

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Applications 12961 and 12962 by Boy Scout Memorial Foundation to appropriate water in Tuolumne County from an unnamed stream tributary to the North Fork of Tuolumne River for Domestic Purposes and from the North Fork of Tuolumne River, for Recreational Purposes.

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Decision A. 12961, 12962 D. 627

Decided October 13, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON AUGUST 30, 1949:

C. D. Bartlett and) Robert C. Kirkwood)	Representing the Applicant
Fred M. Wulzen	Protestant
C. D. Bottini	Representing the Protestants Bottini et al.
S. Skeeahan	Assistant Civil Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer

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OPINION

General Description of the Project

Applications 12961 and 12962, both filed on March 4, 1949, on behalf of Boy Scout Memorial Foundation, propose respectively to divert 8000 gallons per day throughout each year from an unnamed stream tributary to the North Fork of Tuolumne River and to divert

0.01 cubic foot per second of continuous flow and 7 acre feet per season, to be collected between May 1 and October 31, for temporary storage, from the North Fork of Tuolumne River. The proposed points of diversion are described as being located respectively within Lots 2 and 4 of Section 6, T 3 N, R 18 E, M D B & M. The uses contemplated in the two applications are domestic and recreational respectively. Under Application 12961 diversion is to be effected by means of a concrete dam 3 feet high by 15 feet long, two 8000 gallon redwood tanks are to afford regulatory storage, and a 2 inch pipe line 2901 feet long is to convey the water to the place of use, a Boy Scout camp located within Lots 2, 3 and 4 of the above mentioned Section 6. The camp is to be fully plumbed, 200 boys are expected to attend and probable per capita consumption is placed at 40 gallons per day. Application 12962 contemplates the construction of an earth storage dam 5 feet high and 50 feet long which will create a reservoir 2.5 acres in extent and 7.0 acre feet in capacity, to be used for recreational purposes, including swimming.

Protests

A protest was filed on behalf of Ernest Bottini, Columbus D. Bottini, Clarence Bottini, Aurelia Diestel, Elizabeth Conde, Mary Raffo, Evelyn Bottini, Adeline Cleghorn, Terest Albright, and Domingo Bottini; and on behalf of Elizabeth Bottini as administratrix of the estates of Domenico Bottini, Deceased, and of Kate Bottini, Deceased. The protest alleges that the proposed appropriation would diminish or defeat the flow of waters to these protestants' lands for use thereon for domestic purposes and irrigation, such lands being some 25 acres

in extent and lying within Section 6, T 2 N, R 17 E, M D B & M. It is claimed that these protestants hold prior rights, both riparian and appropriative, on Sugar Pine Creek and on North Fork of Tuolumne River and that under these rights reasonable and beneficial use of water is being made and has been made continuously for over 48 years, for domestic purposes and for the irrigation of over 25 acres of orchard and field crops, including potatoes.

A protest was also filed on behalf of Fred M. Wulzen, that protest alleging use of water for domestic, irrigation and mining purposes and alleging that such use would be diminished or defeated by the proposed appropriation. The protest asserts early appropriative rights to waters of Sugar Pine Creek and riparian rights to waters of North Fork of Tuolumne River, which rights are relied upon to serve 5 parcels of mining property near the confluence of the two streams named.

In answer to the protests the applicant asserts that the water sought under the applications will be used only for short periods of time, during summer camping seasons, and that its diversion can not materially prejudice or limit uses by or benefits to down stream users. In further answer the applicant refers to the statements contained in the applications.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code a field investigation was conducted at the site of the proposed appropriation on August 30, 1949, by an engineer of the

Division. The applicant and the protestants were represented during the investigation.

Records Relied Upon

Applications 12961 and 12962 and all data and information on file therewith.

Discussion

According to the report of investigation the flow of the North Fork of Tuolumne River at the proposed point of diversion on that stream was about 5 cubic feet per second on August 30, 1949 and that amount approximately represents minimum normal flow. According to the report also, current or recent use of water on the protestants' lands which lie some 10 miles down stream is limited mainly to the irrigation of some 20 acres. It is thus apparent that a surplus currently exists and that the abstractions of the amounts proposed under Applications 12961 and 12962 will not interfere with the protestants' use of water as now practiced. It is possible that more extensive use of water may be made at some future time, for example in case operations resume on the group of mines for which Protestant Wulsen claims extensive water rights, but it is an accepted principle that prospective future use cannot be recognized as a bar to the approval of an application to appropriate in the mean while and no information is at hand as to the amount of water the operation of the mines in question will require or when such requirement will begin.

The protestants by letters (Form 23 C) dated September 26, 1949, conditionally withdrew their protests against both of the applications, the condition being, in effect, that the applicant at the

end of each season will release gradually rather than all at once the waters stored in its reservoir in order to afford the protestants the advantage of a sustained flow for a period of time. That condition was agreed to by letter-stipulation of September 23, 1949, from Marshall S. Hall, the Applicant's attorney, to William C. Coffill, the attorney representing the protestants. Attorney Coffill, by letter dated September 26, 1949, indicated that the letter-stipulation was acceptable to the protestants.

In view of the apparent existence of a surplus of unappropriated water which may be taken and used in the manner proposed in Applications 12961 and 12962 without injury to the protestants and in view further of the withdrawal of the protests by the protestants, no bar remains to the approval of those applications which therefore should be approved, subject to the usual terms and conditions.

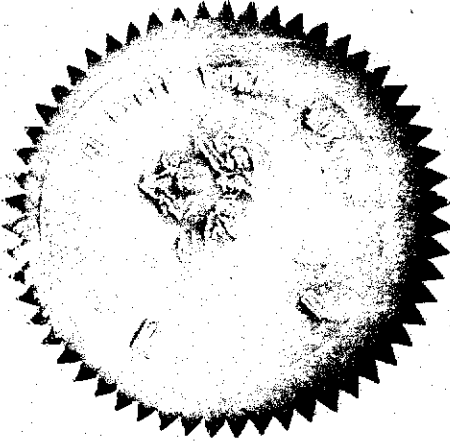
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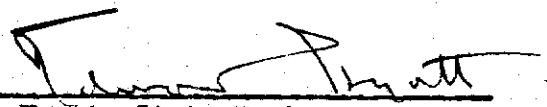
ORDER

Applications 12961 and 12962 for permits to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12961 and 12962 be approved and that permits 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 13th day of October , 1949.




Edward Hyatt, State Engineer