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Governor



STATE OF CALIFORNIA
State Water Rights Board

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SACRAMENTO 7, CALIFORNIA

HENRY HOLSINGER, CHAIRMAN
JOHN B. EVANS, MEMBER
W. P. ROWE, MEMBER

LESLIE C. JOPSON
CHIEF ENGINEER
GAVIN CRAIG
PRINCIPAL ATTORNEY
R. H. MATHER
ASSISTANT TO THE BOARD

October 9, 1957

TO: APPLICANT, PROTESTANTS,
AND OTHER INTERESTED PARTIES

Enclosed is a copy of Decision No. 872 of the State Water Rights Board issued on September 30, 1957, in connection with Applications 15627 and 15628 of Charles L. Harney.

It is the conclusion of the Board that there is unappropriated water in the sources designated in the applications available to supply applicant and that the applications should be approved and permits issued subject to the terms and conditions set forth on page 11 of the decision.

Very truly yours,

STATE WATER RIGHTS BOARD

By *Leslie C. Jopson*
Leslie C. Jopson
Chief Engineer

Enc.

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

IN THE MATTER OF APPLICATIONS)
15627 and 15628)
BY CHARLES L. HARNEY)

Decision No. 872

Decided: September 30, 1957

Appearances at Hearing Conducted at Merced on February 19 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 the Applicant:

Charles L. Harney

H. K. Landram
Attorney

For the Protestants:

James J. Stevinson, a corp.)

Stevinson Water District)

Georgette H. Kelley et al.)

Hugh H. Griswold,
Attorney

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

John K. Bennett,
Assistant Regional Solicitor,
Department of the Interior

DECISION

Substance of the Applications

Application 15627, filed December 2, 1953, initiates an appropriation of 18 cubic feet per second to be diverted between March 1 and October 31 of each year from Bear Creek, a tributary to the San Joaquin River, within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 9, T8S, R11E,* for the purpose of irrigating 1,073 acres of general crops. Diversion will be effected by pumping at a maximum rate of 18 cubic feet per second from the channel of Bear Creek obstructed by a weir. The water will be conveyed to the place of use by an earth ditch.

Application 15628, filed December 2, 1953, initiates an appropriation of 38 cubic feet per second to be diverted between March 1 and October 31 of each year from Deep Slough and Bravel Slough for the irrigation of 2,290 acres of general crops. The amounts to be diverted from each source and the location of each point of diversion are as follows:

<u>Source</u>	<u>Amount in CFS</u>	<u>Location of Point of Diversion</u>
Deep Slough	21	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 9, T8S, R11E
Deep Slough	4	NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 9, T8S, R11E
Bravel Slough	13	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8, T8S, R11E

*All township designations refer to MDB&M.

Diversions at each of the foregoing described points of diversion will be effected by pumping from the unobstructed channels of the sloughs at maximum rates of 21, 4 and 13 cubic feet per second.

Protests and Answers

The objections of protestants to the approval of Applications 15627 and 15628 are in general that any diversions made under these applications would deprive them of the water in the Bear Creek watershed to which they are entitled, resulting in a violation of their rights.

As to their past and present use of Bear Creek water, protestants claim that they or their predecessors in interest have diverted from this source for over 75 years for stockwatering purposes and the irrigation of several thousands of acres adjacent to Bear Creek and San Joaquin River downstream from the points of diversion designated in said applications.

The right to the use of the waters in the Bear Creek watershed claimed by these protestants is based upon ownership of lands riparian to Bear Creek and San Joaquin River downstream from the applicant's proposed points of diversion, adjudicated rights, prior appropriations, and final decrees rendered by the Superior Court of the State of California in and for the

County of Merced entitled James J. Stevinson v. Merced Irrigation District, No. 6179; James J. Stevinson, et al., v. George S. Bloss, Jr., et al., No. 8960; Stevinson Water District v. George S. Bloss, Jr., et al., No. 8964; Stevinson Water District v. East Side Canal and Irrigation Company, No. 13673; and Crane v. Stevinson, et al. (5 Cal. 2d, page 387).

In answer to the protests against his Applications 15627 and 15628, applicant Harney alleged that the records show that substantial quantities of water over and above historical diversion by the protestants have been available in Bear Creek; that water supplies consisting of natural flows of tributary streams and foreign water introduced into these streams by operation of the Merced Irrigation District are available to the protestants in quantities exceeding the amounts reasonably required for their beneficial use; and that the protestants have the first physical opportunity to divert the quantities of water to which they are entitled before such water reaches the points of diversion under his applications.

