

Goodwin J. Knight
Governor



STATE OF CALIFORNIA

State Water Rights Board

1401 21ST STREET

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SACRAMENTO 7, CALIFORNIA

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ASSISTANT TO THE BOARD

October 9, 1957

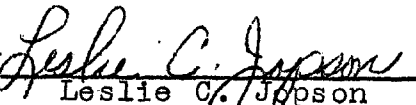
TO: APPLICANT, PROTESTANTS,
AND OTHER INTERESTED PARTIES

Enclosed is a copy of Decision No. 874 of the State Water Rights Board issued on September 30, 1957, in connection with Application 16604 of C. Ray Robinson.

It is the conclusion of the Board that there is unappropriated water in the source designated in the application available to supply applicant and that the application should be approved and permit issued subject to the terms and conditions set forth on pages 7 and 8 of the decision.

Very truly yours,

STATE WATER RIGHTS BOARD

By 
Leslie C. Jopson
Chief Engineer

Enc.

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

IN THE MATTER OF APPLICATION 16604)
BY C. RAY ROBINSON)

Decision No. 874

Decided: September 30, 1957

Appearances at hearing conducted at Merced on February 19, 1957,
by John B. Evans, Member, and on March 11, 12, 13 and 14, 1957,
by Henry Holsinger, Chairman, John B. Evans, Member, and
W. P. Rowe, Member, State Water Rights Board:

For Applicant:

C. Ray Robinson

W. E. Craven, Attorney

For the Protestants:

James J. Stevinson, a corp.)

Stevinson Water District)

Georgette H. Kelley, et al.)

East Side Canal & Irrigation Co.)

Hugh H. Griswold, Attorney

Charles L. Harney

H. K. Landram, Attorney

Crane Cattle Co.

Bert Crane

U. S. Bureau of Reclamation
(as an interested party)

John K. Bennett,
Asst. Regional Solicitor,
Dept. of the Interior

rules and regulations of the State Water Rights Board (hereinafter referred to as the "Board") and was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, before the Board to commence on Tuesday, February 19, 1957, at ten o'clock a.m., in Merced, California. Of the hearing the applicants and protestants were duly notified. The hearing extended through February 19, and March 11, 12, 13 and 14, 1957. The application was consolidated for hearing with Applications 15627, 15628, 15891, 15958, 16083, 16329, 16393 and 16909.

Hearing Testimony

C. Ray Robinson testified (R.T. page 9, line 16) that the existing water supply in the unnamed slough, at the point of diversion under his Application 16604, has existed since the formation of Merced Irrigation District; that with the exception of winter flood flows, the water in the unnamed slough is drainage from Merced Irrigation District; and that (R.T. page 11, line 25) water exists in the unnamed slough the year around. Applicant Robinson also testified (R.T. page 12, line 5, and page 26, line 12) that over weekends and holidays during the irrigation season there is a tendency for Merced Irrigation District to spill in the upper reaches of the unnamed slough sufficient water to aggregate a flow of four to five thousand gallons per minute at his proposed point of diversion and that this flow decreases thereafter to where it is just sufficient to keep

water in the slough during the latter part of each week. He stated (R.T. page 25, line 2) that the flow in the slough does not get into Bear Creek and that water from Bear Creek enters the slough and thence flows into Peck Drain only during extreme flood stages. He described (R.T. page 8, line 1, and page 18, line 24) the general course the unnamed slough takes from his point of diversion to the upper reach of the slough within Merced Irrigation District, where spills from the District's operations are discharged into the slough, as paralleling Bear Creek to the north.

