

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

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In the Matter of Application 9377 of Lindsay-Strathmore
Irrigation District, and Application 9434 of Fremond W. Vollmer
to appropriate from Lewis Creek in Tulare County for
Irrigation and Domestic Purposes.

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DECISION A. 9377, 9434 D 442

Decided *June 7, 1939*

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APPEARANCES AT HEARING HELD AT VISALIA, MARCH 22, 1939

For Applicants

Lindsay-Strathmore Irrigation District
Fremond W. Vollmer

James R. McBride
In propria persona

For Protestants

Lindsay-Strathmore Irrigation District
Fremond W. Vollmer
L. S. Hunn

James R. McBride
In propria persona
In propria persona

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of
Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Application 9377 of Lindsay-Strathmore Irrigation District was filed
with the Division of Water Resources on August 11, 1938. It proposes an appro-
priation of 5 cubic feet per second (total amount diverted in any one year not
to exceed 1250 acre feet) to be diverted from October 1st to September 30th of
each season from Lewis Creek at a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 13,

T 20 S, R 27 E, M.D.B.&M. for irrigation and domestic purposes within the boundaries of the Lindsay-Strathmore Irrigation District.

Application 9434 of Fremond W. Vollmer was filed with the Division of Water Resources on October 5, 1938. It proposes an appropriation of 125 gallons per minute (or approximately 0.28 of a cubic foot per second) to be diverted from January 1st to December 31st of each season from Lewis Creek at a point within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 13, T 20 S, R 27 E, M.D.B.&M. for irrigation and domestic purposes on the east 20 acres of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 13. The irrigation season will extend from about April 1st to about November 30th of each season.

PROTESTS

Protests Against the Approval of Application 9377 of Lindsay Strathmore Irrigation District

L. S. Hunn claims the ownership of the N $\frac{1}{2}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 15, T 20 S, R 27 E, M.D.B.&M. containing 20 acres of land upon which a well has been sunk about 1200 feet from the main channel of Lewis Creek. Since 1931 he claims that 40 to 80 acre feet per annum have been pumped from this well for irrigation purposes and the irrigation of 20 acres of land and alleges in effect that should Application 9377 be approved it would result in reducing the lateral percolation of the waters of the stream, thereby depriving him of the use of the water to which he is entitled.

Fremond W. Vollmer claims a riparian right to the use of water from Lewis Creek. He states that water was first used from this source about May 10, 1938, for domestic purposes and about June 1, 1938, for agricultural purposes. About 7 acres of land were irrigated in June and about 12 acres in July. Protestant alleges in effect that the amount of water which applicant

is seeking to appropriate is far more than there is available in the stream and that the proposed diversion will result in depriving him of the water to which he is entitled as a riparian owner.

Protest Against the Approval of Application 9434 of
Fremond W. Vollmer

James R. McBride, attorney for the Lindsay-Strathmore Irrigation District, states that although the District has not made any direct or immediate use of the water of Lewis Creek in the past, individual landowners within its boundaries have used and are still using the waters of this stream for irrigation purposes as have also the predecessors in title to riparian land now owned by the District. Rights are claimed under its prior Application 9377 and under claim of riparian ownership. Protestant alleges in effect that the amount of water which applicant Vollmer is seeking to appropriate is unreasonable and would result in interference with the proposed program of conservation and beneficial use initiated under its Application 9377.

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

Applications 9377 and 9434 were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on Wednesday, March 22, 1939, at 10:00 o'clock A.M. in Supervisors' Room, Court House, Visalia, California. Of this hearing applicants and protestants were duly notified.

GENERAL DISCUSSION

Lewis Creek, the source of the proposed appropriations rises in the low mountains and foothills of the Sierra Nevadas at an elevation of about 2900 feet and flows in a general southwesterly and westerly direction, a distance of about 10 miles to the mouth of the canyon where the proposed point of diversion of the District is located. From the base of the hills it flows in a northwesterly direction to discharge on the valley floor at a point approximately 8 miles below the District's proposed point of diversion and 2 miles north of Lindsay where ordinarily it debouches on hard and impervious waste lands which are suitable only for pasture. This land has hardpan immediately below the surface and the water spread over it runs into pools and depressions and is lost by evaporation (Tr. p. 14 and 15). In seasons of unusual and extraordinary runoff the water from the creek sometimes flows as far as the East Branch of Outside Creek and at times even reaches Tulare Lake. There was no testimony presented at the hearing that these flood waters served any useful or beneficial purposes after reaching Outside Creek.

The flow of the stream, the watershed of which comprises about 22.2 square miles above the District's proposed point of diversion is irregular and intermittent and varies with the rainfall and seasons. In seasons of heavy rainfall the greater proportion of the flow is flood or freshet waters. In years of light rainfall there may be no flow whatever in the creek but during seasons of average or more than average rainfall a large amount of water is lost to beneficial use as stated above.

