

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 14430 by James M. and Mae E. Brown, Application 14478 by the Estate of George P. Ahart and Nellie G. Tucker, Application 14479 by Floyd R. Bonnifield, Application 14480 by Richard H. Mariner and Application 14482 by Harold W. and Norma E. Brown to appropriate water from Coon Creek, tributary to Sacramento River, in Placer and Sutter Counties, for Irrigation Purposes.

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Decision A. 14430, 14478, 14479, 14480, 14482 D. 773

Decided February 24, 1953

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In Attendance at Investigation Conducted by the Division of Water Resources on October 10, 1952:

James M. Brown	Applicant
C. A. Tucker and)	(Representing Ahart Estate and
Henry Tucker)	(Nellie G. Tucker
Zeta Bonnifield	Representing Floyd R. Bonnifield
Richard H. Mariner	Applicant
Harold W. Brown	Applicant
E. C. Wells, Watermaster)	(Representing Nevada Irrigation
and)	(
F. H. Newcome, Ditchtender)	(District
A. S. Wheeler	
Senior Hydraulic Engineer	Representing the State Engineer
Division of Water Resources	
Department of Public Works	

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OPINION

General Description of the Project

The five applications at issue initiate appropriations from Coon Creek, diversion to be effected in each instance by pumping, and the water utilized for irrigation. Applicants, amounts, seasons, locations of diversion point or points, acreages and crops to be irrigated, and locations of places of use, in that sequence, are, according to the applications:

Application 14430: James M. and Mae E. Brown, 2 cubic feet per second, April 1 to November 1, within NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T 12 N, R 4 E, MDB&M, 80 acres of rice within N $\frac{1}{2}$ SE $\frac{1}{4}$ of the same Section 2.

Application 14478: Estate of George P. Ahart and Nellie G. Tucker, 1.5 cubic feet per second, April 15 to November 30, within SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36 and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, T 13 N, R 5 E, MDB&M, 120 acres of pasture within the same Sections 35 and 36.

Application 14479: Floyd R. Bonnifield, 1.5 cubic feet per second, April 1 to November 1, within SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T 13 N, R 5 E, MDB&M, 120 acres of alfalfa within the same Section 34.

Application 14480: Richard H. Mariner, 2 cubic feet per second, April 1 to November 1, within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35 and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T 13 N, R 5 E, MDB&M, 159 acres of pasture within Sections 33, 34 and 35 of the same township.

Application 14482: Harold W. and Norma E. Brown, 0.63 cubic foot per second, April 15 to November 15, within the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, T 13 N, R 5 E, MDB&M, 50 acres of pasture within the same Section 34. Applications 14478, 14479 and 14480 bear notations to the effect that the signers thereof desire that those three applications shall be of equal priority.

Protest

The Nevada Irrigation District protests the five applications. It claims a right to the use of water from Coon Creek, basing its claim upon alleged prior use, prescription and ownership of the water. It asserts that it has diverted continuously since 1935, its point of diversion being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T 12 N, R 4 E, MDB&M. It asserts further in support of each of its protests:

"During the irrigation season of each year the only water in Coon Creek at the point of applicant's proposed diversion is water introduced into the Creek by the protestant in the form of spill from District's conduits, and return flow within the boundaries of the District, from irrigation water provided by the District. The protestant then uses Coon Creek as a conduit to conduct its said water to a point in the NW $\frac{1}{4}$ of Section 15, Township 12 North, Range 4 East, MDB&M, where the water is diverted from Coon Creek into a canal that runs Southerly, and said water is then diverted by protestant from said canal at a point in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 28, Township 12 No., R Range 4 East, MDB&M, and sold by protestant for rice culture in the area. That in that manner protestant has diverted and used all water in Coon Creek each irrigation season from and including the year 1935 to date. That there is no unappropriated water in Coon Creek during the summer months, and all of the water in said Creek during the summer months is surplus water and is the property of the protestant. The surplus water is sold outside the District boundaries on a year by year basis only and it is clearly understood in the contract that this water can be withdrawn

for use within the District when such demands are made. Surveys and plans have been made to divert said water within the District's boundaries in the near future.

