



WATER-RIGHT DOCKET

Yosemite National Park

Docket No: 24

EL PORTAL, 1884 WHARTON AND UTTER, MERCED RIVER

Preliminary Docket Information

00-00-0000: notes to the file

NOTES TO THE FILE YOSE 023: El Portal, 1880, Hennessey and Morrison, Merced R.
YOSE 024: El Portal, 1884, Wharton and Utter, Merced R.
YOSE 025: El Portal, 1888, O. W. Ward, Crane Cr.

June 28, 1996

The primary water supply for El Portal is from wells 2 through 7. Well 1 was used in the past, but is not currently in use because of contamination problems. All 7 wells are thought to tap the underflow of the Merced River. Dockets 012, 010, 018, 019, 020, 021, and 022, provide documentation of wells 1-7 respectively. Water rights for these wells, or future developed supplies within El Portal from the Merced River or its tributaries, could conceivably be claimed under various water right doctrines, including riparian and appropriative (pre-1914 rights). For information pertaining to land status common to dockets 012, 010, and 018-025, please refer to YOSE 012: El Portal Well #1. For information pertaining to pre-1914 appropriative rights common to dockets 023-025, please refer to YOSE 023.

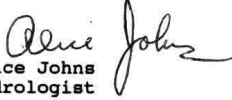
Dockets 023-025 provide documentation of pre-1914 appropriative rights. As of December 2, 1959--the date the NPS filed an application to appropriate the waters of Moss Creek (documentation in YOSE 006)--the NPS presented to the State of California (under item 12 of the Moss Creek application) three pre-1914 rights as valid rights NPS had acquired. Dockets 023-025 each contain a copy of the Moss Creek application which documents information provided to the State about NPS's pre-1914 appropriative rights at El Portal.

The Acting Regional Chief of Operations, in a June 23, 1959, Memorandum from Regional Chief of Operations, Region Four, to Superintendent, Yosemite National Park, Subject: Water Right Application, Moss Creek, El Portal, 1959, stated "of the 19 or so county water right filings made for water in the El Portal area, we believe only three fit the State's requirement of Paragraph 12, Other Rights. The lands on which Moss Creek water is to be used have been supplied in the past with water possibly covered by county filings as listed on the application...We thought reference should be made to permit the establishment of early appropriative priorities should they be needed in the future."

The quantities associated with the rights were estimated "offhand" in a July 29, 1959, Memorandum from Acting Regional Chief of Operations, Region Four, to Superintendent, Yosemite, Subject: Water Right Application, Moss Creek, El Portal, file L54: "...the most we could substantiate by past use would be in the range of 10,000 gallons per day under the Hennessey and Morrison filing, a like amount under the Wharton and Utter filing and 250,000 gallons per day under the O. W. Ward filing for Crane Creek."

The Moss Creek application (YOSE 006) is for water for municipal use. A municipality can hold water rights for a future anticipated need. And, when the NPS filed its Moss Creek right, it also estimated its future anticipated need as "estimated average daily consumption by the above facilities during the month of maximum use at the end of each five-year period..." for 1966, 1971 and 1976, and noted that "Continued growth is expected beyond 1976." For 1976 1,000,000 gallons per day (1.55 cubic feet per second) was estimated.

The NPS's pre-1914 appropriative rights, documented in YOSE 023-025, probably have not been lost by non-use because the NPS anticipated and documented a future need for the water for municipal purposes. Additionally, it is conceivable that the NPS has been exercising its pre-1914, in whole or in part, by its withdrawals and diversions within El Portal.


Alice Johns
Hydrologist
Water Rights Branch
Water Resources Division

OK 6/24
(2)

L-54

June 23, 1959

Memorandum

To: Superintendent, Yosemite National Park
From: Regional Chief of Operations, Region Four
Subject: Water Right Application, Moss Creek, El Portal

Attached are the original and one copy of an application and supporting map for appropriation of the water of Moss Creek for use at the El Portal Administrative Area.

