

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

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In the Matter of Application 17223 )	
by Joseph S. Ferreira and Mary G. )	Source: Sailors Ravine
Ferreira )	County: Placer

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Decision No. D 889

Decided: February 28, 1958

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Appearances at hearing conducted at Sacramento on September 10, 1957, by Herny Holsinger, Chairman, and W. P. Rowe, Member, State Water Rights Board:

For the Applicants

Joseph S. Ferreira and Mary G.  
Ferreira

T. L. Chamberlain, Attorney

For the Protestants

United States of America, Bureau  
of Reclamation

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

Nevada Irrigation District

No appearance

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DECISION

Substance of the Application

Application 17223 was filed on August 9, 1956, proposing an appropriation from Sailors Ravine of 0.625 cubic foot per second

by direct diversion between April 1 and November 1 of each year. Sailors Ravine is tributary to Sacramento River via Doty Ravine thence Coon Creek thence Natomas East Main Drainage Canal. Diversion is to be effected by an earth dam, 5 feet in height and 40 feet long on top, located at a point within  $SE\frac{1}{4}$  of  $NE\frac{1}{4}$  of Section 35, T13N, R7E, MDB&M. According to the application water is to be diverted into an earth ditch 3 feet wide at water line, 2 feet deep, 0.5 foot wide at bottom and 3960 feet long with a grade of 40 feet per 1000 feet. The water is to be used for irrigation of 50 acres of pasture consisting of 15 acres in  $NE\frac{1}{4}$  of  $NE\frac{1}{4}$ , 25 acres in  $NW\frac{1}{4}$  of  $NE\frac{1}{4}$  and 10 acres in  $NE\frac{1}{4}$  of  $NW\frac{1}{4}$  of Section 35, T13N, R7E, MDB&M. The applicants indicate that they own the land at the proposed point of diversion and the land upon which the water is to be used.

#### Protests

Nevada Irrigation District protests Application 17223 on the basis of prior rights alleging that injury would result to it as the flow available for diversion to the District's Doty South Canal would be reduced which is allegedly return irrigation water from the District's Gold Hill Canal thereby requiring supplemental water from Auburn Ravine which supplemental water would have to be purchased during the irrigation season from Pacific Gas and Electric Company. The protestant states that water has been used, in the amount of approximately 12 cubic feet per second, since 1933 during the period April 1 to October 15 of each year for irrigation of about 1500 acres. The protestant indicates that its points of diversion and rediversion are located as follows:

(1) Dudley Canal Spill to Sailors Ravine, NE $\frac{1}{4}$  of Section 35, T13N, R7E, MDB&M.

(2) Gold Hill Canal Diversion, NW $\frac{1}{4}$  of Section 35, T13N, R7E, MDB&M.

(3) Gold Hill Canal rediversion, SE $\frac{1}{4}$  of Section 3, T12N, R7E, MDB&M.

(4) Doty South Canal diversion, NE $\frac{1}{4}$  of Section 36, T13N, R6E, MDB&M.

United States Bureau of Reclamation protests Application 17223, stating that the proposed appropriation will diminish flows into the Sacramento-San Joaquin Delta thereby reducing water available for Central Valley Project operations. The Bureau's claim of right is based upon prior Applications 5626, 9363, 9364, 9366, 9367 and 9368 for the appropriation of unappropriated water in furtherance of the Central Valley Project. It claims that unappropriated water is not available for the applicants' proposed appropriation.

#### Answers to Protests

In answer to the protest of Nevada Irrigation District the applicants deny that the granting of their application would reduce the flow in Doty Ravine. The applicants contend that the water in Sailors Ravine is in part return flow from irrigation of lands above their point of diversion and in part natural flow. The applicants deny that spill water from Dudley Canal enters Sailors Ravine above their point of diversion and contend that there is a sufficient quantity of natural flow to satisfy the amount applied for; namely, 0.625 cubic foot per second. It is also asserted by the applicants that the lands owned by them are riparian to Sailors Ravine.

The protest of United States Bureau of Reclamation was answered by the applicants by stating that the land upon which the water applied for is to be used is riparian to Sailors Ravine and that a part of the flow of said ravine is natural flow from springs. It is stated that 12 inches of water are purchased for irrigation from Nevada Irrigation District and that a substantial portion of this water seeps into Sailors Ravine below the point of diversion. The applicants contend that, by reason of the fact that the lands upon which the water sought is to be used are adjacent and drain into Sailors Ravine, the flow of Sailors Ravine will not be reduced to the extent of the full amount of water requested.

The applicants assert that they are within the watershed of origin of the natural flow and see no good reason in law or in equity why lands susceptible of beneficial irrigation, which are riparian to a stream, should be deprived of water so that said water might be transported by the protestant, at great expense and seepage losses, to lands far removed from the area of origin.

#### Notice and Hearing

Application 17223 was completed in accordance with the Water Code and applicable administrative rules and regulations, and was set for hearing under the provisions of the California Administrative Code, Title 23, Waters, before the State Water Rights Board (hereinafter referred to as "the Board"), on September 10, 1957, at 10:00 a.m., at Sacramento, California. The applicant and protestants were duly notified of the hearing.

