

BEFORE THE DIVISION OF WATER RESOURCES

DEPARTMENT OF PUBLIC WORKS

STATE OF CALIFORNIA

oOo

In the Matter of Application 11256 of El Dorado National Forest to Appropriate Water from Tamarack Flat Creek, Tributary to South Fork of American River, in El Dorado County for Domestic, Recreational and Fire Protection Purposes.

oOo

Decision A. 11256 D. 546

Decided February 28, 1947.

oOo

Appearances at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriation on October 9, 1946.

For Applicant

El Dorado National Forest

Edwin F. Smith

H. B. Miller

For Protestants

William Dreher, Vernon D. Sprock, and

Vernon D. Sprock

Ernest K. Richardson

Ernest K. Richardson

For Division of Water Resources

S. C. Whipple, Associate Hydraulic Engineer, for Edward Hyatt, State Engineer.

O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Application 11256 was filed with the Division of Water Resources on January 10, 1946, by the El Dorado National Forest for a permit to appropriate 40,000 gallons per day to be diverted from Tamarack Flat Creek throughout the

year at a point within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 9, T. 11 N., R. 17 E., M. D. B. & M. for domestic, recreational and fire protection purposes at a Seventh Day Adventist Church Camp within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 9, T. 11 N., R. 17 E., M. D. B. & M. Of the 40,000 gallons per day, applicant proposes to use 20,000 gallons per day for domestic and recreational purposes and 20,000 gallons per day for fire protection.

PROTEST

In a joint protest filed by William Dreher, Vernon D. Sprock and Ernest K. Richardson, these protestants claim riparian rights to the waters of Tamarack Flat Creek and also rights based on "possible prior application, prior adverse user and prescriptive right." They claim that their present use is approximately 7,000 gallons per day which amount will be increased to 82,000 gallons per day when their plans for subdivision and resort purposes have been developed. They allege in effect that there is insufficient water in Tamarack Creek to satisfy the needs of the applicant and the use immediately contemplated by the protestants. They state that at the present time the flow in the creek in July decreases to one half of the spring flow, in the early part of September the flow is reduced to 16% of its normal flow and in the middle of September the lower portion of the creek becomes entirely dry.

Field Investigation

Stipulations to an informal hearing under Regulation 733 (b) of the Rules and Regulations of the Division of Water Resources having been entered into by both the applicant and the protestants and these stipulations having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation on October 9, 1946, by an engineer of the Division, at which representatives of the applicant and protestants

were present.

Records Relied Upon in Arriving at a Decision

In arriving at a decision, reliance is placed on the following:

Application 11256, entire file

Application 11264, entire file

General Discussion

According to the report of the engineer who conducted the investigation of the proposed appropriation, the flow of Tamarack Flat Creek at applicant's proposed point of diversion on October 9, 1946, was approximately 81,000 gallons per day and is fairly well sustained during the summer months being run-off from the upper watershed. On the same date, the flow at protestants' intake about one-quarter mile downstream was estimated as being approximately 97,000 gallons per day. Between the proposed point of diversion and protestants' intake there are three tributaries which were each contributing approximately 16,000 gallons per day at the time of the investigation. These tributaries, however, drain lower levels of the watershed and are not dependable sources of supply during the summer months. According to the Forest Service the flow of Tamarack Flat Creek just above protestants' intake was approximately 98,000 gallons per day on October 22, 1945, and 65,000 gallons per day just below the intake. The year 1945 was considered locally as a year of normal runoff.

Although no actual measurements of the amounts of water used by the protestants were made, it was estimated that the present needs of the protestants should not exceed 3,800 gallons per day.

The northeast quarter of Section 16 is divided by the South Fork of American River to which Tamarack Flat Creek is tributary. The northerly

portion is owned by protestants Sprock and Richardson who propose to build and operate a summer resort including a hotel, 21 cabins and a swimming pool and to subdivide and sell building sites. In fact the hotel is about one-half constructed and they expect to have it in operation in 1947. Construction on the remainder of their project is to be pushed as fast as building material can be procured. These protestants have Application 11264 before the Division seeking an appropriation of 0.05 cubic feet per second (32,500 gallons per day) and 1 acre foot per annum for domestic, recreational and fire protection purposes. The southerly portion is owned by protestant Dreher who has sold about 40 summer home sites and expects to sell about 120 more. Six summer homes have been completed and three more are in the process of construction since the property was subdivided in 1930.

Should both the Sprock-Richardson and Dreher projects be carried to completion, their ultimate requirements may be approximately 59,000 gallons per day. Protestants believe that the requirements will be 82,000 gallons per day within 10 years. The Forest Service predicts that its own use will be completed within five years.

With reference to protestants' claim that their entire property is riparian to Tamarack Flat Creek, it appears from the report of the engineer who investigated the development that a considerable portion of the property lies outside of the watershed of Tamarack Flat Creek. The protestants claim that riparian rights have been reserved to the parcels and lots which have been sold but the Forest Service claims otherwise. Suffice it to say that at least a portion of protestants' property is riparian to Tamarack Flat Creek and the amount which they can presently claim cannot exceed the

present use on the riparian lands which amount is apparently less than 4000 gallons per day.

The issue presented is between lower riparian claimants who commenced use some 25 years ago and are rapidly expanding their use and the Forest Service which is seeking to appropriate water for use on lands above. As Application 11264 of Vernon D. Sprock and Ernest K. Richardson is subsequent to Application 11256 of the Forest Service, it cannot be claimed as a basis of right against the approval of the earlier application, nor is there any merit in protestants' claim of prescription and adverse user as against an upstream appropriator.

Riparian use which is prospective only cannot be urged as a basis upon which to deny the approval of an application and until such a time as the protestants have use for additional water and can actually apply it to beneficial use, the law provides that the water may be appropriated by others.

During a season of normal runoff there is unappropriated water in Tamarack Flat Creek in sufficient quantities to justify the approval of Application 11256 and therefore this application should be approved subject to the usual terms and conditions.

ORDER

Application 11256 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 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 11256 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 23th day of February 1947.


Edward Hyatt, State Engineer