"Approval by the California Districts Securities Commission of the sale of water outside of the District is unnecessary in this instance (see Section 22260 of Water Code). The right to the water and to sell the same outside the District is claimed under Section 22259 of the Water Code, and also under the case of Stevens vs. Oakdale Irrigation District 13 Cal. (2) 343; Los Angeles vs. City of Glendale 23 Cal. (2) 68; Haun vs. DeVours 97 Cal. APP. (2) 841."

Answers

Applicants James M. and Mae E. Brown answer the protest against their application by denials and allegations, particularly the following:

- "1. Deny that during the irrigation season . . . the only water in Coon Creek at the point of Applicants' proposed diversion is water introduced into the creek by the Protestant in the form of spill from District's conduits, and return flow within the boundaries of the District, from irrigation water provided by the District, and on the contrary allege that Coon Creek in the vicinity of Applicants' proposed diversion is divided into the North Branch and the South Branch and that Applicants' proposed diversion is on the North Branch of Coon Creek; that the excess waters of the District flow down the South Branch of Coon Creek.
- "2. Allege that the water that Applicants herein propose to divert are the waters that come into the North Branch of Coon Creek from the irrigation of rice lands above and tributary to said North Branch, which water is obtained by the irrigation of said rice lands from wells through pumping, and no part of said water is obtained from said Nevada Irrigation District."

No answers to the protests against any of the other applications are of record.

Field Investigation

The interested parties with the approval of the Department having stipulated to the submittal of the applications and protests upon the official records of the Department, a field investigation was conducted on October 10, 1952 by an engineer of the Division. The applicants and the protestant were all present or represented at the investigation.

Records Relied Upon

Applications 14430, 14478, 14479, 14480 and 14482 and all data and information on file therewith; also Reports of Sacramento-San Joaquin Water Supervision, State of California, Department of Public Works, for years 1947, 1948, 1949, 1950 and 1951.

Information Secured by Field Investigation

The engineer who conducted the field investigation of October 10, 1952 summarizes the results of that investigation as follows:

- "1. Flow in Coon Creek at the time of the investigation was about 18.0 cfs.
- "2. Flow in Coon Creek is usually in excess of protestant's requirements.
- "3. Protestant relies mainly on other sources to meet its requirements.
- "4. A high percentage of the summer flow does not originate within the protestant's boundaries.

"5. Additional run-off from lands outside the protestant's boundaries can be expected.

"6. Unappropriated water appears available to applicants."

Information set forth in the body of the report of field investigation is as follows:

"Coon Creek . . . heads in the Sierra Nevada foothills and flows westerly to the Sacramento River via District 1001 Drain.

"The watershed above the lowermost applicant has an area of about 115 square miles, is moderately wooded in the upper portion and more or less barren in the lower portion and has an average rainfall of around 20 inches.

"About 80% of the watershed is within the boundary of the . . . protestant . . .

"Mr. J. M. Brown stated that prior to 1910 or 1912, when importation of water commenced, the stream normally had no surface flow in its lower reaches during the summer but sub-surface flow kept pools sufficiently supplied to permit a limited amount of pumping.

"Since importations commenced, it appears that runoff caused by increasing use of imported waters derived from wells has caused a gradual increase in summer flow and further increases are expected as additional lands are placed under irrigation. In this connection, the writer viewed some new areas being prepared for irrigation during 1953 with water from new wells.

"Runoff from lands within the watershed, which are irrigated by well waters, cannot be claimed by protestant. In this connection on lands within the watershed, outside of the protestant's boundaries, between 35 and 40 cfs was used from wells for irrigation during 1952. These lands included about 1300 acres of rice. It would therefore appear that run-off from such use was usually sufficient to provide for the total of 7.63 cfs sought by applicants without any runoff from lands within protestant's boundaries.

