effect a duplication of that company's protest.

Summary and Conclusions

The applicants seek to appropriate 50 cubic feet per second, year-round, from Salt Slough, tributary to San Joaquin River in Merced County.

The application is protested by two downstream appropriators (Westover Company and H. Moffat Company) who hold permits from the Division to divert amounts aggregating 91.9 cubic feet per second, year-round. The application is also protested by the San Luis Canal

Company and by the State of California Department of Fish and Game. Of the two latter protests the former fails to show any use made of waters flowing in Salt Slough below the applicants' proposed points of diversion and the latter alleges merely the possibility that it may acquire the property of the Westover Company and that that property may be injured by the proposed appropriation.

The flow of Salt Slough has been measured since 1940 at a gaging station located below the applicants and above the two first named protestants. That flow during the non-irrigating months has been more than enough to meet the needs of all of the parties, those needs being limited mainly at that season to stockwatering. In the irrigating months of the drier years 1948, 1949, 1950 and 1951 monthly mean flows in Salt Slough were usually less than 94.9 cubic feet per second - the amount necessary to satisfy Applications 11687, 11688 and 13508 in full. In the other 8 years of record, monthly mean flows during April, May, June and July always exceeded 94.6 cubic feet per second and excesses over that amount, more often than not, were greater in those months, than the 50 cubic feet per second sought under Application 14582. In the months of August, September and October of those 8 years - 24 months in all - monthly mean flows exceeded 94.9 cubic feet per second about half the time, but in only 4 of those 24 months by as much as the 50 cubic feet per second sought by the applicants.

The facts summarized point to the conclusion that unappropriated water in the source from which the applicants seek to appropriate

usually exists during November, December, January, February and March, that it usually exists also during April, May, June and July of years of average or above-average streamflow and during August, September and October of years of above-average streamflow, that it exists occasionally but infrequently at other times and that such unappropriated water insofar as it does exist may be taken and used in the manner proposed in the application without injury to any protestant.

In view of the facts summarized it is the opinion of this office that Application 14582 should be approved and permit issued, subject to the usual terms and conditions.

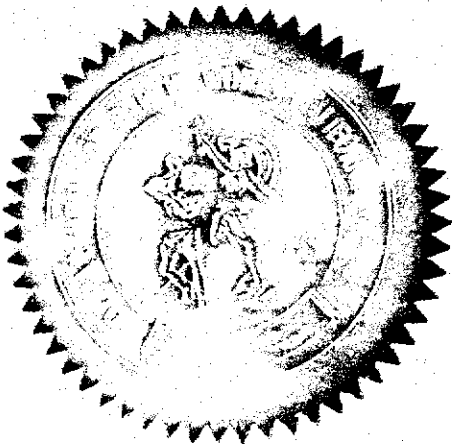
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ORDER

Application 14582 having been filed with the Division of Water Resources as above stated, protests having been filed, a hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14582 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 15th day of February, 1954.



A. D. Edmonston
A. D. Edmonston
State Engineer