Hearing Held in Accordance with the Water Code

Applications 15627 and 15628 were completed in accordance with the provisions of the Water Code and applicable administrative rules and regulations of the State Water Rights Board (hereinafter referred to as the "Board") and were 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 applications were consolidated for hearing with Applications 15891, 15958, 16083, 16393, 16604, 16909 and 16329.

Hearing Testimony

Howard Stoddard, civil engineer, testified that (R.T. page 233, line 5) he prepared the maps in support of Charles L. Harney's Applications 15627 and 15628; that (R.T. page 234, line 21) the lands to be irrigated under the applications are of a grade to justify the production of irrigated crops. He described (R.T. page 235, line 9) the Merced Stream Group as consisting of Bear Creek, Owens Creek, Mariposa Creek and other minor creeks that rise in the foothills of the Sierra Nevadas. He testified that the natural runoff from those streams is principally from rainfall; that these streams run westerly toward the trough of the valley intersecting the East Side Canal which, in effect, redistributes these waters. He stated that (R.T. 235, line 22) East Side Canal is located approximately four miles east of the Harney Ranch. Mr. Stoddard testified that (R.T. pages 235 through 241)

the information set forth in Harney Exhibits Nos. 3, 5, 9, 10, 11, 12 and 13, was abstracted from the published "Reports of the Sacramento-San Joaquin Water Supervision" or unpublished records of the Bureau of Reclamation.

Robert D. Kelley testified that (R.T. page 276, line 4) he is an officer of the various protestant corporations in the matter of Applications 15627, 15628 and 16604. He stated that (R.T. page 276, line 10) he has been familiar with the operation of the East Side Canal since 1945, through which water is distributed under order of the Public Utilities Commission. He testified that (R.T. page 277, line 6) the East Side Canal intercepts the flow of various streams it crosses for use within the service areas of East Side Canal and Irrigation Company and Stevinson Water District (See Stevinson, et al., Exhibit No. 1); that (R.T. page 279, line 10) approximately 600 acres within Stevinson Water District lying west of the San Joaquin River can use water being transported through Bear Creek to the San Joaquin River and rediverted from the river to these lands; and that lands within the East Side Canal and Irrigation Company service area within Section 36, T7S, R10E, were irrigated in 1956 by diversions from Bear Creek below the East Side Canal. Mr. Kelley stated that (R.T. page 283, line 24) the Merced Irrigation District releases at its boundaries water as provided for in the Merced decree

(Stevinson, et al., Exhibit No. 3) which is conveyed to the East Side Canal (R.T. page 281, line 20) through McCoy and Arena Spillways, South Branch Livingston Drain, Peck (Atwater) Drain, Bear Creek and other streams in the so-called Merced group and that (R.T. page 282, line 18) Merced Irrigation District sends the East Side Canal Company a weekly record of the amount of water it released into the aforementioned drains. Mr. Kelley further stated that (R.T. page 287, line 2) between 7,800 and 8,000 acres normally are irrigated from the first part of April, or when water is available, until about October 15 of each year which would require (R.T. page 289, line 22) approximately 40,000 acre-feet annually, excluding transit losses.

George Lucas testified that (R.T. page 309, line 22) he is water superintendent and has been associated with distributing water through the East Side Canal since 1930. He stated that (R.T. pages 311 through 312) during the irrigation season water released into various creeks and drains by Merced Irrigation District is intercepted by the East Side Canal at the various points the canal crosses these creeks and drains; that (R.T. page 314, line 24) there is some leakage permitted to flow down said creeks and drains below East Side Canal for stockwatering purposes, but otherwise (R.T. page 315, line 5) all of the water is intercepted and diverted into the East Side Canal; that (R.T. page 315, line 23) during an average day throughout the summer months approximately 100 cubic feet

per second is diverted into the Stevinson area; and that (R.T. page 319, line 17) if water is available, deliveries are made on a three-week schedule and during periods of short water supply, deliveries on a four-week schedule.