Bert Crane testified (R.T. page 51, line 6) that the slough, prior to the leveling of Crane land within the NE $\frac{1}{4}$ of Section 8, T8S, R12E, entered the Robinson property (Point R-2, Robinson Exhibit No. 2) forming a swamp on Robinson land in Section 5 of said township prior to the time these lands were put under cultivation. Mr. Crane further testified (R.T. page 44, line 22) that the unnamed slough enters the Crane property in the NE $\frac{1}{4}$ of Section 8, T8S, R12E (Point R-3, Robinson Exhibit No. 2); that said property is riparian to the slough. He stated (R.T. page 45, line 12) that this water has been used for stockwatering purposes and irrigation of Crane land in said Section 8, north of Bear Creek and that he is opposed to any application depriving Crane land of its share of the riparian water in the slough.

Testimony was given by Robert D. Kelley (R.T. pages 276-289) and George Lucas (R.T. pages 309-319) concerning the operation of East Side Canal and use of water therefrom by protestants.

Leland K. Hill, civil engineer employed by the United States Bureau of Reclamation, testified (R.T. pages 426 through 466) as to the water requirements in the Sacramento-San Joaquin Delta and for the operation by the United States of the Central Valley Project. Mr. Hill stated that (R.T. page 428, line 6) although the United States only formally protested Applications 16393 and 16909, the United States wishes to enter a protest against the other applications being considered on the same grounds that excess water is not available to completely satisfy these applications. Mr. Hill testified that (R.T. page 465, line 23) the data given in USBR Exhibit 35 indicates that excess water occurred in the Delta during the seven months' irrigation season of the 31-year study period in only 61 months of the 217 months, and excess water did not occur in 8 of the 31 years.

Discussion

It is apparent from the testimony given with respect to Application 16604 that water in the unnamed slough, designated as the source thereunder, does not have any material effect upon the flow in Bear Creek because the source of water supply in the unnamed slough is drainage and operational spill into the slough within the Merced Irrigation District and does not reach Bear Creek except in flood times. The slough parallels Bear Creek to the north, and in past years water in the slough formed a swamp in the area to be irrigated. In view of the foregoing and the other testimony presented at the hearing, there

appears to be, at times throughout the irrigation season, water in the unnamed slough subject to appropriation under Application 16604. Inasmuch as the waters in the unnamed slough have not in any appreciable amounts reached Bear Creek or the East Side Canal during the irrigation season, it is not apparent that issuance of a permit to applicant would encroach upon the rights of the protestants depending upon water conveyed through the canal or Bear Creek or the alleged rights of the Bureau of Reclamation to divert from the Delta.

Apparently the drainage and operational spill from lands within the Merced Irrigation District has its origin from diversions by the district of water from the Merced River. It is questionable, therefore, whether lands contiguous to the unnamed slough have riparian rights to the use of such water. However, any appropriation pursuant to permit issued on Application 16604 will be subject to vested rights including such riparian rights as may exist.

The water which applicant proposes to divert appears to be derived from drainage waters from upstream irrigated land or from operational spill, and issuance of a permit will, of course, afford no assurance that the supply will continue to be available as in the past.

Summary and Conclusions

The Board finds that there is unappropriated water in the source designated in Application 16604 available to supply applicant, which water may be appropriated to a substantial extent in the manner proposed in the application

without injury to any other lawful user of water, that the intended uses are beneficial and that said application should be approved and permit issued to applicant subject to the usual terms and conditions.

O R D E R

Application 16604 for a permit to appropriate unappropriated water having been filed with the former Division of Water Resources, protests having been filed, jurisdiction of the administration of water rights including the subject application having been subsequently transferred to the State Water Rights Board and a public hearing having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16604 be, and the same is, hereby approved, and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 10 cubic feet per second, which amount may be diverted from about January 1 to about December 31 of each year.
2. The maximum amount herein stated may be reduced in license if investigation so warrants.
3. Construction work shall begin on or before June 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, the permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1959.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1960.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under the permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interests of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water, and to prevent unreasonable interference with vested rights.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 30th day of September, 1957.

/s/ Henry Holsinger
Henry Holsinger, Chairman

John B. Evans, Member

/s/ W. P. Rowe
W. P. Rowe, Member