In lieu of actual runoff records of Lewis Creek which are not available over an extended period of time the District has submitted an estimate of runoff based upon the seasonal runoff of the Yokohl Creek Group as set forth on

page 217 of Bulletin 5 of the Division of Engineering and Irrigation entitled "Flow in California Streams". This estimate indicates that the mean seasonal runoff from the 22.2 square miles of drainage area above the District's proposed point of diversion is 3400 acre feet; that the maximum seasonal runoff is 13,300 acre feet and the minimum seasonal runoff is zero.

The Yokohl Creek Group as set forth in Bulletin 5 comprises the runoff from Horse Creek (drainage area 25.3 square miles), Lewis Creek (drainage area 22.2 square miles), and Yokohl Creek (drainage area 50.4 square miles), and in obtaining the estimated runoff of Lewis Creek the District has apparently assumed that the rate of runoff is uniform over the entire watershed having a total area of 97.9 square miles.

While the maximum elevations of the Horse Creek and Lewis Creek watersheds are approximately 2900 feet, the maximum elevation of the Yokohl Creek watershed is approximately 5500 feet and it is reasonable to assume that the runoff from the higher watershed is somewhat greater per square mile than that from the lower watersheds and consequently the runoff of the Lewis Creek watershed is probably less than that estimated by the District.

On the basis of the District's estimate of mean seasonal runoff which appears high, and using the monthly distribution of runoff of the Yokohl Creek Group as set forth in Bulletin 5, the following table has been prepared which indicates approximately the runoff of Lewis Creek for each month in acre feet and the average rate of runoff according to the estimates of the District:

Mean Seasonal Runoff of Lewis Creek

<u>Month</u>	<u>Distribution of runoff per cent</u>	<u>Runoff Acre Feet</u>	<u>Average rate c.f.s.</u>
January	12.9	438.6	7.1
February	14.9	506.6	9.1
March	15.4	523.6	8.5
April	21.4	727.6	12.2
May	17.4	591.6	9.6
June	8.9	302.6	5.1
July	4.3	146.2	2.4
August	0.0	000.0	0.0
September	0.0	000.0	0.0
October	0.9	30.6	0.5
November	1.5	51.0	0.9
December	2.4	81.6	1.3

Total 3400.0

The only actual measurements of the flow of Lewis Creek were made by the applicant District during the period from January 1, 1938, to March 15, 1939. The following table indicates the mean monthly flow in cubic feet per second and the total monthly flow in acre feet.

<u>Month</u>	<u>Mean Flow (c.f.s.)</u>	<u>Monthly Discharge (A.F.)</u>
January, 1938	3.08	189.68
February	34.92	1939.43
March	61.51	3782.36
April	11.65	693.35
May	4.39	270.01
June	3.59	213.90
July	2.70	165.22
August	1.86	114.57
September	1.10	65.55
October	2.18	134.08
November	2.47	147.10
December	2.88	177.01
January, 1939	2.92	179.31
February	4.31	239.53

The total discharge for the calendar year 1938 was, according to the above table, 7,893.26 A.F.

The precipitation this year according to the rainfall records for the

years 1923 to 1938, submitted by the applicant, was 54 per cent above normal.

The record indicates that the 20 acre tract of land owned by protestant L. S. Hunn was formerly included in the Lindsay-Strathmore Irrigation District. In 1928 applicant's father in whose name the property then stood, filed a petition with the District seeking the exclusion of the property from the District upon the grounds that the soil was not suitable for the growth of certain trees and a vineyard that had been planted thereon and that it was intended to clear the land and use it for purposes not requiring irrigation. The petition was granted and the lands excluded from the District.

In 1931 protestant Hunn who had succeeded to his father's interest in the property drilled a well to a depth of about 35 feet in the northeast corner thereof which is some 1200 feet from Lewis Creek, and has subsequently used from 40 to 80 acre feet of water per annum for irrigation purposes. According to testimony presented at the hearing by Mr. Hunn, most of the water which collects in the well comes from between the 8 and 30 foot depth and it is his belief that it came from lateral seepage from Lewis Creek inasmuch as any appreciable rise of water in the creek was reflected by a corresponding rise in the water surface in the well within twelve hours thereafter and at times of flood in Lewis Creek he had noticed a 4 or 5 foot increase in the well after a period of two days.

He testified that during the high water of 1938 the water level in the well was within 3 feet of the top and during the same year the minimum water level was within 15 feet of the top. The lowest level he stated was about 19 feet of the top in the year 1932 or 1933 at which time the output of the well was approximately 45 gallons per minute (1 c.f.s.) obtained by continuous pumping which amount should be sufficient to irrigate his lands.

Protestant's well is situated in a drainage area or basin where the natural surface drainage and slope is from the south and east and toward the creek and well. This basin is approximately one-half developed to orchards and vineyards and practically all of the developed acreage is irrigated by foreign waters supplied by the District. Exhibit 5 of the District indicates that since 1933 through 1938, the District has supplied to this basin a total of 12,528 acre feet of foreign water for irrigation and domestic purposes of which possibly 15 to 20 per cent percolates underground below the root zone. This statement was not challenged by the protestants.

