

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

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In the Matter of Application 10759 of Allan G. and Lillian  
Jespersion, Application 10760 of R. W. and Floy Hayes  
Forbes and Application 10966 of L. S. White to  
Appropriate Water from Cholame Creek Trib-  
utary to Estrella River and Salinas  
River in Monterey County for  
Irrigation, Domestic and  
Stock Watering Purposes.

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Decision A. 10759, 10760, 10966 D. - 524

Decided *December 5, 1945*

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APPEARANCES AT INVESTIGATION MADE ON JUNE 22, 1945

For Applicants

Allan G. and Lillian Jespersen  
R. W. and Floy Hayes Forbes  
L. S. White

James D. Fisher  
James D. Fisher  
James D. Fisher  
and L. S. White

For Protestants

C. W. Clarke Co.  
R. E. Jack Co.

Clarke Hall and  
L. K. Jordan  
C. P. Kaetzel and  
Howard Jack

For Other Interested Parties

Evan Brown (Appl. 10761)

Evan Brown

For Division of Water Resources

T. R. Simpson, Supervising Hydraulic Engineer, Division of Water  
Resources, Department of Public Works, State of California.

## O P I N I O N

### General Description of Proposed Developments

Under Application 10759, Allan G. and Lillian Jesperson propose to appropriate 1 cubic foot per second from Cholame Creek to be diverted at a point within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 30, T. 25 S., R. 16 E., M.D.B. & M. and used for irrigation, domestic and stock watering purposes on 40 acres of land within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 30. It is proposed to use the water from March 1 to November 1 for irrigation purposes and throughout the entire year for domestic and stock watering purposes.

Under Application 10760, R. W. and Floy Hayes Forbes propose to appropriate 1 cubic foot per second from Cholame Creek to be diverted at a point within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 31, T. 25 S., R. 16 E., M.D.B. & M. and used for irrigation, domestic and stock watering purposes on 40 acres of land within the said NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 31. It is proposed to use the water from March 1 to November 1 for irrigation purposes and throughout the entire year for domestic and stock watering purposes.

Under Application 10966 L. S. White proposes to appropriate 0.5 cubic foot per second from Cholame Creek to be diverted at a point within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 21, T. 23 S., R. 14 E., M.D.B. & M. and use it for irrigation, domestic and stock watering purposes on 33 acres within the SW $\frac{1}{4}$  of said Section 21. It is proposed to use the water from February 1 to December 1 for irrigation purposes and throughout the entire year for domestic and stock watering purposes.

### Protests

Applications 10759 and 10760 were protested by the R. E. Jack Company.

Applications 10759, 10760, and 10966 were protested by the C. W. Clarke Company.

R. E. Jack Co., a California Corporation, claims the ownership of Rancho Cholame and adjoining parcels of land aggregating approximately 40,000 acres which are riparian to Cholame Creek, of which approximately 20,000 acres can be beneficially irrigated provided that sufficient water is available; that under claim of riparian ownership and use since 1912, water has been used for cattle raising and other agricultural purposes and from 2,500 to 5,500 head of cattle are watered from the creek for approximately 15 miles along it as it enters Rancho Cholame on the northerly side thereof, through the Rancho and through its lands adjacent thereto; that about 40 acres of alfalfa are irrigated on the Rancho above applicants' points of diversion but water is also used for stock watering below applicants' proposed intakes. The Company alleges in effect that the proposed appropriations under Applications 10759 and 10760, if approved, would deprive it of water to which it is entitled.

The C. W. Clarke Company claims a right based upon its prior Application 10202 which was approved by the Division on August 7, 1941, for an amount of water not to exceed 2.7 cubic feet per second to be diverted from Estrella River throughout the year for the irrigation of 88 acres within Sections 13 and 24, T. 26 S., R. 14 E., M.D.B. & M. The point of diversion is within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 24. A right is also claimed by appropriation initiated prior to December 19, 1914, the effective date of the Water Commission Act and also by virtue of riparian ownership. Protestant alleges in effect that should Applications 10759, 10760 and 10966

be approved it would result in reducing the low flow of the Estrella River to less than the amount of water which it is entitled to use under its prior rights. Protestant is willing to withdraw its protests if the applicants will agree not to divert water during the months of May to September inclusive when the protestant is operating its pumping plant.