Copies are being distributed for review by the Director, Chief, WODC, and the Regional Solicitor. Upon receipt of notice of concurrence of these three offices the original may be signed and submitted to the State Water Rights Board.

The application is a revision of the draft submitted with our memorandum of February 10. Changes have been made in accordance with your memorandum of February 18, PCP U-109, and Mr. Dunn's memoranda of February 16, March 25, May 4(2) and June 4.

We make the following detailed explanation of the numbered paragraphs of the application:

2. The amount has been increased to 2.00 cfs as suggested by Mr. Dunn although the final license may have to be worded "when available" since the late summer flow probably will be less.

3. Municipal use only has been claimed as Mr. Dunn suggested. In this regard we understand that the existing residents will be served by the Park Service System through laterals constructed by the permittees. However, the present Moss Creek application makes no claims for permittees use because such use, we believe, is covered by existing rights as discussed below. We contemplate that the existing system used by permittees will continue to divert from Crane Creek until such time as the Park Service constructs replacement works on Crane Creek. The assumption is made that whatever water rights are held by the El Portal Water Association will be taken over by the Park Service.

4. The point of diversion has been relocated higher up the stream as recommended February 18 by Mr. Neilson. The survey tie is a scaled tie to the nearest known permanent corner.

5. Main conduit terminus has been selected as the site of the reservoir above El Portal.

6. Dimensions of the diversion dam were arbitrarily selected by this office, since planning has not advanced beyond the stage of preliminary requirements.

7. Reservoirs have been changed to 2 - 500,000 gallon tanks rather than a single million gallon tank to conform to PCP 5-109.

8(b) Pipeline sizes and total length conform to PCP 5-109.

9. The controlling grade of the 8-inch line from point of diversion to the tank was selected to give a capacity slightly larger than 2.0 cfs, the claimed amount.

The estimated cost was made equal to the construction estimate of PCP 5-109. Actually the PCP includes diversion works on Crane Creek which are not part of the Moss Creek works but costs may be balanced by the fact that there may be construction after 1966 chargeable to the Moss Creek system.

10. Construction beginning date was selected on the assumption that the water system will be in the 1962 fiscal year program.

The completion date of July 1966 allows for some delay and subsequent additions to the work listed on PCP 5-109.

The date water will be completely applied to the proposed use has been shown as "about 1971" as suggested by Mr. Dunn in the text to the last paragraph of his February 16 memorandum. We are aware of an inconsistency in that elsewhere the application states that the 1971 use will be 1.24 cfs and that continued growth is expected beyond 1976.

11. The place of use has been described as the entire area administered by the Park Service using the terminology of the third paragraph of Mr. Dunn's February 16 memorandum.

12. The description of existing rights has been extensively revised following Mr. Dunn's suggestions of February 18 and May 4.

12A. The reference to possible loss of riparian rights has been deleted. The suggested paragraph concerning patented lands was added.

12B. Of the 19 or so county water right filings made for water in the El Portal area, we believe only three fit the State's requirement of Paragraph 12, Other Rights. The lands on which Moss Creek

water is to be used have been supplied in the past with water possibly covered by county filings as listed on the application. The degree to which continued use can be proved and the chain of interest in the rights are difficult to establish. We thought reference should be made to permit the establishment of early appropriative priorities should they be needed in the future.

The chains of interest in the three filings as near as we can determine are as follows:

a. The first filing, that of Hennessey and Morrison, apparently covered use in the vicinity of area now known as "Abbeville." This land was patented by Augustus H. Ward in 1890. No record of the transfer of the water right from Hennessey and Morrison to Ward has been found but a 1908 agreement between Ward and others reserves Ward Land Company the right to divert water to the "Hennessey Ranch." Through succession the United States presumably now has the right. The actual use appears to have been first for mining use, followed by a small ranch with irrigated crops and more recently domestic use by residents leasing from the El Portal Mining Company. Some years ago direct diversion from the river was abandoned in favor of wells except for occasional pumping from the river when wells went dry. At best, the record of use provides only a tenuous claim for a small amount of water dating from the early filing.

b. The chain of interest and use under the 1884 Wharton and Utter filing is even more obscure. The appropriation was for water to be taken from the Merced River apparently near Crane Creek and conveyed for use somewhere near the present Standard Oil bulk plant. We have no evidence that actual use was made. Wharton received a patent in 1884 for lands at the present El Portal, his interests being sold to Oliver Ward, then to Augustus Ward and through succession to the United States. Reference to this filing has been included because further study may be able to establish it as the original appropriative right covering the use of water pumped from the Merced River.

c. The 1888 filing by O. W. Ward to Crane Creek offers the best continuous record of use and probably can be established as the right covering recent use by permittees at El Portal concurrent with a riparian right of the land owner (now the United States) to the same water. The chain of interest in the right has been covered in the tabulation attached to our memorandum of February 20, 1959 to the Director. Briefly, the appropriation was for use of water on Ward's ranch (the present El Portal) and later for other facilities on the site as evidenced by references in various recorded deeds and agreements although the right is not referred to specifically by the county recording. The chain of interest shows a division of the right, but the active portion is apparently now held by the United States.

We are not certain reference to these three filings should be shown on the application. We made reference only because the form called for a listing of rights under which water is served to the subject land. If it is desired to eliminate this portion the second page of the supplement can be removed and the reference under paragraph 12 can be erased.

It should be noted while on the subject of other rights, that Application 10488 covers use by Forest Service leases at El Portal. In accordance with the instructions, Paragraph 12, that rights on file with the State Water Rights Board be excepted, no reference was made to this right on the application.

21. The final statement concerning a waiver of other rights was added as Mr. Dana reminded.

(SGD) JOHN B. WOSKY
John B. Wosky
Regional Chief of Operations

Attachments

Copy to: Director (w/attachments)
Chief, WROC (2) (w/attachments)
Regional Solicitor (w/attachments)

FILE IN DUPLICATE

[For full information concerning the filling out of this form refer to
Article 4 of Rules and Regulations Pertaining to Appropriation of Water]

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

Application No. _____ Filed _____ at _____ M.
(Applicant must not fill in the above blanks)

APPLICATION TO APPROPRIATE UNAPPROPRIATED WATER

I, John C. Preston for the United States of America
Name of applicant
 of Yosemite National Park - Box 577, Yosemite County of Mariposa
Address
 State of California, do hereby make application for a permit to appropriate the
 following described unappropriated waters of the State of California, *SUBJECT TO VESTED RIGHTS*:

Source, Amount, Use and Location of Diversion Works

- The source of the proposed appropriation is Moss Creek
Give name of stream, lake, etc., if named; if unnamed state nature of source and that it is unnamed
 located in Mariposa County, tributary to Merced River
- The amount of water which applicant desires to appropriate under this application is as follows:
 - For diversion to be directly applied to beneficial use 2.00 cubic feet per
1 cubic foot per second equals 40 statute miner's inches or 646,317 gallons per day
 second, to be diverted from January 1 to December 31 of each year.
Beginning date Closing date
 - For diversion to be stored and later applied to beneficial use _____ acre-feet
1 acre-foot equals 325,851 gallons
 per annum, to be collected between _____ and _____ of each season.
Beginning date Closing date

NOTE.—Answer (a) or (b) or both (a) and (b) as may be necessary. If amount under (a) is less than .025 cubic foot per second, state in gallons per day. Neither the amount nor the season may be increased after application is filed. If underground storage is proposed a special supplemental form will be supplied by the State Water Rights Board upon request.
- The use to which the water is to be applied is municipal
Domestic, irrigation, power, municipal, mining, industrial, recreational
 _____ purposes.
- The point of diversion is to be located 5850 feet N 15° 30' E of the Southwest corner
State bearing and distance or coordinate distances from section or quarter section corner
of Section 18, T 3 S, R 20 E, MDM
 being within the SE 1/4, SW 1/4
State 40-acre subdivision of public land survey or projection thereof
 of Section 7, T. 3S, R. 20E, MD B. & M., in the County of Mariposa
- The main conduit terminates in NW 1/4, NW 1/4 Sec. 16, T. 3S, R. 20E, MD B. & M.
State 40-acre subdivision of U. S. Government survey or projection thereof

Description of Diversion Works

NOTE.—An application cannot be approved for an amount grossly in excess of the estimated capacity of the diversion works.

