

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

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In the Matter of Application 11168 of Clifton G. Potter  
to Appropriate Water from an unnamed Spring  
tributary to West Fork of Carson River  
in Alpine County for Domestic Use.

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Decision A. 11168 D. 542

Decided October 20, 1946.

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APPEARANCES AT INFORMAL HEARING CONDUCTED BY THE  
DIVISION OF WATER RESOURCES ON AUGUST 24, AND  
SEPTEMBER 2 TO SEPTEMBER 4, Inclusive, 1946

For Applicant

Clifton G. Potter

In Propria Persona

For Protestant

H. F. Dangberg Land & Livestock Company

George L. Sanford

For Harriett Miller, an interested party

G. F. Gifford

For Division of Water Resources

Harrison Smitherum, Supervising Hydraulic Engineer, for Gordon Zander, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, State of California.

O P I N I O N

General Description of Proposed  
Project

When Application 10644 was inspected for license action, it was found

that Applicant Potter was using beneficially more water for domestic purposes than the 15 gallons per day for which that application was approved and in order to provide for the additional water required, Application 11168 was filed with the Division on October 5, 1945 for 200 gallons per day to be diverted from the same spring and to be used at the same place of use as described in Application 10644. The spring is within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 31 T. 11 N, R. 19 E, M.D.B. & M. The place of use is within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 25 T. 11 N, R. 18 E, M.D.B. & M. It is proposed to use the water for domestic purposes at a summer residence for four persons and for the irrigation of 400 square feet of garden and a few shrubs.

#### P R O T E S T

Application 11168 was protested by H. F. Dangberg Land & Livestock Company, a corporation. Protestant claims that it has rights to divert water from the West Fork of the Carson River from various points on the river below applicant's proposed point of diversion, which rights are based upon riparian ownership and appropriative rights initiated prior to December 19, 1914, the effective date of the Water Commission Act. The protestant claims that among the lands which it irrigates in Nevada are the following:

Section 36; E $\frac{1}{2}$  Section 35; Section 26; Fractional Section 23  
T. 13 N, R. 19 E, M. D. B. & M.

and that among the lands irrigated in California are the following:

Lots 1-4 inclusive, 8, 10-14 inclusive, 17-20 inclusive,  
W $\frac{1}{2}$  of Lots 7 and 9, E $\frac{1}{2}$  of Lot 16, of Section 13; Lots 1, 2,  
W $\frac{1}{2}$  of Lot 3, 4, 7, E $\frac{1}{2}$  of Lot 8, 9, 10 of Section 24, all in  
T. 11 N. R. 18 E, M. D. B. & M.

Protestant states that there is insufficient water available in the West Fork of the Carson River with which to irrigate the lands which it is

entitled to irrigate and to provide water for stock watering purposes, that during each year there is a shortage of water during the months of July to October, inclusive and that there is never sufficient water to supply the vested rights on the river.

Protestant also states that although the amount of water which applicant seeks to appropriate is small, yet other diversions of similar amounts would no doubt be <sup>made</sup> /should Application 11168 be approved, thereby setting a precedent for small diversions which when accumulated would seriously affect the water users on the stream <sup>and</sup> /alleges in effect that to approve Application 11168 would result in injury to the protestant.

Protestant believes that the land upon which applicant proposes to use the water is private land which is held under a long term lease by the company and that applicant has not obtained permission to use the water on the land.

#### FIELD INVESTIGATION

Stipulations to an informal hearing under Regulation 12 B (Now Section 733b) of the Rules and Regulations of the Division of Water Resources having been signed by the applicant and the protestant and having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on August 24, 1946 in the company of G. F. Gifford, representing Harriet Miller who has Application 10480 before this office to appropriate water from the same spring and is co-owner with Applicant Potter in the diversion works. The applicant was interviewed on September 2, and the protestant's attorney on September 3 and 4, 1946.

Records Relied Upon In Arriving At a Decision

- (1) Application 10480 of Harriet May Miller (entire file)
- (2) Application 10644 of Clifton G. Potter (entire file)
- (3) Application 11168 of Clifton G. Potter (entire file)

West Carson River Adjudication

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Particular reliance is placed upon the report of Mr. Smitherum who conducted the informal hearing.

### General Discussion

The source of the proposed appropriation is a grass and willow covered seepage area extending down a steeply sloping hillside to the West Fork of Carson River. At the upper end of the area, a wooden header box has been sunk into the ground and several short ditches have been dug in which water is collected and conveyed to the box. Any excess water which reaches the box is spilled through a short length of 3 inch diameter pipe and finds its way to the river. At the lower end of the seepage area similar ditches have been dug by means of which the water is collected and discharged into the river. A flow of 10,000 gallons per day has been developed at the header box, from which applicant claims that a greater flow reaches the river than prior to the development.

The diversion system was installed by Harriet Miller in connection with her Application 10480. Clifton G. Potter subsequently acquired an interest in the system which is now being used in connection with his Application 10644 and which he proposes to use in connection with his Application 11168.

A 3/4 inch diameter galvanized pipe leads from the header box to an elevated 200 gallon tank at the Miller cabin. The Potter cabin is served through a pipe of the same diameter which taps the main line upstream from the Miller tank. The relative elevations of the Miller and Potter outlets are such that Potter receives little or no water when Miller's taps are open.