That there is no definite underground basin underlying the shallow well of the protestant is clearly indicated from the result of test wells drilled in that locality (Tr. p. 19) and it appears that the water which protestant pumps from the well is seepage water from the slopes above rather than percolation from the creek bed which is in a cement gravel or hard gravelly bed (Tr. p. 18). In fact the record indicates that prior to the operation of the District there were a number of shallow wells or pits not over 15 or 20 feet in depth which were used to collect the seepage water from the hills and slopes above which have since been abandoned for the water supplied by the District.

The Pacific Coast Aggregates, Inc. has extracted large quantities of gravel on lands lying immediately northeast of the land of protestant Hunn and as a result of its operations, lakes have been formed which act as storage reservoirs in which large amounts of flood and freshet waters as well as the low flow of Lewis Creek are collected (Tr. p. 18). The surface areas of these lakes aggregate about 10 acres and are about 6 feet in depth below the bottom of the streambed. Also directly north of protestant Hunn's land there is such

a lake having a surface area of about 1 acre and averaging at least 10 feet in depth below the bed of the stream. It would seem entirely possible that if any water from Lewis Creek reaches this protestant's well, it comes from these lakes rather than from the stream itself. That there is a possibility that the water is partly derived from these lakes is admitted by the protestant himself (Tr. p. 45).

While it is possible that a small amount of water may find its way to protestant's well during flood seasons by lateral seepage through the banks of the creek, yet the benefit so derived is probably small and inconsequential as compared with the much greater benefit which would result from the District's proposed direct diversion of the surface waters of Lewis Creek and to deny a permit to the District based upon a speculative injury which might possibly result from the District's operations would not best conserve the public interest. In view of the lack of positive evidence that such injury will inure to this protestant and that he will be deprived of sufficient water to irrigate his lands it is the opinion of this office that the protest should be dismissed.

Protestant Fremond W. Vollmer by petition also had his land withdrawn from the Lindsay-Strathmore Irrigation District as being unsuitable for irrigation purposes. However, under claim of riparian ownership he diverts water from Lewis Creek by pumping from the surface flow at such times as this flow is available and at other times by pumping from a shallow sump adjacent to the streambed.

Although there is a possibility that some of the water which collects in the sump is water which percolates underground from an old regulatory reservoir of the District located on the north bank of Lewis Creek about one mile above protestant's sump, the record indicates that the main source of supply is

derived from springs located in the foothills apparently above applicant District's proposed point of diversion.

Just what effect the proposed diversion of the District would have upon the protestant's water supply is not clear. The fact remains, however, that a portion at least of Mr. Vollmer's water supply is derived from Lewis Creek and the burden will be upon the District to so regulate its diversion as not to interfere with whatever rights Mr. Vollmer may have or else to supply him with water from its irrigation system in lieu of the water which he now obtains from Lewis Creek.

The testimony presented at the hearing clearly indicates that there is unappropriated water in Lewis Creek which if not taken and used by the District will be lost to any useful or beneficial purpose. Although the season of diversion specified in Application 9377 is throughout the entire year it seems reasonable to assume that the District will take the water when it is most needed which will be during the height of the irrigation season from about April 1st to November 30th. Assuming the mean runoff of Lewis Creek as estimated by the District and the monthly distribution of runoff as set forth in Bulletin 5, it is quite likely that the entire flow of Lewis Creek will be taken by the District during the months of May to November inclusive as the estimated runoff of Lewis Creek during these months is 1121.8 acre feet and the District seeks to appropriate 1250 acre feet. If the District so appropriates there would apparently be little or no water left for the proposed appropriation of Mr. Vollmer under Application 9434. However, there may be times when there is water available for appropriation by Mr. Vollmer and he should be permitted to take water at any time that it may be made available to him.

The only protest filed against the approval of Application 9434 was filed in behalf of the Lindsay-Strathmore Irrigation District by its attorney James R. McBride who admitted at the hearing that if Application 9377 were approved the District would have no protest against Application 9434. By the granting of a permit to Mr. Vollmer, no injury can inure to the District as its point of diversion is above that of Mr. Vollmer and he will have an opportunity to divert such water as passes the diversion point of the District.

CONCLUSION

The uses to which the water is to be applied under Applications 9377 and 9434 are useful and beneficial ones and it has been shown conclusively that there is unappropriated water in Lewis Creek which is not now being applied to beneficial use and it is therefore the opinion of the Division that Applications 9377 and 9434 be approved subject to the usual terms and conditions.

ORDER

Applications 9377 and 9434 for permits to appropriate water from Lewis Creek having been filed with the Division of Water Resources as above stated, protests having been received, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 9377 and 9434 be approved and that permits be granted to the applicants 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 7th day of June, 1939.

EDWARD HYATT, State Engineer

(Seal)

WES:MP

BY HAROLD CONKLING

Deputy