

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 Application 15169 by Carl Stenberg to Appropriate
Water from an Unnamed Drain Tributary via Rodeo Creek to Sacramento
River in Tenama County for Irrigation Purposes.

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Decision A. 15169 D. 787

Decided March 9, 1954

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In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on July 29, 1953:

Carl Stenberg

Applicant

Dale E. Borrer

Protestant

A. S. Wheeler

Senior Hydraulic Engineer
Division of Water Resources
Department of Public Works
Representing the State Engineer

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OPINION

General Description of the Project

The applicant seeks to appropriate 3 cubic feet per second, total diversions in one season not however to exceed 200 acre-feet, from an unnamed drain that is tributary via Rodeo Creek to Sacramento River, in Tehama County. It is his expectation to divert from March 1 to October 31. The drain which at present meanders across his property is to be rechanneled along his north and east property lines. A regulating reservoir, 2.7 acres in surface area and 10 acre-feet in capacity, is to be constructed into which water will enter, by gravity, and from which water will be pumped at a maximum rate of 1300 gallons per minute, through a 6-inch x 200-foot pipeline to the high point of his property, and thence distributed by gravity. The water is to be used in irrigating 15 acres of alfalfa and a 25-acre pasture, partly within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of projected Section 10 and partly within the W $\frac{1}{2}$ SW $\frac{1}{4}$ of projected Section 11, T25N R3W, MDB&M. It is to be used also for the watering of up to 60 head of beef cattle. The land to be irrigated is said ^{in the application} to have an additional water supply of 4 acre-feet per acre per annum from El Camino Irrigation District.

Protest

Dale E. and Inez M. Borrer protest that the diversion that the applicant proposes "would reduce flow to point where water would be insufficient for our water right of 0.62 ft. per sec. and our stock water supply." They base their claim of a prior right upon Application 15155.

They also state "water from Rodeo Creek has been used for stock water since development of ranch many years ago." They describe their point of diversion as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T25N R3W, MDB&M. They state that their protest may not be disregarded and dismissed under any conditions.

Answer

The applicant, by letter dated May 14, 1953, states:

" ... there are several other streams or drains that run into Mr. Borrer's place besides this one that I filed on, which starts on my ranch.

"Due to the fact that his only requirement for the water is for stock purposes, it is my opinion that Mr. Borrer would get enough water from the other drains. There are also other ranches below mine that would have waste water running in this particular stream, also the drainage from my waste irrigation water, which seems to me would be plenty to serve his purposes."

Field Investigation

The applicant and the protestants with the approval of the Department having stipulated to the submittal of the application and protest upon the official records of the Department, a field investigation was conducted on July 29, 1953, by an engineer of the Division. Applicant Stenberg and Protestant Dale E. Borrer were present during the investigation.

Records Relied Upon

Applications 13254, 13509, 14254, 15155, 15169, 15578 and all data and information on file therewith.

Information Secured by Field Investigation

The report covering the field investigation of July 29, 1953, contains statements as follows:

"The sources involved are Rodeo Creek, on which protestants' diversion point is located, and an unnamed drain, on which applicant's diversion is located, which joins Rodeo Creek a short distance above protestants' diversion point.

"The watershed is practically barren and has an average annual rainfall of about 21 inches.

"The watershed of the drain above applicant's diversion point has an area of about 0.4 square mile and the Rodeo Creek watershed above protestants' diversion point has an area of about 3.0 square miles.

"Applicant and protestant agreed that there was no natural flow in the two streams except during storm periods and for a short period thereafter and that all flow during most of the irrigation season consisted of runoff from upper irrigated lands. These lands are mainly irrigated by water delivered by the El Camino Irrigation District and the balance by water obtained from wells and from Rodeo Creek and tributaries under other applications

"Insofar as the drain's portion of the watershed is concerned, most of the runoff is from lands irrigated from wells with the balance being runoff of District waters.

"It was stated that the District delivered water to the Rodeo Creek area every other week and that during the intervening week there was usually little or no flow available to applicant and protestant.

