

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 21446  
of Elmer DeGregori and Estate of  
Louis M. DeGregori to Appropriate from  
Wilson Ranch Ditch in Merced County

Decision D 1223

ADOPTED JUN 30 1965

1223

DECISION DENYING APPLICATION

Elmer DeGregori and Estate of Louis M. DeGregori having filed Application 21446 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

Substance of the Application

Application 21446 is for a permit to appropriate 1.5 cubic feet per second (cfs) by direct diversion from March 1 to November 1 of each year for irrigation purposes from Wilson Ranch Ditch in Merced County. The points of diversion are to be located within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 27, T9S, R10E, MDB&M.

### Source of Water

The Wilson Ranch Ditch is a branch of Badger Flat Ditch which heads at the Main Canal of the protestant, Central California Irrigation District (hereinafter referred to as "the District"). It is a community ditch, not owned or maintained by the District.

The water in the ditch at the applicants' point of diversion is water released from the District's Main Canal for use upon lands within, and occasionally in the past, without the District, return flow and seepage from lands served by the District and by private wells, operational spill, and leakage from around structures. Occasionally, the ditch is used by individuals to transport well water. The ditch terminates in a swampy area approximately one-half mile beyond the applicants' place of use.

### Applicants' Project

Applicants divert by gravity from the Wilson Ranch Ditch through two laterals for the irrigation of approximately 55 acres of pasture within the boundaries of the District. Approximately 25 per cent of the water now being used by the applicants for this pasture is purchased from the District and the remainder is obtained from a well on the applicants' property. Applicants do not propose construction of additional diversion works and seek to appropriate water in the ditch which they claim is not now being placed to beneficial use

and eventually wastes into the swampy area. They concede that if they obtained a permit to this water, they would not obtain a right against the District for the continuation of this supply.

The District states this water is available for use by the applicants if they so wish, but opposes the issuing of a permit or license to them. The District contends that the water in question is within its distribution system and has not been abandoned. It further contends that approval of an application by a member of the District for water occurring within the District's system would obligate other members of the District to file on such water, causing problems of measurement and distribution of water within the District.

Applicants Can Acquire No Rights Against the District

An irrigation district is entitled to the exclusive control of the water diverted into its main canal and while within the district's boundaries, the right extends to water which is commonly known as wastage or surface runoff in the form of return water or seepage necessarily incident to practical irrigation. (Stevens v. Oakdale Irrigation District, 90 P.2d 58, page 62; United States v. Haga, 276 F. 41, page 43; Twin Falls Canal Co. v. Damman, 277 F. 331.) In accomplishing a second use of water, it is not necessary that a district maintain continuous possession of such water so long as it does not abandon the water and intends to use it (Ide v. United States, 263 U.S. 497).

Applying the foregoing principles to the present set of facts, there is no doubt that the water sought to be appropriated is subject to control by the district and could be intercepted before it reaches the applicants' land for any proper purpose by the district. Issuance of a permit to applicants would give them no right as against the district to require continuation of supply from the district's canal. The only right that could be acquired by issuance of a permit would be to prevent other landowners in the district from intercepting surplus water in the system before it reaches the applicants--water to which the applicants presently have no better right than their neighbors.

Although a small portion of the water attempted to be appropriated originates in wells, it is commingled with water originally supplied by the District and cannot be separately identified.

#### Conservation of the Public Interest

Assuming that the water applied for under Application 21446 may be technically unappropriated, the question remains whether or not approval of the application would be in the public interest.

"The board shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest." (Water Code Section 1255)

"A California irrigation district, though not a political subdivision, is a 'State agency' and

the use to which water owned and controlled by it is put is a public use." (Fletcher v. Mapes et al., 62 F.Supp. 351)

"The use of all water, together with all property which may be acquired, which is required to carry out fully the provisions of this division is a public use...." (Water Code Section 22456)

In the consideration of whether or not approval of the application would best conserve the public interest, the purposes for which an irrigation district is organized, and the legal relationship between it and its members are of importance.

The title to all property acquired by an irrigation district is held in trust for its uses and purposes (Water Code Section 22437). The term "property" by definition includes water and water rights (Water Code Section 20529). The owners of property within a district have been called beneficiaries of this trust whose interests are to be protected along with bondholders and general creditors (52 Cal.Jur.2d 651).

The water distributed by an irrigation district under this trust, except as statutes otherwise provide, is to be apportioned to each landowner on the basis of the ratio the last assessment against his land bears to the whole sum assessed in the district. Discrimination among water users in a district is contrary to State law (Water Code Section 22250; 52 Cal.Jur.2d 657-8).

Further definition of the relationship between the district and its members is contained in the following cases:

"The right of a landowner of the district to the use of water acquired by the district is a right to be exercised in consonance with and in furtherance of such ultimate purpose, viz., for the improvement by irrigation of lands within the district and in no other way. His right is always in subordination to the ultimate purpose of the trust." (Jenison v. Redfield, (S.Ct., Calif.) 87 Pac. 62, page 64)

"No statute has been deemed necessary to aid the courts in holding that when a person or company undertakes to supply a demand which is affected by public interest, it must supply all alike or like situated, and not discriminate in favor of or against any." (Leavitt v. Lassen Irr. Co., (S.Ct., Calif.) 106 Pac. 404, at 407)

To approve the application would amount to a discrimination in favor of the applicants against other district members, would create competition for water among the members, would cause problems of measurement, and otherwise interfere with the orderly distribution of water by the district and the administration of its trust. Further, the approval of the application would appear to conflict with Section 22262 of the California Water Code:

"No right in any water or water right owned by the district may be acquired by use permitted under this article."

The applicants refer in their brief to a statement of general policy set forth in Section 100 of the Water Code, that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of the water be prevented. There has been no showing that the protestant has made an unreasonable use or employed an unreasonable method of use of water. The water involved is

the operational spill, leakage, seepage, and return flow which occur when accepted irrigation practices are followed. As the protestant has no objection to the use of the water by the applicant or other members of the District, it cannot be said to have been wasting the waters as prohibited by this general policy statement.

From the foregoing findings, the Board concludes that the approval of Application 21446 would not best conserve the public interest and that therefore it should be denied.

The records, documents, and other data relied upon in determining this matter are Application 21446 and all relevant information on file therewith, particularly the report of field investigation made September 3, 1964.

ORDER

IT IS HEREBY ORDERED that Application 21446 be, and it is, denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, the            day of            , 1965.

/s/ Kent Silverthorne  
Kent Silverthorne, Chairman

/s/ Ralph J. McGill  
Ralph J. McGill, Member

/s/ W. A. Alexander  
W. A. Alexander, Member