#### Field Investigation

On June 22, 1945, a field investigation was conducted under the supervision of Engineer T. R. Simpson of this office at the site of the proposed appropriations. Accompanying Mr. Simpson were Howard Jack and C. P. Kaetzel, representing the R. E. Jack Company, L. K. Jordan and Clarke Hall, representing the C. W. Clarke Company, James D. Fisher, representing the applicants, L. S. White, for himself and Evan Brown, an interested party who has approved Application 10761 before this office to appropriate water from Cholame Creek below the properties of the R. E. Jack Company.

Subsequent to the investigation, copies of the report prepared by Mr. Simpson were sent to the interested parties together with copies of the form of stipulation to an informal hearing under Regulation 12 of our Rules and Regulations with the suggestion that if the report appeared to contain a full and correct statement of the physical situation, the matter could be submitted under the provisions of Regulation 12.

Stipulations to an informal hearing were submitted by James D. Fisher, attorney for the applicants (Applications 10759, 10760 and 10966), by L. K. Jordan representing the C. W. Clarke Company in its protests against the approval of Applications 10759, 10760 and 10966 and by C. P. Kaetzel attorney for the R. E. Jack Co. in its protest against the approval of Applications 10759 and 10760. These stipulations have been approved by the State Engineer.

In arriving at a decision in the matter reliance is placed upon the entire files on Applications 10759, 10760 and 10966 and particularly on the report of the investigation made on June 22, 1945, by Engineer T. R. Simpson and submitted to the State Engineer under date of June 26, 1945.

#### General Discussion

Although on June 22, 1945, the date of the investigation, there was sufficient flow in Estrella River to satisfy the demands of the C. W. Clarke Company, the report of the investigation indicated that the flow might recede during the summer months to a quantity below protestants' requirements. The report also indicates that the entire flow of Cholame Creek through that portion of the property of the R. E. Jack Company which extends below the points of diversion named in Applications 10759 and 10760 is used for stock watering purposes by that Company under a claim of riparian ownership and although the flow in the stream is ample during the late fall, winter and early spring, there is insufficient unappropriated water during the irrigation season to justify the approval of Applications 10759 and 10760. It appears that both the applicants own lands which are riparian to Cholame Creek and if such is the case they are in a position to share reasonably in the use of any water which may be available to them during periods of substantial runoff, with other riparian owners on the stream.

The report indicates that no present use is being made of the flow in the stream from which applicant L. S. White proposes to appropriate under his Application 10966. While the water if unused by him may contribute to the ground water supply in that area, only a relatively small proportion of the water, if any, could be recovered by the C. W. Clarke Company whose intake is some 30 miles below.

It is the well established policy of the Division to overrule a protest of a user of water from a stream at some distance downstream from a spring or stream where there is no surface connection during the summer months with the stream from which protestant obtains his supply, on the theory that the flow of water underground would be so slow that the ground water replenishment by storms of the succeeding winter would offset any draft upon the stream so far as protestant is concerned.

The protest of the C. W. Clarke Company which is the only one filed against the approval of Application 10966 is therefore dismissed without prejudice.

#### Summary and Conclusion

There is insufficient unappropriated water available in Cholame Creek during the irrigation season to justify the approval of Applications 10759 and 10760. These applications should therefore be rejected.

The proposed diversion under Application 10966 will have little or no effect upon the use of water by protestant C. W. Clarke Co. It should therefore be approved subject to vested rights.

#### O R D E R

Applications 10759, 10760 and 10966 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a field investigation by the Division having been made, a stipulated hearing having been held in accordance with Regulation 12-B of the Rules and Regulations of the Division of Water Resources and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 10759 and 10760 be rejected and cancelled upon the records of the Division of Water Resources, and

IT IS FURTHER ORDERED that Application 10966 be approved, and that a permit be granted 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 5th day of December, 1945.

WES:GG

  
State Engineer

