

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 14111 by A. I. Tomkin,
Application 14140 by James Rowland Lowe, and Application
14163 by Royce Holland and Rose Holland to Appropriate
Water from Little Uvas Creek in Santa Clara County for
Irrigation Purposes.

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Decision A. 14111, 14140, 14163 D. 733

Decided March 14, 1952

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER
RESOURCES IN CONNECTION WITH THE PROPOSED APPROPRIATIONS ON OCTOBER 24, 1951:

A. I. Tomkin)	
Royce Holland)	Applicants
James Rowland Lowe)		
B. J. Dunn, Jr.)	Manager of Lowe Ranch
Fred O. Scheidegger)	
Edward L. and Anna V. Young)		Protestants
Jeffrey K. Armsby)	
Ralph F. Merriman)	
Sidney S. Johnson)	Representing the protestant City of Gilroy and the protestant South Santa Clara Valley Water Conservation District
Lloyd and Verna Fulton)	
Mr. and Mrs. Arthur B. Corey)		Interested parties
Raymond Kell)	
Leslie C. Jopson)	Supervising Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer

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OPINION

General Description of the Projects

The applications initiate appropriations from Little Uvas Creek in Santa Clara County, for irrigation purposes. Application 14111 is for 0.38 cubic foot per second from April 15 to July 15, Application 14140 is for 40 acre-feet per annum to be collected between February 1 and June 1 and Application 14163 is for 0.175 cubic foot per second, from May 1 to September 1. The proposed diversions head respectively within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, all of T 9 S, R 2 E, M.D.B.&M. In each instance diversion is to be by pumping. The project under Application 14140 includes a 25 acre-foot reservoir, created by a concrete dam, 15 feet high by 120 feet long. Applicants Tompkin and Lowe each propose to irrigate 30 acres of pasture; the applicants Holland, a 2 acre orchard and 12 acres of pasture.

PROTESTS

Fred O. Scheidegger protests that the diversion proposed under Application 14111 will leave insufficient water in the creek for the normal irrigation of his orchard. He asserts a riparian right and states that he has irrigated 20 acres of orchard every year since 1933, using about 150 gallons per minute for that purpose. He describes his diversion point as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T 9 S, R 2 E, M.D.B.&M. The protest may be disregarded and dismissed, he states, if the amount applied for is cut in half.

Edward L. Young also protests that the diversion proposed under Application 14111 would reduce the flow of Little Uvas Creek below his irrigation needs. He asserts a riparian right as well as use commencing

in 1922. He states that consumption averaged 5000 gallons daily from 1941 to 1949 and has now increased to 15,000 gallons. His diversion heads, he states, within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T 9 S, R 2 E, M.D.B.&M. He is willing that his protest be disregarded and dismissed if the application is reduced in amount to 0.19 cubic foot per second.

Jeffrey K. Armsby protests Application 14140 only. He states that any further diversions for irrigation purposes will deny him of his entire stockwatering and domestic supply. He claims a riparian right and use since 1935 for domestic purposes, stockwatering and irrigation. He states that he diverts at a point within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T 10 S, R 2 E. His protest also contains the following statement.

"Protestant has filed a complaint against applicant to determine water rights to Uvas Creek in the Superior Court in and for the County of Santa Clara, Civil No. 77558, and has also obtained a preliminary injunction against applicant since applicant's pumping activities have impaired protestant's supply.... Said controversy has been referred....to the Department of Public Works as referee...."

Ralph F. Merriman protests Application 14140 only. He claims to be a riparian owner, to have acquired his property in 1949 and to have used water since that time by pumping from a shallow well on Uvas Creek to supply water for livestock, for a small garden, for 3 cabins and for his own dwelling. He complains that in the summer of 1950 his well was low due to the applicant's pumping, a situation that caused his garden to die and prevented him from renting his cabins. His well, he states, is located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T 10 S, R 3 E, M.D.B.&M. He states (like Protestant Armsby) that he has filed a complaint in the Superior Court against the applicant and has obtained a preliminary injunction, and that the Court has referred the controversy to the Department of Public Works as referee.

The South Santa Clara Valley Water Conservation District protests Application 14140 only. That District refers to its pending application before the Division which it contends is senior to and should prevail over Application 14140. It claims a total of 36,000 acres within its exterior boundaries, states that the water supply situation within the area is growing more critical year by year and professes a bona fide intention of relieving that situation by diverting from Uvas Creek under its pending application.

The City of Gilroy protests all three of the applications. It asserts that it has been using, since 1970, all the water that will run through the 12 inch pipe at its intake within Section 18, T 10 S, R 3 E, M.S.B.&M., said location being downstream from all of the points of diversion proposed by the applicants. It asserts that the flow of Little Uvas Creek, except flood flow, is either in use or is covered by applications earlier than the applicants'. It asserts that its entire supply has come from Uvas Creek for many years and that while Uvas Creek is still its principal source of supply, it has been necessary of late to supplement that supply by pumping from wells.