- Intake or Headworks (fill only those blanks which apply)
 - Diversion will be made by pumping from _____
Sump, offset wall, unobstructed channel, etc.
 - Diversion will be by gravity, the diverting dam being 8 feet in height (stream bed to level of overflow); 30 feet long on top; and constructed of concrete
Concrete, earth, brush, etc.
 - The storage dam will be _____ feet in height (stream bed to overflow level); _____ feet long on top; have a freeboard of _____ feet, and be constructed of _____
Concrete, earth, etc.
- Storage Reservoir two 500,000 gallon steel tanks for regulation and fire protection.
Name
 The storage reservoir will flood lands in _____
Indicate section or sections, also 40-acre subdivisions unless shown upon map
 It will have a surface area of _____ acres, and a capacity of _____ acre-feet.
NOTE.—In case of insufficient space for answers in form, attach extra sheets at top of page 3 and cross reference.

FORM 1

8. Conduit System (describe main conduits only)

(a) Canal, ditch, flume: Width on top (at water line) _____ feet; width at bottom _____ feet; depth of water _____ feet; length _____ feet; grade _____ feet per 1,000 feet; materials of construction _____
Cross out two not used
 Earth, rock, timber, etc.

(b) Pipe line: Diameter See supplement inches; length _____ feet; grade _____ feet per 1,000 feet; total fall _____ feet; kind _____
Riveted steel, concrete, wood-stave, etc.

Note.—If a combination of different sizes or kinds of conduit is to be used, attach extra sheets with complete description, also show location of each clearly on map.

9. The estimated capacity of the diversion conduit or pumping plant proposed is 2.06 cubic feet per second
State cubic feet per second or gallons per minute

The estimated cost of the diversion works proposed is \$261,000

Give only cost of intake, or headworks, pumps, storage reservoirs and main conduits described herein

Completion Schedule

10. Construction work will begin on or before July 1961 (Land acquisition and construction plans are now in progress)

Construction work will be completed on or before July 1966

The water will be completely applied to the proposed use on or before about July 1971

Description of Proposed Use

11. Place of Use. See supplement

State 40-acre subdivisions of the public land survey. If area is unsurveyed indicate the location as if lines of the public land

survey were projected. In the case of irrigation use state the number of acres to be irrigated in each 40-acre tract, if space permits. If space does not permit listing of all 40-acre tracts, describe area in a general way and show detail upon map.

Do (es) applicant (s) own the land whereon use of water will be made? Yes Jointly? _____
Yes or No Yes or No

If applicant does not own land whereon use of water will be made, give name and address of owner and state what arrangements have been made with him.

12. Other Rights. Describe all rights except those on file with the State Water Rights Board under which water is served to the above named lands.

Nature of Right (riparian, appropriative, purchased water, etc.)	Year of First Use	Use made in recent years including amount if known	Season of Use	Source of Other Supply
1. <u>See Supplement</u>				
2. _____				
3. _____				
4. _____				

Attach supplement at top of page 3 if necessary.

13. Irrigation Use. The area to be irrigated is _____ acres.
State net acreage to be irrigated

The segregation of acreage as to crops is as follows: Rice _____ acres; alfalfa _____ acres; orchard _____ acres; general crops _____ acres; pasture _____ acres.

Note.—Care should be taken that the various statements as to acreage are consistent with each other, with the statement in Paragraph 11, and with the map.