#### Summary of the Evidence

By affidavit dated September 6, 1957, (Applicants' Exhibit No. 1), H. V. Wall, Work Unit Engineer of United States Soil Conservation Service, affirms that he made measurements of the flow of water in Sailors Ravine on January 11, 1957, and on September 6, 1957.

On January 11, 1957, the flow in Sailors Ravine, at a dam on the applicants' property, was found to be 15 miner's inches. (In the following analysis, all reference to miner's inches refer to the statute miner's inch -- R.T. page 22) On September 6, 1957, the flow in Sailors Ravine was measured at a point where it enters the applicants' property and at a point just above the Dudley Canal Spill to Sailors Ravine of Nevada Irrigation District, and was found to be 25 miner's inches and 35 miner's inches respectively (R.T. page 21). Mr. Joseph S. Ferreira testified that the measurement of flow in Sailors Ravine made on January 11, 1957, was after a period of approximately 50 days of no rainfall, that it is not customary to irrigate orchards during the wintertime regardless of the lack of rainfall, that no irrigation had been carried on in the area subsequent to the preceding October 1, that he and his boys accompanied Mr. Wall on an investigation of the ravine upstream from the point of measurement to Musso Brothers diversion dam (about one and one-quarter mile upstream from applicants' point of diversion), and that their investigation revealed no irrigation water nor any spill entering the ravine (R.T. pages 33-37, 48, 49, 67).

As to the increase in flow across Ferreriras' property, evidenced by the measurements made on September 6, 1957, applicant explained that it was due in part to return flow from the 12 miner's inches of water purchased by him from Nevada Irrigation District which is used to irrigate his land draining into Sailors Ravine (R.T. pp 44, 45), and in part to the flow of springs on his property below the point of diversion, which he estimates to be in the order

of seven or eight miner's inches or more (R.T. page 45). There are apparently other springs contributory to the flow of Sailors Ravine upstream from the applicants' proposed point of diversion (R.T. pages 44, 45, 67, 68).

To substantiate the allegation that natural flow exists in Sailors Ravine, the applicants' attorney introduced affidavits having to do with the "ancient" history of Sailors Ravine (Applicants' Exhibit No. 1, parts 2 and 3). The affidavits contain the following information:

"... Sailors Ravine, in the Mt. Vernon District, runs through ... the "Beermans Place" (applicants' ranch);

"My recollection of Sailors Ravine is as follows: in 1887 ... had to cross Sailors Ravine going and coming from school, and to my best recollection this ravine was never dry, but always had a small head of water. In later years ... there was always plenty of water on the driest falls and winters;

"... there were four very good live springs flowing into this creek; two were one-fourth mile from our home, .... These springs were located on the 'Old Waldren Place' and flowed into Sailors Ravine;

"In the early days the Ogle Family had a garden and used the water from the spring near their house that was located in about the center of the Beerman place, and this water ran into Sailors Ravine; there was also a spring not far from Mt. Vernon schoolhouse .... That spring always ran a good head of water that flowed into Sailors Ravine.

"All these things happened from the year 1887, ... until 1909 ....

"Years ago the Bosses had a big spring that was the head of Sailors Ravine and supplied all their livestock with water and watered their garden."

/s/ Elmer Baxter

"1. That I am sixty-one years of age, ... that I first took up my residence on the Baxter Ranch, through which Sailors Ravine flows, in the year 1911;

"2. That there are natural springs upstream along Sailors Ravine from the dividing line between Sections 35 and 36, Township 13 North, Range 7 East, M.D.B. & M.;

"3. That at the time I was acquainted with Sailors Ravine there was a natural flow of water therein during the years 1911, 1912 and 1913;

"4. To the best of my recollection there was no irrigation conducted upstream along Sailors Ravine from the line between Sections 35 and 36 in the early years;

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"6. That during the time I was acquainted with this area of Sailors Ravine there was enough natural water therein to make a swimming hole;

"7. There was always some water running in Sailors Ravine in this area in the summertime and the creek did not dry up.

/s/ Joe C. Snyder"

The foregoing affidavits were admitted into evidence without objection.

A letter dated September 5, 1957, from protestant Nevada Irrigation District to the Board explaining the position of the District in regard to Application 17223 and its decision not to have a representative at the hearing was read into the record by Chairman Holsinger. The District's position is that the memorandum of field visit dated July 29, 1957, by R. R. Forsberg, Assistant Hydraulic Engineer on the Board's staff ( a portion of Staff Exhibit No. 6), seems to verify the District's stand with the addition of several remarks as follows:

"The Musso Brothers are currently purchasing 45 miners inches of irrigation water from the District.

In accordance with Section 22078 of the State Water Code, the District has the right to recapture and reuse said waters after leaving the property of the purchaser, or in this case, to first satisfy Mr. Samson's alleged water right. The remaining water is picked up in the District's Gold Hill Canal, located in the NW $\frac{1}{4}$  of Section 35, T13N, R8E, and the Doty South Canal located in the NE $\frac{1}{4}$  of Section 36, T13N, R6E.