"Protestant stated that when the District was delivering water to the area the flow in Rodeo Creek at his place would provide him with sufficient water for four days, that in '5 of the 7 days the supply was pretty good and that only on one day per week was there excess water.' The applicant, however, maintained that during most days of the District delivery periods the flow at protestants' place was in excess of the amount covered by protestants' permit.

"Both parties stated that there was no irrigation runoff from Rodeo Creek from lands lying north of the creek except from one small area.

"At the time of this investigation there was no flow in the drain at applicant's place. The applicant stated that when there was flow, it ranged from 0 to about 1000 gpm (2.23 cfs). At the same time the flow, as measured, in Rodeo Creek at protestants' place was 0.55 cfs. The protestant stated that this was about the average flow during the period when water to any great extent has been present.

"There has been no use of water by protestants except to water livestock which use, it is claimed, has been made during the past 27 years.

"Protestants propose irrigating 40 acres of pasture by pumping from a small regulating reservoir to be formed by a concrete dam in the channel of Rodeo Creek.

"Since neither the applicant nor the protestants have had any irrigation experience with the waters involved ... no accurate information could be obtained as to the extent, if any, applicant's operations will interfere It, however, appeared to the writer, from the little information that could be obtained, that at times during the proposed irrigation season water in excess of that covered by protestants' permit was present.

"There appeared to be no reason for any deviation from a normal duty of water in the area and under the circumstances it appears that the amounts covered by applicant's and protestants' applications are excessive."

Information Secured from Other Sources

Application 15155, Permit 9408, authorizes the diversion by Dale E. and Inez M. Borrer (who protest Application 15169) of 0.62 cubic foot per second from Rodeo Creek from March 1 to November 30, at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of projected Section 11, T25N R3W, MDB&M, for irrigation purposes. Application 15155 was unopposed. The point of diversion under that application scales about 0.15 mile below the point at which the unnamed drain filed on by the applicant enters Rodeo Creek. Under

Permit 9408 construction was to be commenced by September 1, 1953; construction is to be completed and water completely applied to the proposed use by December 1, 1955, and December 1, 1956, respectively.

Application 14254, Permit 8653, authorizes the diversion by Lawrence P. Jueden of 0.25 cubic foot per second from Rodeo Creek from about March 1 to about November 1 at points within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of projected Section 10, T25N R3W, for irrigation purposes. The diversion under Application 14254 heads about 1.5 miles upstream from the point at which diversion is authorized under Application 15155. Application 14254 was unopposed. Permittee Jueden states in his progress report for 1953:

"We had intended to clear a channel for a quarter of a mile and dig a sump After two years of irrigating ... we have found we get only enough water to irrigate the 10 acres and it would be a waste of money and time to improve it further."

In the same report Mr. Jueden also states:

"We start irrigation in March and continue through summer until November. We irrigate once a week all summer long.

* * *

"the reservoir fills from surrounding lands when people irrigate."

Application 13509, Permit 8060, authorizes the diversion by Howard L. Myers of 2 cubic feet per second from an unnamed tributary of Rodeo Creek, year-round, at 2 points within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 11, T25N R3W, MDB&M, respectively, for irrigation and stockwatering purposes. The permit provides that the equivalent of the continuous flow allowance for a 30-day period may be diverted in a shorter time if there is no interference with vested rights. The application

was not protested. The two diversion points scale respectively about 3/8 mile and about 3/4 mile upstream from the point of diversion under Application 15155. The permittee (under Application 13509) states in his progress report for 1952:

"I have been able to erect both dams ... and ready now for a gainful use of the water when it runs as this is waste although I can get water from the District pump."

Application 13254, Permit 7850 authorizes the diversion by John R. Robinson of 2.5 cubic feet per second but not to exceed 100 acre-feet per annum from an unnamed waste ditch, tributary to Rodeo Creek, from March 1 to October 31, at points roughly 1.5 and 1.7 miles respectively above the point of diversion under Application 15155, for irrigation purposes. The permittee states in his progress report for 1953 that he used water from March 1 through August 31 and, in effect, that his use is full and complete.

