

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

oOo

In the Matter of Application Number 3776 of Ysabel L.
Young to Appropriate from Calaveras River in San Joaquin County
for Agricultural Purposes

oOo

DECISION NO. 3776 D 46
Decided March 17 , 1925

APPEARANCES AT HEARING HELD MARCH 2, 1925

For Applicant - Eugene F. Goodrum, of Von Detten, Henry &
Goodrum
For Protestants - W. C. Fox of Chickering & Gregory, for
Hunt Brothers Packing Company. No
appearance for A. N. Davis, et al.
Examiner - Edward Hyatt, Jr., Chief of Division of Water
Rights

oOo

O P I N I O N

Application Number 3776 was filed by Ysabel L. Young on
February 29, 1923. It is an application to appropriate 1.25 cubic feet
per second of unappropriated water from March 1st to October 30th, subject
to existing rights from Calaveras River, at a point in the NW $\frac{1}{4}$ of the
NW $\frac{1}{4}$ of Section 4, Township 2 North, Range 9 East, M.D.B. & M. for the
purpose of irrigating 125 acres of alfalfa and other general crops.

The application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, was duly advertised, and being protested was set for a public hearing at 707 Forum Building, Sacramento, at 11 o'clock a.m. on Monday, March 2, 1925.

The application was protested by Hunt Brothers Packing Company - who were represented at the hearing by W. C. Fox of the office of Chickering & Gregory, Attorneys at Law, San Francisco,- and by A. N. Davis, et al, who, although duly notified, were not represented at the hearing.

It appears that Hunt Brothers are the owners of some 334 acres irrigated by diversions from Mormon Slough, a branch of Calaveras River, at a point below that described in this application No. 3776; that these appropriations are made both under claim of riparian right and notice posted December 15, 1909 with subsequent use in accordance with the Civil Code sections of California then in force; that there are periods during each and every year when the flow in Calaveras River and Mormon Slough is inadequate to supply the needs of protestant Hunt Brothers Packing Company under these claimed rights of appropriation; and that therefore this protest was filed as a means of insuring protestant against invasions by applicant of the claimed rights of protestant at those times when there was an insufficient supply to satisfy both needs.

It appears that A. N. Davis, et al, have in the past irrigated some 320 acres of walnut trees by diversion from Calaveras River at a

point close to that of applicant; that such diversions are made both under claim of riparian right and under Permits No. 1262 and No. 1263 of the Division of Water Rights; and that in this case also the protest was filed as a means of insuring protestant against invasions by the applicant of the claimed rights of said protestant during the periods of water shortage as noted above.

It appears that under claim of riparian right the applicant and his predecessors in interest have since 1912 been irrigating a portion of the lands described as those to be irrigated under this application; that from 1912 to 1920 some 100 acres were then irrigated; and that since 1920 some 50 acres have been so irrigated.

Applicant was advised and apparently has a clear understanding that the rights to be obtained under this application, and any permit issued thereon will have a priority as of the date of filing this application, to wit, February 29, 1923; that the rights so initiated will not in any way relate back to the prior rights claimed by applicant; and that the rights so initiated will in fact be expressly subject to all prior and vested rights.

Available records of the United States Geological Survey clearly establish the fact that there are frequently periods of very large flow in Calaveras River. Studies heretofore made by the Division of Water Rights in connection with Application No. 860 of Wm. S. Dennis, to appropriate from Calaveras River indicate that during years of normal precipitation it may be expected there will be a surplus of water in said river available for irrigation use until about June 1st. Applicant testified that during some years in the past he had irrigated in July.

The protestants in this case have in fact made no denial that there is an available surplus of water subject to appropriation in the earlier portion of the irrigation season.

At the time of examination of David E. Young on behalf of the applicant during the hearing it appeared that applicant had in mind not only obtaining a new and additional right to the use of the same water now claimed as a riparian but also to establish a special claim of right to a portion of such flood waters as may hereafter be stored for flood control purposes and subsequently released to flow down Calaveras River. The application is itself silent upon this point, however, and contains no reference to the use of such water nor did it appear at the time of hearing that applicant had entered into any agreement with the parties proposing such flood control storage looking to the use of such water. We do not therefore feel that this hope or expectation of the applicant to share in the use of the proposed flood control storage need enter into the considerations which must govern our actions in this case.

O R D E R


Application No. 3776 for a permit to appropriate water from Calaveras River having been filed with the Division of Water Rights, as above stated, it having been completed, and protests having been filed, and a public hearing having been held, and the Division of Water Rights being now fully informed in the premises,

IT IS HEREBY ORDERED that said application No. 3776 be approved and that a permit be granted to the applicant subject to such

of the usual terms and conditions as may be appropriate and the following special terms and conditions to wit:

"The amount appropriated shall be limited to the amount which can be beneficially used and shall not exceed one and one quarter (1.25) cubic feet per second from about March 1st to about October 30th of each season when there is unappropriated water available at the proposed point of diversion, the season of unappropriated water being in years of normal flow from about December 1st to about June 1st."

Dated at Sacramento, California, this 17th day of March,
1925.



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

ENB :HA