ANSWERS

Aside from a letter from Applicant Tomkin addressed to the Division on May 14, 1951, commenting upon his own situation, the several protests appear not to have been answered.

FIELD INVESTIGATION

The applicants and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted

in the vicinity of The Gilroy Waterworks Dam on Uvas Creek on October 24, 1951 by an engineer of the Division. All of the applicants and protestants were present or represented during that investigation.

RECORDS RELIED UPON

Applications 14111, 14140 and 14163 and all data and information on file therewith.

DISCUSSION

According to the report of field investigation, the applicants state that Little Uvas Creek normally maintains a flow sufficient to supply all the water needed for use on the irrigable lands thereon until about June 30 of each year, the advent of hot dry weather at about that time usually causing the creek to fail rapidly except for a small, spring-fed flow on the uppermost applicant's property, which flow continues throughout the dry season. According to the same report, it was observed in the course of an investigation in connection with a recent court reference (Armsby, et al v. Lowe, et al, No. 77558, Superior Court, Santa Clara County) that Little Uvas Creek was discharging something under 0.30 cubic foot per second into Uvas Creek on June 13, 1951, that the flow ceased entirely at that point shortly thereafter, and that the flow of Uvas Creek above the mouth of Little Uvas Creek and the flow of Uvas Creek at the City of Gilroy dam on June 14, 1951 were 3.86 and 1.70 cubic feet per second respectively.

Other information contained in the report upon the field investigation of October 24, 1951 is to the effect that the City of Gilroy conduit has a normal carrying capacity of 1.78 cubic feet per second, that this amount is usually diverted, when available, for municipal and domestic use, that sometimes at high stages and again during the low stages that usually occur after July 1 Uvas Creek water becomes unsuitable for domestic use and the City then obtains its supply by extraction of ground water instead of by

diversions from Uvas Creek, that Protestant Scheidegger states that Little Uvas Creek flows through his land and normally supplies enough water to fill his requirements until about June 30, that Protestant Young states that Protestant Merriman's use has been limited because the stream channel is usually dry after July 1 due to diversions above him by the City of Gilroy and to channel losses, and that no use of water has been made by the Protestant South Santa Clara Valley Water Conservation District under Application 13886. The report also states that as nearly as could be determined all the diverters from Little Uvas Creek are riparian thereto and the flow of that stream usually fails while water is still available for use on Uvas Creek. The investigator remarks in his report that the City of Gilroy with its old appropriative rights and the South Santa Clara Valley Water Conservation District with its application senior to the applications currently at issue appear from the U.S. Geological Survey records of stream flow to have a prior claim to nearly all surplus water, above riparian requirements, which may exist on the stream.

The U.S. Geological Survey records mentioned in the report of field investigation are the records of flow at the gaging station designated as "Uvas Creek near Morgan Hill, Calif." That station is described in the USGS Water Supply papers as being located 500 feet above Uvas Dam, said dam being also known as the Gilroy Waterworks Dam - the dam which diverts water into the conduit serving the City of Gilroy. The station scales some 3.2 miles downstream from the junction of Uvas and Little Uvas Creeks. It commands a watershed of 30.2 square miles. The published record extends from December, 1930 to September, 1949, both inclusive. For that period, minimum, maximum and mean flows for each month of the year, in cubic feet

per second, appear to have been as follows:

Month	Monthly Means in Cubic Feet per Second		
	Minimum	Maximum	Average
January	8.07	215.	60.5
February	4.14	508.	137.1
March	6.46	269.	86.7
April	1.74	228.	45.2
May	.71	30.7	11.2
June	.13	11.7	4.33
July	.10	3.89	1.39
August	.03	1.35	0.52
September	.00	1.12	0.32
October	.00	2.33	0.62
November	.00	31.2	4.65
December	.36	261.	47.4

From the above tabulation it is at once apparent that should prior Application 13886, by South Santa Clara Valley Water Conservation District, be approved and that District divert 100 cubic feet per second from November 1 to July 31 plus 30,000 acre feet per annum, collected without restriction as to time, as contemplated therein, no unappropriated water would remain in Uvas Creek at all, except in years of very excessive runoff. And if it be assumed that the City of Gilroy is entitled to divert up to the capacity of its pipe line (some 1.78 cubic feet per second) it is also apparent that the flow of Uvas Creek is insufficient, even before action is taken upon

Application 13886, to supply present users, including Protestant Merriman, located below the City of Gilroy intake, in an average year after some time ^{is} in early July. It is apparent finally that until such time as the District project under Application 13886 becomes operative, unappropriated water ordinarily exists in Uvas Creek, above the City of Gilroy intake (although not necessarily in Little Uvas Creek,) from some time in November until early July.

From the circumstances set forth in the preceding paragraph it follows that the protests against Application 14140 are an insufficient basis for the denial of that application, which seeks only to accumulate a total of 40 acre-feet per annum, collected during February, March, April and May, all months of relatively plentiful supply, at least until diversions commence under Application 13886.