"The supply in Coon Creek is further augmented, insofar as the lower applicant is concerned, by a new drain which has been dug along the R. 4-5 E. line from Yankee (Slough) Ravine to the north channel of Coon Creek.

"Records of flow in the creek may be obtained from the Sacramento-San Joaquin Water Supervision Reports. However the recording station which is located at the U. S. Highway 99E bridge, does not record any runoff entering the creek from lands outside of protestant's boundaries.

"On the date of this investigation the flow, as measured by the writer at a point about 2 miles below the recording station, was 18.0 feet.

"Mr. Wells stated that other than to deliver such local runoff as the protestant may be entitled to, Coon Creek was not used as a delivery conduit to lands outside protestant's boundaries but that Auburn Ravine was used for that purpose.

"Auburn Ravine, which drains a larger area within protestant's boundaries than Coon Creek, is mainly depended upon for service to areas outside the protestant's boundaries.

"Protestant delivers purchased and other waters to the ravine and then diverts such waters through a ditch heading at Lincoln and by means of pumps on District 1001 Drain to which the ravine is now tributary.

"Records of flow in Auburn Ravine are available in the reports of the Sacramento-San Joaquin Water Supervision Service and in U. S. Geological Survey reports. The recording station is near Lincoln and above the point where protestant diverts.

"In addition to Coon Creek and Auburn Ravine, protestant secures water from Markham Ravine which also discharges into District 1001 Drain. The waters thus secured consist of such run-off within the protestant's boundaries as protestant may be entitled to.

"No records of flow are available for Markham Ravine but as nearly as could be determined, the summer flow is about one-third that recorded in Coon Creek.

"While Yankee (Slough) Ravine also receives some run-off from lands within protestant's boundaries the effect of such runoff on the supply available in District 1001 Drain is slight.

"Records of flow in Reclamation District 1001 Drain are available in reports of the Sacramento-San Joaquin Water Supervision Service. The recording station is below the points at which protestant's customers divert from the drain. The records are, therefore, indicative of the amount available in the drain in excess of protestant's use.

* * *

"Use by protestant in this case involves use only on lands outside of protestant's boundaries. The bulk of these lands are served by a ditch from Auburn Ravine which does not involve the waters of Coon Creek. The only lands involved with Coon Creek waters are therefore those served by diversions from District 1001 Drain. In the past few years the maximum supplied with water from the drain by protestant has been 600 acres devoted to . . . rice. Based on the normal requirements . . . the protestant's maximum use has therefore been 15.0 cfs.

"Protestant depends mainly upon Auburn Ravine to supply the 15.0 cfs and . . . purposely places water in that ravine for that purpose."

Information Afforded by Water Supervision Reports

Monthly mean flows in cubic feet per second at the gaging stations referred to in the report of field investigation, for periods within which appropriation is sought in the applications at issue, are stated in Sacramento-San Joaquin Water Supervision Reports (Department Publications) to have been as follows:

Coon Creek at Highway 99E

	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950</u>	<u>1951</u>
April			41.4	43.7	34.2
May			22.4	32.6	58.3
June			6.4	12.4	15.5
July	No	No	4.8	10.6	10.9
August	record	record	6.2	11.2	10.2
September	published	published	4.7	15.5	22.4
October			10.6	35.5	67.6
November			13.0	406.	90.1

Auburn Ravine at Highway 99E

	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950</u>	<u>1951</u>
April			27.4	29.7	11.7
May			66.5	56.2	69.2
June			87.5	52.4	60.6
July	No	No	90.2	72.9	64.3
August	record	record	91.7	63.6	65.4
September	published	published	46.3	35.5	26.8
October			9.58	19.5	27.6
November			13.1	187.	43.5