The irrigation season will begin about _____ and end about _____
Beginning date Closing date

14. Power Use. The total fall to be utilized is _____ feet.

Difference between nozzle or draft tube water level and first free water surface above
 The maximum amount of water to be used through the penstock is _____ cubic feet per second.

The maximum theoretical horsepower capable of being generated by the works is _____ horsepower.
Second feet $\times$ fall $\div$ 5.5

The use to which the power is to be applied is _____
For distribution and sale or private use, etc.

The nature of the works by means of which power is to be developed is _____
Turbine, Pelton wheel, etc.

The size of the nozzle to be used is _____ inches.

The water will be returned to _____ in _____ of _____
Name stream State 40-acre subdivision

Sec. _____, T. _____, R. _____, B. & M. _____

SUPPLEMENT

8. (b) Pipeline

Main pipeline from diversion to reservoir to be 2000 lin. ft. of 8-inch diameter pipe with grade 26.3 feet per 1000 feet. Mains from reservoir to places of use will be 20,000 lin. feet of 4-inch to 8-inch diameter pipe.

11. Place of Use

Those federally-owned portions of Sections 16, 17 and 18, T3S, R20E and Section 13, T3S, R19E, MD B&M, which have been established as an Administrative Site, outside of Yosemite National Park, under the Act of September 2, 1958 (72 Stat. 1772).

12. Other Rights

Water is served to the above named lands under the following rights:

A. Water has been used for domestic, irrigation, stock watering, mining and milling and power by riparian owners on the following patented tracts acquired by the United States:

(All in T 3 S, R 20 E, Md B&M)

<u>Location</u>	<u>Acres</u>	<u>Patantee</u>	<u>Patent No.&Date</u>	<u>Recorded</u>
SW 1/4 NW 1/4 Sec. 16)	160	Leonidas G. Wharton	Homestead Cert.	Stockton
S 1/2 NE 1/4 Sec. 17)			No. 1578, Aug.	Vol. 4
SE 1/4 NW 1/4 Sec. 17)			1, 1884	Page 460
SE 1/4 NW 1/4 Sec. 18)	160	Oliver W. Ward	Homestead Receipt	
SW 1/4 NE 1/4 Sec. 18)				
NW 1/4 SE 1/4 Sec. 18)				
NE 1/4 SW 1/4 Sec. 18)				
N 1/2 SW 1/4 Sec. 17)	160	Augustus H. Ward	M.B.L. Warrant	Warrant
SW 1/4 NW 1/4 Sec. 17)				
NE 1/4 SE 1/4 Sec. 18)				
			No. 80860, Oct.	Vol. 1130
			16, 1890	Page 214

The above patented lands were acquired by the El Portal Mining, and significant portions were leased to residents of what has since constituted the El Portal community. The United States has acquired the lands subject to the leases until they expire, together with those riparian water uses which have been made.

SUPPLEMENT

B. The United States acquired with the purchase of El Portal Mining Company property certain appropriative rights established by use under the following Mariposa County filings:

<u>Date of Filing</u>	<u>Stream</u>	<u>Appropriator</u>	<u>Point of Diversión</u>	<u>Place of Use</u>	<u>Recorded Vol. Page</u>
Jan. 22, 1880	Merced R.	Hennessey & Morrison	In NE1/4SE1/4 Sec. 18	(NE1/4SE1/4Sec 18 (NW1/4SW1/4Sec 17	1 38
Apr. 14, 1884	Merced R.	Wharton & Utter	In SW1/4NW1/4 Sec. 16	(SW1/4NW1/4Sec 16 (S1/2NE1/4 Sec 17 (SE1/4NW1/4Sec 17	1 84
Feb. 27, 1888	Crane Cr.	O. W. Ward	In NW1/4NW1/4 Sec. 16	(SW1/4NW1/4 Sec.16 (S1/2 NE1/4 Sec.17 (SE1/4NW1/4 Sec.17	1 123

The water to which these rights apply is currently used for domestic purposes by lessees at El Portal and is water also covered by the riparian rights of the United States.