Application 15578, by Harold L. Myers initiates an appropriation of 0.32 cubic foot per second, year-round, from an unnamed drain tributary to Rodeo Creek at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 11, T25N R3W, MDB&M, for irrigation purposes. The described source appears to be the one from which diversion is sought, farther upstream, under Application 15169. Dale E. and Inez M. Berror protest Application 15578 as well as Application 15169.

Discussion

Since Application 15169 is junior to Application 15155 water cannot legally be diverted under Application 15169 until needs under Application 15155 are satisfied. Information is insufficient to enable estimates to be made of flows reaching the point of diversion specified in those applications or of the periods of time when unappropriated water may be considered to exist. While the protestants apprehend that the diversion proposed by the applicant will result in insufficiency of supply at their intake and Permittee Jueden feels that the flow of Rodeo Creek at his intake is no more than enough for his requirements, Permittee Myers on the other hand is confident enough that unappropriated water exists to have filed Application 15578 to secure it, Permittee Robinson finds his supply at least sufficient and the investigator reports that on July 29, 1953 it appeared to him that unappropriated water is present at times. The apparent conflict between these statements may well be due to the fluctuations resulting from the bi-weekly delivery schedule of El Camino Irrigation District (reported by the investigator). In the light of the limited information it may be accepted as probable that flow increases and subsides at bi-weekly intervals and that, for periods extending from shortly before to shortly after each peak, supply exceeds demand and the excess is subject to appropriation. So intermittent a supply may or may not be satisfactory for irrigation and stockwatering purposes. If the applicant is entitled to obtain a firm though partial supply by other means, as he claims that he is, it may be that he can

use the intermittent supply filed upon to good advantage. If the applicant will so limit his diversions under Application 15169 that sufficient water will pass his intake to satisfy prior downstream rights, as the law requires him to do, no injury to the protestants can result from the approval of the application.

Three cubic feet per second -- the amount that the applicant seeks to appropriate -- is excessive for the 40 acres that he proposes to irrigate and inconsistent with his declaration that the appropriation is not to exceed 200 acre-feet per annum. Experience indicates the net duty of water for the locality, for alfalfa and pasture, to be of the order of 1 cubic foot per second per 80 acres irrigated. As earlier stated the investigator reported in this connection that no reason was apparent for deviation, on the applicant's project, from a normal duty. The scaling down of the amount from 3 cubic feet per second to, say, 1 cubic foot per second is indicated, in the event of approval of the application, that reduced amount presumably allowing more than enough for such transmission losses as may later be shown to occur.

Due to the intermittency of flow in the proposed source the applicant cannot divert at a constant rate but will be limited to the utilization of flow as it occurs. It is fitting therefore that any permit issued in the matter contain a clause authorizing diversion at greater rates than specified for correspondingly shorter periods insofar as such practice by him does not interfere with the exercise of prior rights of downstream users.

Inasmuch as the applicant claims already to have a supply of 4 acre-feet per acre (from El Camino Irrigation District) and waste of water is not to be condoned, any permit issued in the matter should contain a clause limiting his diversions from any and all sources for the benefit of the described place of use to a total of 5 acre-feet net per acre irrigated.

Summary and Conclusions

The applicant seeks to appropriate 3 cubic feet per second from March 1 to October 1, his total diversions in one season, under the application, not to exceed 200 acre-feet, from an unnamed drain tributary to Rodeo Creek in Tehama County for the irrigation of 40 acres of alfalfa and pasture and for stockwatering. The protestants, whose intake is approximately 0.9 mile downstream from the applicant, apprehend that the proposed diversion will reduce the flow of the source below the amount necessary to satisfy their rights under Application 15155.