Reclamation District 1001 Drain into Cross Canal

	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950</u>	<u>1951</u>
April	2.	3.6	5.8	2.3	12.1
May	11.1	9.8	12.1	5.4	18.5
June	4.5	5.4	0.	1.5	0.
July	0.	0.	0.	0.	0.
August	0.	0.	0.	0.	0.
September	0.	0.	0.	3.9	0.
October	0.	0.	0.	1.3	0.
November	0.	0.	0.	85.6	1.3

Discussion

Insofar as the flow of Coon Creek consists of water which the protestant District is entitled to divert and utilize under existing rights, that flow apparently is at the disposal of the District to sell, temporarily, to users outside of its boundaries, as "surplus" water, at least if it is actually possible, physically, to utilize that water within the District at some future time and if it is the District's bone fide intention to convert to such use, reasonably soon. Insofar however as the flow of Coon Creek is composed of waters not covered by rights held by the protestant, or by any one else, such flow plainly is subject to appropriation. The protestant's assertion, in its protest, that during the irrigation season of each year the only water in Coon Creek at the points where the applicants propose to divert is water introduced into the creek by the protestants and return flow from lands within the boundaries of the District, is not borne out by the observations of the engineer who conducted the field investigation, that engineer having stated in his report of investigation that runoff from rice lands, outside of the protestant District, served from wells, enters Coon Creek and is usually sufficient to provide the 7.63 cubic feet per second that the applicants seek. It is not apparent that the protestant can lay claim to the runoff from the rice lands mentioned. That runoff, in the light of the information at hand, is subject to appropriation. Should it prove impossible for the protestant to utilize within its boundaries all water now passing "Coon Creek at Highway 99E", any unused residue apparently would also be subject to appropriation.

Summary and Conclusions

Coon Creek, from which the applicants seek to appropriate, altogether, 7.63 cubic feet per second, from early April to late November, for rice and pasture irrigation, heads in the Sierra Nevada foothills in Placer County and flows westerly draining into Sacramento River via "Cross Canal." The applications, five in number, are protested by Nevada Irrigation District which serves certain customers located along Reclamation District 1001 Drain, that drain being supplied partly by Coon Creek and partly by waters diverted from Auburn Ravine, Markham Ravine and Yankee Slough, to all of which waters the protestant lays claim insofar as they originate within its boundaries. The applicants contend that Coon Creek, besides carrying flow to which they concede the Nevada Irrigation District is entitled, carries also other waters, sufficient for their purposes, such waters including return flow from lands irrigated by pumping from wells. The report of the field investigation of October 10, 1952 supports the applicants' contention. Stream flow records contained in Sacramento-San Joaquin Water Supervision reports are indicative of general flow conditions within the locality. Those records in conjunction with the report of field investigation indicate that Coon Creek at Highway 99E at times carries more water than the protestant currently utilizes from that source. They also indicate that the flow of Auburn Ravine is relatively plentiful and that wastage sometimes occurs into Cross Canal.

In view of the situation as above summarized it is the opinion of this office that unappropriated water ordinarily exists in the source from which the applicants seek to appropriate, that such water may be taken and used in the manner proposed without injury to downstream users and that Applications 14430, 14478, 14479, 14480 and 14482 should therefore be approved and permits issued, subject to the usual terms and conditions.

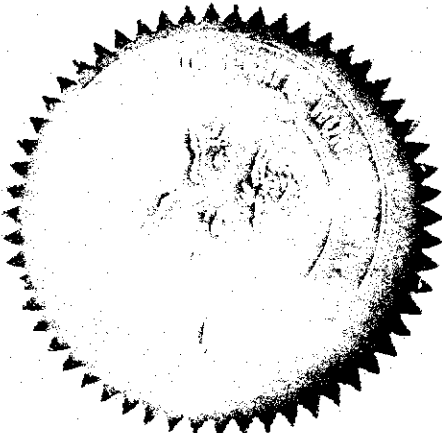
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ORDER

Applications 14430, 14478, 14479, 14480 and 14482 having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 14430, 14478, 14479, 14480 and 14482 be approved and that permits be issued 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 24th day of February, 1953.



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