The capacity of Potter's system when Miller's taps are closed is approximately 2.0 gallons per minute or 2880 gallons per day. Water is now being used under Application 10480 at a rate of 25 gallons per day and under Application 10644 at a rate of 15 gallons per day. The Potter appropriation of 15 g.p.d. is barely sufficient for household uses and the additional 200 gallons

per day is necessary for the irrigation of applicant's garden and shrubs.

According to the applicant the water which he seeks to appropriate has been largely developed by the construction of the ditches in the seepage area by means of which water has been salvaged which otherwise would have been lost by plant transpiration and evaporation if allowed to spread over the grass and brush covered area and as stated above he believes that the actual flow which reaches the river has increased as a result of the development.

In the protest certain lands in California and others in Nevada are described. Protestant alleges that these lands are irrigated from the West Fork of Carson River and that applicant's proposed diversion from a spring which is tributary to said river will injure the protestant.

Protestant's California lands lie in Hope Valley, above the point where the waters of the spring may enter the river and therefore will not be affected by any diversion which may be made of the waters of the spring. These lands apparently receive their water from Willow Creek, a tributary of West Fork of Carson River which enters the river above the spring, rather than from the river itself.

Protestant's Nevada lands are situated in Carson Valley some twenty miles downstream from the point where the waters of the spring may enter the river. Assuming that the entire flow of the spring which is approximately 10,800 gallons per day, should reach the river, it is highly probable that, due to losses in transportation through twenty miles of stream channel, little or none of it would reach the lands of the protestant. Furthermore, during each alternate week from July 1, to October 1, of each season, which is the period of deficiency alleged by protestant, the entire flow of the West Fork of Carson River, originating in California is diverted by California water right owners

under their legal rights as set forth in the decree entered on November 27, 1905 by the Circuit Court of the United States - Ninth Circuit, Northern District of California in the case of John Anderson, et al v. Henry Bassman, et al. In these so called California weeks, or for one-half of the deficiency period, protestant would not receive any water from the spring and therefore could not be injured if the entire flow of the spring were diverted. In the alternate Nevada weeks the flow of the river is usually supplemented by large quantities of water released from storage reservoirs owned and operated by the Nevada water right owners for irrigation of their Nevada lands including those of the protestant. Therefore, during the remaining one-half of the deficiency period, injury, if any to the protestants would be highly theoretical, entirely indeterminate and negligible even though the entire flow of the spring was diverted and protestant would suffer no measurable injury during the entire deficiency period by the applicant's diversion of such a small quantity of water as 200 gallons per day.

Contrary to protestant's contention, applicant is the owner of the land described in the application as the place of use.

By letter dated September 5, 1946, protestant's attorney informed this office that the protestant will not further oppose the approval of the application provided that the permit is issued subject to all prior appropriations and vested rights and with the further reservation that the right be reserved to the protestant to shut off or cause to be shut off any water under the appropriation used by the applicant at any time that such water is needed by the protestant under its prior rights.

All permits issued by the Division are issued subject to vested rights and it is believed that this restriction will be entirely sufficient to cover the

reservations requested on behalf of the protestant. Furthermore, the West Fork of Carson River is under the control of a California watermaster during the California weeks and a Nevada watermaster during Nevada weeks. It is the function of these watermasters to regulate the diversions from the stream system in accordance with the legal rights to the use of the waters thereof. Through this service proper legal authority is provided to cause applicant to cease diverting whenever such diversions interferes with vested rights.

#### Summary and Conclusion

While it is possible that a small amount of the water which applicant seeks to appropriate may, if not diverted as proposed, eventually reach the Nevada lands of the protestant some twenty miles below, yet the beneficial use, if any, on these lands will be so small and inconsequential as compared with the much greater benefit which will be derived from the local use of the water that to deny a permit to the applicant based upon a speculative injury which might possibly result from the appropriation will not best conserve the public interest. In view of the lack of positive evidence that injury will result to the protestant in that it will be deprived of sufficient water to irrigate its lands and to water its stock, and that the protestant has consented to the approval of Application 11168 subject to vested rights and to certain other restrictions which may be enforced by the proper legal authorities, it is the opinion of the Division that Application 11168 should be approved subject to such of the usual terms and conditions as may be appropriate.

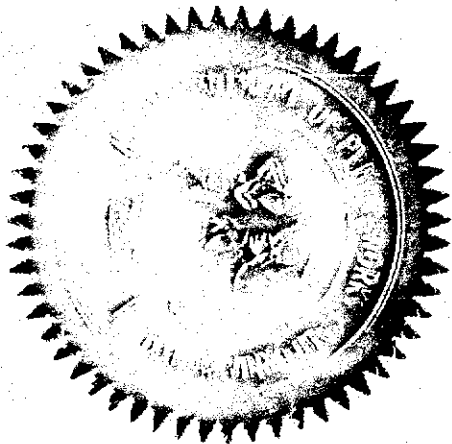


ORDER

Application 11168 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 having been made, a stipulated informal hearing having been held in accordance with Section 733 (b) of the Rules and Regulations of the Division of Water Resources and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that application 11168 be approved and that a permit be issued 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 *20th* day of *October* 1946.



  
Edward Hyatt, State Engineer.