

Before the Division of Water Resources  
Department of Public Works  
State of California

oOo

In the Matter of Application 10350 of Jesse Arnold Cason  
to Appropriate Water From Shackleford Creek in Siskiyou  
County for Domestic and Irrigation Purposes

oOo

Decision A. 10350 D.499

Decided February 17, 1943

oOo

APPEARANCES AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER  
RESOURCES ON JUNE 22, 1942

For Applicant

Jesse Arnold Cason

In propria persona

For Protestant

Abbie C. Albee

Ralph Albee

For Interested Parties

Ralph Eastlick  
Hoopa Valley Indian Agency

In propria persona  
O.M. Boggess, Supt.  
George Purcell

For Division of Water Resources

Harrison Smitherum, Senior Hydraulic Engineer and P.E. Stephenson,  
Assistant Hydraulic Engineer for Harold Conkling, Deputy State Engineer,  
in Charge of Water Rights, Division of Water Resources, State of  
California.

O P I N I O N

General Description of Project

Under Application 10350 filed by Jesse Arnold Cason on December  
31, 1941 it is proposed to appropriate 1 cubic foot per second from Shackle-  
ford Creek, tributary to Scott River via Mill Creek in Siskiyou County for

domestic and irrigation purposes throughout the year. The season of irrigation use is described as being from about March 15 to about November 15.

The applicant proposes to divert water through the "Howard-Jones" ditch, the intake of which is within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 9, T 43 N, R 10 W,

M.D.B.M. The place of use is described as follows:

5 acres	within	NW $\frac{1}{4}$	SW $\frac{1}{4}$	Sec. 10,	T 43 N,	R 10 W,	M.D.B. & M.
12 acres	"	NE $\frac{1}{4}$	SW $\frac{1}{4}$	"	"	"	"
6 acres	"	SE $\frac{1}{4}$	SW $\frac{1}{4}$	"	"	"	"
<u>13 acres</u>	"	SW $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"	"

36 acres total

It is intended to irrigate 35 acres of alfalfa and 1 acre of orchard.

#### Protest

Abbie C. Albee claims the right to store water in upper and lower Campbell Lakes on the upper reaches of Shackleford Creek and to divert water directly from this creek within the east one-half of Section 9, T 43 N, R 10 W, M.D.B.M. above the applicant's proposed point of diversion. This right she claims is for the appropriation of approximately 10 cubic feet per second initiated prior to the effective date of the Water Commission Act for irrigation, stockwatering and domestic purposes. She alleges in effect that there is no water available for appropriation by the applicant as proposed in Application 10350.

Although protestant's point of diversion is above the applicant's proposed point of diversion it is necessary at times of low stream flow for her to by-pass water at the intake of her ditch in order to satisfy the prior rights of the Hoopa Valley Indian Agency which diverts water through the Rialto Burton Ditch, the intake of which is below the proposed point of diversion of the applicant and as applicant would be in a position to

intercept such water, should Application 10350 be approved, the protest of Abbie C. Albee was given recognition by the Division.

#### Investigation

Stipulations under Regulation 123 of the Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings having been signed by both applicant and protestant and approved by this office, an investigation was made in the field on June 22, 1942 by engineers of the Division. Notices of the proposed investigation were sent to the parties at interest.

The records relied upon in the determination of this matter are as follows:

- (1) Correspondence and memoranda filed in connection with the Shackleford Creek controversy (General Complaint File - Correspondence Folder No. 1)
- (2) Application 10350. Complete file.

#### General Discussion

The users of water from Shackleford Creek may be divided into two groups, the upper group including those who divert water through the Rialto Burton Ditch and all other diverters above, and the lower group including all those who divert water from the creek below the intake of the Rialto Burton Ditch.

During the low water period the flow of water in Shackleford Creek is normally insufficient to supply the generally recognized superior priorities of Abbie C. Albee through the Weed Ditch and of the Hoopa Valley Indian Agency through the Rialto Burton Ditch. As a result the channel of Shackleford Creek below the intake of the Rialto Burton Ditch for a distance of several miles is entirely dry and the diverters in the lower group are

completely cut off from water originating in the upper reaches of the stream. Apparently the diverters in the lower group are resigned to this condition and have little or no interest in the operations of the diverters in the upper group.

The intake of the Howard-Jones Ditch through which applicant proposes to divert is above the intake of the Rialto Burton Ditch and therefore the proposed appropriation would mainly affect the diversions in the upper group and any action which the Division may take in connection with Application 10350 would have little or no effect upon existing conditions so far as the lower group is concerned. It is for this reason presumably that no protests were filed against the approval of Application 10350 by the diverters in the lower group.

The only protest filed against the approval of Application 10350 was that of Abbie C. Albee one of the diverters in the upper group. She obtains her water from Shackleford Creek through the Weed Ditch the intake of which is above applicant's proposed point of diversion. During the low water period of each year the protestant, who apparently claims the second priority right on the creek, is required to by-pass water at the intake of the Weed Ditch in order to satisfy the recognized first priority of the Hoopa Valley Indian Agency to divert water at the intake of the Rialto Burton Ditch which is below the applicant's proposed point of diversion. Protestant's only concern in maintaining her protest is to insure protection against the possible interception by the applicant of any water which is by-passed by her for use by the Indian Agency as such interception would undoubtedly aggravate an already acute situation existing between the protestant and the Hoopa Valley Indian Agency.