"The leakage observed by Mr. Forsberg through the flashboards at the Doty South Canal diversion is sold to two consumers below said diversion, who pump a total of 31 miner's inches from Doty Ravine.

"It is the District's conclusion, ... that the water in Sailors Ravine at the proposed J. S. Ferreira diversion is return water from irrigated lands above said property, and is therefore District water." (R.T. page 2-4)

The aforementioned memorandum of field visit dated July 29, 1957, contains observations of the flow in Sailors Ravine and Doty Ravine and includes the following statements:

"Nevada Irrigation District's Doty South Canal Diversion Dam was observed on the afternoon of July 26, 1957, and it was found that the entire flow in Doty Ravine, to which Sailors Ravine is tributary, was being diverted into Doty South Canal. The diversion dam is of concrete abutment and flashboard construction. Some water was leaking between the boards and about 0.5 cubic foot per second was flowing below the dam. The location of this diversion is within NE $\frac{1}{4}$  of Section 36, T13N, R6E, MDB&M."

In addition to the claim of right of Nevada Irrigation District to the recapture of return irrigation water in Sailors Ravine, there are active upon the records of the Board the following filings with points of diversion upstream from the District's Doty South Canal diversion dam:

Permit 9503 (Application 15290) of Stanley J. Samson and Betty R. Samson allows an appropriation of 0.55 cubic foot per second from Sailors Ravine between March 1 and December 1 of each year for irrigation and stockwatering purposes. The point of diversion is above applicants' land and within NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 36, T13N, R7E, MDB&M (Applicants' Exhibit No. 4).



License 352 (Application 1923) of I. R. and Mary Sousa confirms the right to appropriate 0.125 cubic foot per second by direct diversion from Sailors Ravine between June 1 and September 30 of each year for agricultural use. The point of diversion is within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 34, T13N, R7E, MDB&M (Page 7 of Staff Exhibit No. 6).

### Discussion

The applicants produced evidence to the effect that 15 miner's inches (0.37 cfs) of water were flowing in Sailors Ravine through their property on January 11, 1957. This was supposedly natural flow as there allegedly had been no rainfall in the area for a period of about 50 days and no water had been applied to irrigation subsequent to about October 1 of the preceding year.

On September 6, 1957, the flow of Sailors Ravine at the applicants' place was 25 miner's inches (0.62 cfs), with accretions to the stream of some 10 miner's inches (0.25 cfs) between that point and a point immediately above the Dudley Canal spill to Sailors Ravine of Nevada Irrigation District. As irrigation is usually necessary in the area during the month of September, it is probable that the increase in flow between that measured at the applicants' place on January 11, 1957 and September 6, 1957, was return flow from upstream irrigation.

Although Protestant Nevada Irrigation District claims ownership of this so-called return flow by virtue of Water Code Section 22078\*, there must be a showing that the water was originally

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\* 22078. A district (irrigation district) may control, distribute, store, spread, sink, treat, purify, recapture and salvage any water including but not limited to sewage waters for the beneficial use or uses of the district or its inhabitants or the owners of rights to water therein.

the property of the District in order for this code section to become operative. Although such ownership is inferred by the District in its aforementioned letter of September 5, 1957, a simple unsworn statement alleging ownership without opportunity of cross-examination is not proper evidence and cannot be considered in this instance. Therefore, as the District holds no permit or license issued pursuant to an application to appropriate, there is no evidence before the Board as to the right of the District to the flow of Sailors Ravine.

It is possible that Nevada Irrigation District could have produced adequate evidence at the hearing to support its claim of ownership to a considerable portion of the flow of Sailors Ravine under Water Code Section 22078; however, the Board's decision on applications to appropriate water must be based solely upon competent evidence introduced at the hearing. In this instance, the staff report contains no information concerning rights to the water prior to its original irrigation use.

No showing of injury was likewise made by Protestant United States Bureau of Reclamation and accordingly we must assume that the appropriation sought under the subject application will not be adverse to the water supply of the Central Valley Project, the claim of injury advanced in the protest. In fact, cross-examination of Applicant Ferreira by counsel for the Bureau strongly suggests that as the land to be served is riparian to Sailors Ravine the Bureau has no objection to the use of water as contemplated by the application (R.T. page 41).

## Conclusions

The evidence indicates and the Board finds that there is unappropriated water in Sailors Ravine, which water may be appropriated in the manner proposed in Application 17223 without substantial injury to downstream existing rights, and that in the absence of an adequate showing by Nevada Irrigation District of a valid claim to such surplus water the application should be approved and permit should be issued subject to the usual terms and conditions.

### ORDER

Application 17223 for a permit to appropriate unappropriated water having been filed, protests having been submitted, a hearing having been held by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17223 be, and the same is hereby approved, and it is ordered that a permit be issued to the applicants subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.625 cubic foot per second to be diverted from about April 1 to about November 1 of each year.

The equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with vested rights.

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

3. Actual 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, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

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 this 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 interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 28th day of February , 1958.

/s/ Henry Holsinger  
Henry Holsinger, Chairman

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