At the time of the field investigation of July 29, 1953, flow was zero in the unnamed drain, flow at protestants' intake was 0.55 cubic foot per second, the protestants claimed that excess flow occurs but one day in every other week, the applicant claimed that excesses occur on most days of alternate weeks. On the same occasion the investigator gathered that the flow of Rodeo Creek and of the unnamed drain consists mainly of runoff from up-slope irrigation and that said flow at times is probably more than enough to satisfy

existing rights. The applicant asserted that a supply of 4 acre-feet per acre per annum from El Camino Irrigation District is available to him. The protestants state that their land has no water right or source of water supply except their appropriation under Application 15155. They consider a minimum of 5 acre-feet per acre to be necessary for their purposes.

Other water users whose diversions head on the same small stream system at points above the protestants include the holders of approved Applications 13254, 13509 and 14254. Of these, Jueden, holder of Application 13254, considers the flow at his intake about sufficient for his needs; Myers, holder of Application 13509, is confident enough of the supply that reaches his lands to have filed a second application (Application 15578) on the same stream system; and Robinson, holder of Application 13254, in reporting full use of water from March through October, indicates satisfaction with supply at the location of his intake.

From the applicant's assertion that he has a substantial supply apart from the supply sought under the application it is inferred that he is in a position to benefit by a supply obtained through the appropriation that he seeks, even if that supply may be intermittent and sometimes fail.

The diversion of 3 cubic feet per second for the irrigation of 40 acres of alfalfa is excessive and should be reduced, in any permit issued, to 1 cubic foot per second. Since flow in the proposed source is intermittent and often fails, diversion at a constant rate is impossible;

any permit issued should therefore contain a clause authorizing diversion at greater rates for correspondingly shorter periods provided that downstream users are not thereby prevented from exercising prior rights. Since the applicant professes already to have a supply of 4 acre-feet per acre any permit issued should contain a clause limiting his diversions from all sources to a total of 5 acre-feet per acre irrigated.

The information at hand indicates that the flow in the unnamed drain from which the applicant seeks to appropriate is intermittent, variable and greater at times than necessary for the satisfaction of existing rights and that the excess of supply over demand, when such excess exists, is subject to appropriation. It is the conclusion of this office that said water which is subject to appropriation may be taken and used beneficially in the manner proposed by the applicant without injury to the protestants and that Application 15169 should be approved and permit issued to the applicant. It is the conclusion of this office further that in view of the excess of the amount applied for over apparent needs the permit issued in approval of Application 15169 should be reduced in amount to an amount not in excess of 1 cubic foot per second; that in view of the impossibility of diverting at a constant rate from so variable a supply and the availability to the applicant of a partial supply from another source the permit should contain provisions authorizing diversions at greater rates for correspondingly shorter periods and limiting diversions from all sources for the benefit of the place of use described in the application to totals not exceeding 5 acre-feet, net, per acre irrigated.

ORDER

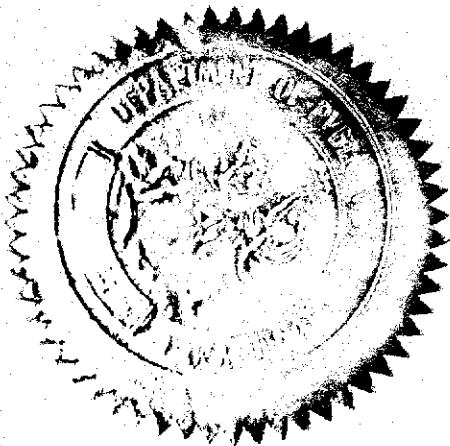
Application 15169 having been filed with the Division of Water Resources as above stated, a protest having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

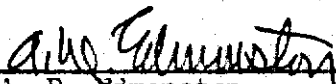
IT IS HEREBY ORDERED that Application 15169 be approved in the reduced amount of 1 cubic foot per second and that a permit in that reduced amount be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject to the following special terms and conditions, to wit:

The equivalent of the continuous flow allowance under this permit for any thirty day period may be diverted in a shorter time if there be no interference with vested rights.

The amount of water diverted under this permit together with that diverted under existing rights of permittee shall not exceed in any one year a total of 5 acre feet per acre irrigated.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 9th day of March, 1954.




A. D. Edmonston
State Engineer