Named in downstream order, the water users in the upper group, the ditch used by each and the amount of water claimed by each are as follows:

<u>Owner</u>	<u>Ditch or Reservoir</u>	<u>Amount</u>
Abbie C. Albee	Campbell Lakes	storage (amount unknown)
Ralph Eastlick	Eastlick Ditch	3.0 c.f.s.
Abbie C. Albee	Weed Ditch	10.0 c.f.s.
Jerome Lofgren )		
W. A. Hicks )	Howard-Jones Ditch	2.0 c.f.s.
Scott Valley Bank )		
Hoop Valley Indian Agency	Rialto Burton Ditch	<u>8.0 c.f.s.</u>
	Total	23.0 c.f.s. + storage

No determination of the amounts of water to which each user is entitled or the priorities of the respective rights has been made by the Division nor can an adjudication of the rights be made under this proceeding. It is, however, generally conceded among the users of water from Shackleford Creek that the first and third priorities on the stream are held by the Hoopa Valley Indian Agency to the extent of about 8 cubic feet per second to be diverted at the intake of the Rialto Burton Ditch and that the second priority is held by Abbie C. Albee to the extent of about 10 cubic feet per second to be diverted at the intake of the Weed Ditch.

Measurements made on September 11, 1942 by engineers of this office indicate that the net available flow of Shackleford Creek on that date was 10.7 c.f.s. representing the summation of discharge measurements made in each ditch in the upper group. On this date there was no water passing the dam at the intake of the Rialto Burton Ditch. This 10.7 c.f.s. therefore represents less than 50% of the amount of water necessary to satisfy the direct diversion claims listed above and less than 60% of the direct diversion claims under the first three priorities.

Observations of the flow of Shackleford Creek below the intake of the Rialto Burton Ditch made by engineers of the Division are as follows:

<u>Date</u>	<u>Amount</u> c.f.s.	<u>Observer</u>
August 17, 1940	0.00	P.E. Stephenson
May 17, 1941	45.00 (Est.)	P.E. Stephenson & H. Smitherum
September 12, 1941	0.00	" "
June 22, 1942	30.00 (Est.)	" "
September 11, 1942	0.00	" "

No other records of the runoff of Shackleford Creek are available.

It appears however that normally the flow falls about July 1 and from that date until the demand for general irrigation ceases which is about October 1 the flow is insufficient to meet the requirements of the diverters in the upper group. The critical or low flow period therefore extends from about July 1 to about October 1 of each year.

Applicant proposes to divert the water from Shackleford Creek through the Howard-Jones Ditch which has a capacity of about 4 c.f.s. This ditch passes through the property of Jerome Lofgren who claims 1/8 interest in the ditch and water right attached thereto, through the property of W.A. Hicks who claims a 1/8 interest in the ditch and water right and through the property of Scott Valley Bank which claims a 1/2 interest in the ditch and water right. The remaining 1/4 interest was claimed by applicant's predecessor but this interest was apparently lost by non-user.

While it appeared at the time of the investigation that Mr. Walker representing the Scott Valley Bank and Mr. Hicks had no objection to the use of the Howard-Jones Ditch by the applicant provided that he shared in the maintenance of the ditch and recognized their prior rights therein, subsequent correspondence addressed to them and also to Mr. Lofgren has not resulted in either an approval or denial of the proposed use of the ditch by the applicant. Having received no definite denial however it will be assumed that no objection will be entered against the proposed use.

Mr. Frank Hayes who leases land owned by Mrs. Emma Barba over which the ditch runs has consented to allow the water to pass over his leased land until the lease expires on March 10, 1943. The Southern Pacific Land Company which owns land at the intake of the ditch has also issued a lease to Mr. Cason for the purpose of maintaining a ditch through its property.

#### Summary and Conclusion

In a year of normal runoff, the flow in Shackleford Creek is equal to or in excess of the demands of the users of water from this creek until about July 1 but from about July 1 to about October 1 the flow is insufficient to meet the requirements of the present claimants. Application 10350, therefore, should be approved only for domestic use from about October 1 to about July 1 of each season and for irrigation use from about March 15 to about July 1 of each season.

At the time of the issuance of the permit the applicant's attention should be directed to the fact that the approval of Application 10350 is not to be construed as confirming any right of access to the point of diversion, or any right of way for his ditch or any right to use water through the Howard-Jones Ditch.

#### ORDER

Application 10350 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation by the Division having been made and a stipulated hearing having been held in accordance with Regulation 12B of the Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10350 be approved for an amount of water not to exceed 1 cubic foot per second to be diverted from

about March 15 to about July 1 for domestic and irrigation purposes and from about October 1 to about March 15 as required for domestic purposes only 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 17th day of February 1943.

EDWARD HYATT, State Engineer

By Harold Conkeling  
Deputy State Engineer

WES:m