Bert Crane testified that (R.T. pages 322 through 325) he was not a protestant against Applications 15627 and 15628 but that lands owned by his brother and himself are riparian to Mariposa Slough, Duck Slough, Owens Creek and Bear Creek and, in view thereof, he wished that the Board would take into consideration the fact that they do not wish to have their riparian rights infringed upon. Mr. Crane stated that (R.T. page 324, line 15) all of their lands are located upstream from the points of diversion under Applications 15627 and 15628.

Leland K. Hill, civil engineer employed by the United States Bureau of Reclamation, testified (R.T. pages 426 through 466) concerning the water requirements in the Sacramento-San Joaquin Delta and for the operation by the United States of the Central Valley Project. Counsel for the bureau stated (R.T. page 243, line 3) that by reason of estoppel by deed, the bureau would not protest an application to appropriate water from a stream on the east side of the San Joaquin River for use on the Harney lands which were formerly owned by C. S. Howard.

Discussion

The testimony and exhibits presented in connection with Applications 15627 and 15628 reveal that the points of diversion thereunder are located on Bear Creek, Deep Slough, and Bravel Slough at points downstream from the intersection of East Side Canal and said streams, and that at times (see Harney Exhibits 3, 5, 9, 10, 11, 12 and 13) during the irrigation season substantial quantities of water are spilled from the East Side Canal into Bear Creek over and above the amount rediverted by the protestants from Bear Creek and San Joaquin River at points downstream from the diversion points designated under Applications 15627 and 15628. The quantity of water spilled into Bear Creek at East Side Canal is controlled by the spillway structure which is located upstream from the applicant's points of diversion. For this reason, it is not apparent how diversion under permits issued pursuant to these applications could adversely affect the quantity of water available in Bear Creek at the East Side Canal since the protestants would have the first physical opportunity to intercept and divert into the canal the quantity of water to which they are entitled before it reaches the downstream applicant. However, releases that may be made by the protestants into Bear Creek from the East Side Canal, which are to be rediverted from Bear Creek and San Joaquin River below the applicant's points of diversion, present a

different problem. According to the information set forth in Harney Exhibit 13, which gives a comparison of Stevinson Corporation's diversions from San Joaquin River downstream from the mouth of Bear Creek, the discharge of Bear Creek for the years 1952 and 1953 far exceeded the amounts diverted by the protestants from the San Joaquin River. In view of the information set forth in Harney Exhibit 13 that the discharge of Bear Creek greatly exceeds the diversions made by the protestants on Bear Creek and San Joaquin River below East Side Canal, it is not apparent that approval of Applications 15627 and 15628 should adversely affect or encroach upon the existing rights of the protestants.

The rights claimed by the protestants under Permit 5726, Permit 5729 and Permit 5733 cannot be infringed upon by the approval of Applications 15627 and 15628 because the points of diversion under the protestants' mentioned permits are located at upstream points where the East Side Canal intersects Bear Creek, Owens Creek, Duck Creek and Deadman Creek (See Stevinson, et al., Exhibit No. 1).

The water which applicant proposes to divert appears to be drainage water from upstream irrigated lands or from operational spill, and issuance of permits 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 sources designated in Applications 15627 and 15628 of Charles L. Harney available to supply applicant, which water may be appropriated to a substantial extent in the manner proposed in the applications without substantial injury to any other lawful user of water, that the intended uses are beneficial and that said applications should be approved subject to the usual terms and conditions.

O R D E R

Applications 15627 and 15628 for permits 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 applications 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 Applications 15627 and 15628 be, and the same are, hereby approved, and it is ordered that permits 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 under permit to be issued pursuant to Application 15627 shall be limited to the amount which can be beneficially used and shall not exceed 18 cubic feet per second to be diverted from about March 1 to about October 31 of each year.

2. The amount of water to be appropriated under permit issued pursuant to Application 15628 shall be limited to the amount which can be beneficially used and shall not exceed 38 cubic feet per second to be diverted from about March 1 to about October 31 of each year from Deep Slough and Bravel Slough. The amounts that may be diverted

from each source and the location of each authorized point of diversion are as follows:

<u>Source</u>	<u>Amount in CFS</u>	<u>Location of Point of Diversion</u>
Deep Slough	21	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 9, T8S, R11E
Deep Slough	4	NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 9, T8S, R11E
Bravel Slough	13	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 8, T8S, R11E

3. The maximum amount herein stated may be reduced in license if investigation so warrants.

4. 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.

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

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

7. 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.

8. 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