

BEFORE THE DIVISION OF WATER RIGHTS  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA

IN THE MATTER OF APPLICATION NUMBER 1262 OF G. J.  
WENTZELL TO APPROPRIATE FROM NORTH FORK OF DEEP  
CREEK IN MODOC COUNTY FOR AGRICULTURAL PURPOSES

DECISION NO. 1262 D 38

Decided February 5, 1925

APPEARANCES AT HEARING HELD May 5, 1924

For Applicant: C. S. Baldwin, Attorney at Law

For Protestants: Messrs. K. Wylie and O. Gibbons, Attorneys  
for Luman Faskett, A. L. Baty, D. L. Shirk,  
O. S. Gooch, G. W. Gooch, F. E. Bush and  
Curtis Lusk  
D. B. Robnett, Attorney for F. E. Bush, E. R.  
Tyeryar, B. H. Simson, D. J. and Mary L. Benner,  
W. B. Bordwell and Street Brothers

Examiner: Edward Hyatt, Jr., Chief of Division of Water Rights

NO APPEARANCE: F. D. Gooch

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On April 28, 1919, G. J. Wentzell filed his application Number 1262 for a permit to appropriate 3 cubic feet per second from North Fork of Deep Creek, in Modoc County for irrigation of 170 acres. Thereafter protests were separately filed by Luman Faskett, A. L. Baty, D. L. Shirk, B. H. Simson, D. J. and Mary L. Benner, E. R. Tyeryar and F. E. Bush. A joint protest was filed by Messrs. O. S., G. W. and F. D. Gooch.

This application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested was set for a public hearing at the Court House, Alturas, at 9:00 o'clock A.M. on May 5, 1924. Of this

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hearing applicant and protestants were duly notified. Appearances were made by applicant and all protestants of record except by F. D. Gooch noted above. In addition, Curtis Lusk as successor to a partial interest of Luman Faskett, W. B. Bordwell and Street Brothers appeared as protestants.

Protestant F. D. Gooch did not appear at the hearing to press his protest filed jointly with O. S. and G. W. Gooch. These latter two appeared and set forth claims to the entire Gooch interest in the waters of North Fork of Deep Creek. It therefore appears that the protest of F. D. Gooch has not been abandoned but that he was represented in the claims presented by O. S. and G. W. Gooch.

The allegations of all remaining protestants are similar. They claim the right to the use of all of the water of the North Fork of Deep Creek and that they have used all of the flow of said fork during the irrigating season for many years prior to 1914 and that during the past twelve years there has been insufficient water to properly irrigate their lands.

The water of the South Fork of Deep Creek is involved in this matter as well as the water of the North Fork inasmuch as a total area of approximately 1038 acres is irrigated by protestants solely from Deep Creek below the confluence of the two forks. The total area irrigated solely from the South Fork by protestants appears to be about 382 acres. In addition, an area of approximately 73 acres is irrigated partly from the creek below the confluence of the forks. No refutation was made as to these acreages as set forth in the transcript.

The judgment and decree dated September 29, 1923, in the case of Luman Faskett, et al, vs. G. J. Wentzell, in the Superior Court of the State of California in and for the County of Modoc, protestants' Exhibit A, adjudicates to the parties therein the waters of North Fork of Deep Creek to the extent of 8.8 cubic feet per second during the irrigating season plus 0.16 cubic foot per second during April and 0.12 cubic foot per second during May. This decree represents the only claim to the use of water from the North Fork above its confluence with the South Fork. The existence and validity of this claim was admitted by applicant and he stated at the hearing that he did not wish to attack or dispute same in his contention as to the existence of unappropriated water in the North Fork.

It appears from the transcript of the hearing that the flow of the South Fork of Deep Creek is between 1/10 and 1/3 greater than the flow of the North Fork. Using the stream flow records of the North Fork collected under the supervision of this Division, taking into consideration the water adjudicated under the above mentioned judgment and the rising water of  $\frac{1}{2}$  second foot on the F. E. Bush property, and assuming the South Fork 1/10 greater than the North Fork the total amount of water available for the lands of protestants not included in said judgment, from March first to May thirty-first for the period 1920 to 1922 inclusive, in cubic feet per second is indicated in the following table:

Year	MARCH			APRIL			MAY		
	Minimum	Maximum	Mean	Minimum	Maximum	Mean	Minimum	Maximum	Mean
1920	1.1	7.0	2.6	2.7	12.1	6.2	2.0	8.5	6.1
1921	7.0	42.1	17.1	6.6	12.9	8.3	7.8	18.3	10.1
1922	2.0	8.5	4.5	4.2	39.8	17.6	18.3	49.4	31.5

If all of the above water supply had been used to irrigate all of the above acreage of protestants exclusive of that acreage included in the judgment, it is found that the number of acres that would have been irrigated, per cubic foot per second continuous flow in monthly periods, would have been as follows:

Year	March	April	May
1920	575	241	245
1921	87	180	148
1922	332	85	47

The above tabulation shows the number of acres that it would have been necessary to irrigate with each cubic foot per second of water available in monthly periods, in order to irrigate the entire acreage of protestants exclusive of that acreage included in the judgment mentioned above. It is obvious from the table that the water supply was entirely inadequate except during May 1922. Due to the flashy character of the runoff of Deep Creek, a large amount of water must be used whenever available in order that the continuous flow diversion will result in a depth of water applied to the land which is customary for the successful growth of crops.

It appears from the transcript of hearing that there was a serious shortage of water in Deep Creek during 1923 and 1924. It appears that during the past twelve years water was observed to reach Middle Lake through the channel of Deep Creek during only two irrigating seasons. The periods when the waters of Deep Creek in the past twelve years reached Middle Lake were infrequent and were of short duration due to alternate freezes and thaws which caused a flashy runoff. Under these conditions, applicant would be inviting litigation if an attempt were made to skim off the surplus at the peak of the oc-

casional large freshets on account of the difficulties that would be encountered in observing the vested rights.

Applicant brought forth a claim that his alfalfa lands of a gravelly texture thawed earlier in the Spring than the meadow lands of a clay texture of protestants and consequently applicant's lands were usually ready to receive irrigation while a large portion of protestants' lands were still frozen. It appears from the transcript of hearing that there is no material difference between the date of thawing of the gravelly alfalfa lands and that of the clay meadow lands in the vicinity of Deep Creek.

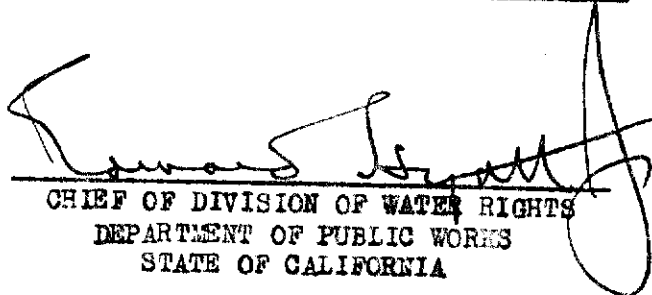
It is therefore concluded that there is (a lack of unappropriated water in sufficient quantity to justify issuance of a permit to applicant: ) and that it would be unreasonable and unwarranted to issue a permit to applicant upon the ground that there might be some water available during infrequent periods of short duration.

O R D E R

Application Number 1262 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said application Number 1262 be rejected and cancelled.

Dated at Sacramento this fifth day of February 1925.

  
CHIEF OF DIVISION OF WATER RIGHTS  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA