

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

oOo

In the matter of Application 7217 of Harry Ramsden to appropriate water from an Unnamed Gulch tributary to Middle Fork of Yuba River in Nevada County for Irrigation and Domestic Purposes.

oOo

DECISION A. 7217 D - 363

Decided - *October 16, 1934*

oOo

APPEARANCES AT HEARING HELD AT NEVADA CITY, OCTOBER 6, 1932.

For Applicant

Harry Ramsden

E. H. Armstrong

For Protestant

San Juan Mutual Water Association

W. E. Moulton

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer for Harold Conkling, Deputy in Charge of Water Rights, Division of Water Resources, Department of Public Works, State of California.

oOo

O P I N I O N

GENERAL FEATURES OF APPLICATION 7217

Application 7217 was filed by Harry Ramsden on March 28, 1932, for an appropriation of 9.5 acre feet per annum from an unnamed gulch tributary to the Middle Fork of the Yuba River in Nevada County to be diverted to storage throughout the entire year at a point within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T 17 N, R 8 E, M.D.B.&M. The capacity of the reservoir which has been already constructed is 9 $\frac{1}{2}$ acre feet. It is proposed to release

water for irrigation purposes from April 1st to November 1st of each season and throughout the entire year for domestic and stock watering purposes. The lands to be irrigated comprise 20 acres within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 7 and 10 acres within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 7, T 17 N, R 8 E, M.D.B.&M.

Application 7217 was protested by the San Juan Ridge Mutual Water Association.

PROTEST

The San Juan Ridge Mutual Water Association claims a right to the waters which applicant seeks to divert by virtue of riparian ownership and the fact that Charles Weinman and Elizabeth Ferguson have used the water from the reservoir for fifty years, that a Mr. Green has used the water for three years, that Dr. Sawyer has used the water for seven years and that C. H. Jones and Chas. Collins until recently have also used water and alleges in effect that the Association owns or controls the reservoir site.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 7217 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on October 6, 1932, at 10:00 o'clock A.M. in Supervisors Room, Court House, Nevada City, California. Of this hearing applicant and protestant were duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

The Morris reservoir in which applicant proposes to store water is located in a small ravine or gulch. Under ordinary conditions there is no water present in the gulch but during periods of rainfall water is col-

lected from the adjacent watershed into the reservoir from which it is siphoned for irrigation and domestic purposes.

GENERAL DISCUSSION

The record indicates that the Morris Reservoir in which the applicant proposes to store water was constructed many years ago on what is known as Lot 13 of Block 3 of the "official survey of the town of Sebastopol" filed in the office of the County Recorder of Nevada County on December 31, 1874, which lot is shown to have an area of 8.95 acres and is well within the boundary lines of Lot 12 of the same official survey of the town of Sebastopol. The reservoir is situated near the center of the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T 17 N, R 8 E, M.D.B.&M. which last named 40 acre tract was transferred by Walter E. Parsons and Margaret E. Parsons to applicant and his wife.

The records of the U. S. Land Office indicate that on February 3, 1877, a patent was issued covering the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6 and other adjacent lands to one John Caldwell in trust for the occupants of the townsite of Sebastopol.

Upon Lot 13 of the official map of the townsite referred to above was the designation "E.L. Co. Reservoir" and upon Lot 12 was the designation "C.E. Taber" from which it might be inferred that at the time the survey was made (i.e. December, 1874) Lot 13 was probably in possession of the Eureka Lakes Mining Company and Lot 12 was in the possession of one C. E. Taber, subsequently transferred to one Parsons.

The Eureka Lakes Mining Company, it appears, was at that time a mining company operating in this area and was using the reservoir as a regulator. Subsequently it appears that the properties of the Eureka Lakes

Mining Company came into possession of the Eureka Lake and Yuba Canal Company Consolidated, a public utility engaged in the business of distributing and selling water for domestic and irrigation purposes on the so called "San Juan Ridge" between the South and Middle Forks of the Yuba River in Nevada County.

The system consisted of three parallel ditch properties, the Milton ditch, through which water was diverted from the North Fork of the Yuba River, the Eureka Lake and Yuba Canal Company Consolidated ditch through which water was diverted from French and Faucherie Lakes and the Bloomfield ditch through which water was diverted from Bowman Lake.

The Eureka Lake and Yuba Canal Company, Consolidated, operated at a loss for many years and on June 3, 1927, after hearing, the Railroad Commission of the State of California authorized the discontinuance of its service as a public utility.

Since the abandonment of the service by the Eureka Lake and Yuba Canal Company, Consolidated, a few of the water users under the name of the San Juan Water Users Association used water from the Morris reservoir, one Charles Weinman acting as their agent.

It appears that no ditches or water rights were purchased by the Association and the ditches which were a part of the water system of the Eureka Lake and Yuba Canal Company, Consolidated, were not maintained as a supply to the reservoir, the only water which was available being the runoff from local watersheds in the immediate neighborhood of the reservoir. In fact it appears that no water from the original sources of supply has been collected in the Morris reservoir since abandonment of service by the Eureka Lake and Yuba Canal Company, Consolidated.

The use was continued by Weinman and his associates until a survey was made by one Lacey which indicated that the reservoir lay entirely within the property deeded to applicant by Parsons. Applicant then posted "No trespass" signs on the property and on March 28, 1932, applied to the Division of Water Resources for a water right.

The Railroad Commission was unable to inform this office as to the final disposition of the physical properties of the Eureka Lake and Yuba Canal Company, Consolidated, but stated that it was understood at the time the matter was heard that the consumers would be permitted to operate the system if they so desired, and that it was also understood that the Company wished to retain its ownership in water rights and physical properties in order that at some future date it might, if considered feasible, use these facilities in providing water for the mining interests on the San Juan Ridge.

The Railroad Commission also informed this office that it had been held that when, pursuant to an order authorizing abandonment, a company ceases operation as a public utility, the Commission loses all control over the acts of the Company or of its property and cannot determine any of the questions which might arise thereafter respecting the rights or claims of the stockholders, creditors or former consumers. In this connection the following citations were directed to our attention:

Mokelumne River P. & W. Co. 24 C.R. C. 932
L.A. & S. D. Beach Ry. Co., 16 C.R.C. 394
Mojave Northern Ry. Co., 26 C.R.C. 66

Protestants represent that there was some sort of an agreement between the mining company and the residents on the San Juan Ridge by which the latter were permitted to use the canals, flumes, ditches and reservoirs

of the Company and in support of this contention introduced a letter dated September 14, 1932, from C. H. Munro, representing the successors in interest of Eureka Lake and Yuba Canal Company, Consolidated, to Dr. W. P. Sawyer, a member of the San Juan Ridge Mutual Water Association which read in part as follows: (See Protestants' Exhibit No. 1)

"As you may know, Mr. E. B. Dudley of North Bloomfield and his associates leased the canals, flumes, ditches and reservoirs from the former owners in 1927 and I believe formed the San Juan Water Users Association for the purpose of supplying water from the ditches for domestic and irrigation purposes."

A report of a search of title made for the applicant indicated that the official records of Nevada County did not disclose that applicant had any right in the reservoir and recommended that "an inspection of the premisesshould be made for existing right of ways for roadways, ditches, flumes and other easements of necessity."

Under date of November 1, 1932, this office informed the applicant that it was not the function of the Division to determine matters of this kind where the ownership of property rights were involved and therefore action would be withheld upon Application 7217 for a reasonable time in order that the parties in interest might proceed before a court of competent jurisdiction to determine the ownership of the property in question.

On May 2, 1933, applicant brought an action before the Superior Court of Nevada County seeking to quiet title to certain lands in Nevada County including Lot 12 of Block 3 of the Sebastopol Townsite but excluding Lot 13 of said Block 3 upon which the reservoir is located.

On or about July 1, 1934, the court decided that the claims of the defendants were without legal basis inasmuch as the pipe line easements over the lands of the applicant had been lost by non user and a decree was

entered quieting plaintiff's title to the land. No appeal has been made to a higher court and the decree is now final.

It appears therefore that although the ownership of Lot 13 of Block 3 has not been decided, this lot is entirely surrounded by Lot 12 of Block 3, the title of which is vested in the applicant and therefore he alone has right of access to the reservoir site on Lot 13 of Block 3. Moreover the reservoir has been used by applicant ever since he acquired the property from Mr. Parsons and Application 7217 was filed on March 28, 1932, for a right to use water which cannot be claimed under the rights acquired by the Eureka Lake and Yuba Canal Company, Consolidated to appropriate from North Fork of Yuba River, French and Faucherie Lakes and Bowman Lake.

The uses to which applicant proposes to put the water are useful and beneficial ones and as it appears that applicant is in a position to utilize water which is not accessible to any other party it is the opinion of this office that Application 7217 should be approved subject to the usual terms and conditions.

O R D E R

Application 7217 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 7217 be approved 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 *twentieth* day of *October*, 1934.

EDWARD HYATT, State Engineer

BY *Harold Conkeling*

RECEIVED 1934

1934

RECEIVED