The application for the appropriation of water of Moss Creek herewith submitted is for water supplemental to that used under appropriative rights originating with the above county filings.

15. Municipal Use

The El Portal area has been acquired by the United States as an operating base and administrative unit to serve Yosemite National Park. Government and concessioner facilities as listed below including certain operations now based in Yosemite Valley, and including residences, community and commercial establishments and utility services will be supplied with water under this application.

Administrative Offices
Utility Shops
Warehouses
Fire Station
Schools
Medical Center

Residences	}	Estimated permanent population
Apartments		1966 700 people
Bermitory		1971 900 "
Trailer Park		1976 1100 "

Mess Hall
Community Center
Recreation Hall, Swimming Pool, Park, Vegetable Garden

Commercial Center
Picnic Grounds
Barn and Corral
Incinerator
Garbage Can Washing; Vehicle Washing
Sewage Disposal Plant
Dump
Other Facilities

The estimated average daily consumption by the above facilities during the month of maximum use at the end of each five-year period is as follows:

<u>Year</u>	<u>Gallons per day</u>	<u>Cubic Feet per Second</u>
1966	600,000	0.93
1971	800,000	1.24
1976	1,000,000	1.55

Continued growth is expected beyond 1976.

In addition to the above, residents under government lease in the existing community of El Portal with a present population of 300 will continue to be supplied by a system diverting from Crane Creek and occasionally by pumping from the Merced River.

DO NOT WRITE IN THIS SPACE
ATTACH EXTRA SHEETS HERE

15. Municipal Use. This application is made for the purpose of serving the El Portal
Name city or cities, towns or towns. Urban areas only
operating base for Yosemite National Park having a present population of see supplement
see supplement

The estimated average daily consumption during the month of maximum use at the end of each five-year period until the full amount applied for is put to beneficial use is as follows:

See supplement

16. Mining Use. The name of the mining property to be served is _____
Name of claim
 _____ and the nature of the mines is _____
Gold placer, quartz, etc.

The method of utilizing the water is _____

It is estimated that the ultimate water requirement for this project will be _____
Cubic feet per second, gallons per minute. State basis of estimate

The water will be polluted by chemicals or otherwise _____
Explain nature of pollution, if any
 and it will be returned to _____ in _____ of
Name stream State 40-acre subdivision

Sec. _____, T. _____, R. _____, B. & M. _____

17. Other Uses. The nature of the use proposed is _____
Industrial, recreational, domestic, stockwatering, fish culture, etc.

State basis of determination of amount needed. _____
Number of persons, residences, area of domestic lawns and gardens, number and kind of stock, type of industrial use, and unit requirements.

General

18. Are the maps as required by the Rules and Regulations filed with Application? Yes
Yes or No If not, state specifically the time required for filing same _____

19. Does the applicant own the land at the proposed point of diversion? Yes
Yes or No If not, give name and address of owner and state what steps have been taken to secure right of access thereto. _____

20. What is the name of the post office most used by those living near the proposed point of diversion?
El Portal, California

21. What are the names and addresses of claimants of water from the source of supply below the proposed point of diversion?
Merced Irrigation District, P.O. Box 759, Merced, California
Others unknown.

Nothing herein shall constitute a waiver of other rights the United States may have to the same water.

UNITED STATES OF AMERICA

[SIGNATURE OF APPLICANT]

By: John C. Preston
Superintendent, Yosemite National Park

APPLICANT MUST NOT FILL IN BLANKS BELOW

PERMIT No. _____

This is to certify that the application of which the foregoing is a true and correct copy has been considered and approved by the State Water Rights Board SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed
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 _____ 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 _____
5. Complete application of the water to the proposed use shall be made on or before _____
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.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

STATE WATER RIGHTS BOARD

Number of Documents in Docket	13		
Documents Dated from	6/23/1959	to	6/23/1959
Docket Compiled:	7/29/2011		