As to Applications 14111 and 14163 for 0.38 cubic foot per second from April 15 to July 15 and 0.175 cubic foot per second from March 1 to September 1 respectively, the tabulated figures indicate that the diversions proposed in those applications will prevent the exercise in full of claimed rights of users on Uvas Creek, below the junction of Little Uvas Creek therewith, after early July of a normal year. In view of the local situation on Little Uvas Creek also it is improbable that there is any unappropriated water in that stream, in a normal year, after about July 1. The watersheds drained by Uvas and by Little Uvas Creeks are not known to be equally productive. There are no extended records of their individual yields. On June 13, 1951, according to

the report of investigation, isolated measurements indicated Little Uvas Creek to be contributing some 0.30 cubic foot per second and Uvas Creek 3.86 cubic feet per second, at the junction of those streams, the flow at the USGS gage on Uvas Creek (some 3.5 miles downstream) then being 4.03 cubic feet per second. These figures, while suggestive, are insufficient to establish definitely the relationship between the yields of the two streams. Protestant Scheidegger's statement at the investigation of October 24, 1951 to the effect that Little Uvas Creek normally supplies enough water to fill his requirements until about June 30, is an indication that on or after June 30 of an average year there is no unappropriated water in Little Uvas Creek. Protestant Scheidegger's statement was corroborated by Applicants Tompkin and Holland who agreed, at the field investigation, that Little Uvas Creek normally maintains a flow sufficient to supply all the water needed for use on the irrigable lands thereon until about June 30. That amount, according to the parties, is made up of the 150 gallons per minute and the 15 000 gallons per day which Protestants Scheidegger and Young respectively claim to divert plus the 0.38 cubic foot per second and the 0.175 cubic foot per second which Applicants Tomkin and Holland respectively seek to appropriate, a total of approximately 0.91 cubic foot per second.

Discharges of Uvas Creek at the USGS gaging station, on June 15, June 30 and July 15 of each year of record, in cubic feet per second, are reported in the Water Supply Papers to have been as follows:

Year	Flow on June 15	Flow on June 30	Flow on July 15
1931	0.1	0.1	0.1
32	2.3	1.2	0.6
33	1.2	0.8	0.3
34	2.2	1.0	0.5
35	4.8	2.8	1.2
36	4.8	2.3	1.1
37	5.5	3.0	1.1
38	7.5	5.0	2.7
39	0.6	0.3	0.3
40	4.4	2.9	1.4
41	8.5	6.5	3.4
42	12.0	7.0	4.2
43	5.5	2.4	1.6
44	4.0	2.4	0.8
45	2.8	3.0	1.8
46	3.2	2.0	1.1
47	2.4	1.6	1.2
48	5.2	2.4	1.3
49	2.2	1.4	0.9
50	2.6	0.6	0.5
51	3.8	1.9	1.1
Average	4.08	2.41	1.30

It is evident from the tabulation that the flow on June 15 averages about 4.08/2.41 or 169% of the flow on June 30, and that the flow on July 15 averages about 1.30/2.41 or 54% of the flow on June 30. The flow variation patterns of Uvas and Little Uvas Creeks are probably much the same, due to the nearness and the topographic similarity of the two watersheds. It may be assumed therefore that if, as the parties seem to believe, the flow of Little Uvas Creek at the Scheidegger place on Little Uvas Creek averages 0.91 cubic foot per second on June 30, the flow at the same point probably averages roughly 1.69×0.91 or 1.54 cubic feet per second on June 15 and 0.54×0.91 or 0.49 cubic foot per second on July 15, and the average daily diminution of flow in the 30 days considered is $(1.54 - 0.49)/30$ or 0.035 cubic foot per second.

Summary and Conclusions

Pending such time as the right initiated by the filing of Application 13886 may be exercised, unappropriated water appears to exist at times in the source filed upon under Applications 14111, 14140 and 14163. It appears that such water may be taken and used beneficially in the manner proposed by the applicants without injury to the protestants, provided that diversion periods under Applications 14111 and 14163 be suitably restricted. It is the opinion of this office that Application 14140 should be approved subject to the usual terms and conditions and that Applications 14111 and 14163 should be approved subject to the usual terms and conditions but subject also to a further condition limiting diversions thereunder to periods ending on or about June 30 of each year.

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ORDER

Applications 14111, 14140 and 14163 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14111 insofar as it relates to diversion from about April 15 to about June 30 and Application 14163 insofar as it relates to diversion from about May 1 to about June 30 be approved and that permits be issued subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that authorization to divert under Application 14111 from about June 30 to about July 15 and to divert under Application 14163 from about June 30 to about September 1 be denied.

IT IS FURTHER ORDERED that Application 14140 be approved and that a permit be issued 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 14th day of March 1952.



A. D. Edmonston

A. D. Edmonston
State Engineer