

STATE OF CALIFORNIA
PROCEEDINGS BEFORE THE
STATE WATER RIGHTS BOARD

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In the Matter of Application 15681 by Marvin H. and Lydia M. Sorensen and Application 15956 by Lynne L. Barnett to Appropriates from an Unnamed Spring Tributary to West Fork Carson River in Alpine County for Domestic Purposes.

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Decision # 15681, 15956 D 867

Decided November 30, 1956

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In Attendance at Investigation Conducted by the State Water Rights Board on August 3, 1956:

Marvin H. Sorensen)

Lydia M. Sorensen)

Lynne L. Barnett)

Applicants

E. C. Johnson,
Assistant Hydraulic Engineer
State Water Rights Board

Representing the State Water
Rights Board

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DECISION

Substance of the Applications

The applications initiate appropriations from a certain spring in Alpine County, for domestic purposes. In each application the spring is described as being located 1,430 feet north and 463 feet east from the NE corner of Section 31, T11N R19E,

MOBLM. In each application it is proposed to serve four people in one cabin. One of the projects involves the use of 591 lineal feet of pipeline, the other, 105 lineal feet. Under Application 15681 it is sought to appropriate 200 gallons per day from June 1 to October 31 of each year, under Application 15956, 100 gallons per day from May 1 to October 31. Ownership of the place of use is claimed, ownership of the spring disclaimed, in each instance. The applicants Sorensen state that they will apply to Toiyabe National Forest for a special use permit; Applicant Barnett states that such permit in his own case has already been obtained.

Protest

The H. F. Langberg Land and Live Stock Company, a corporation, protests each of the applications, alleging in its protests that it owns and irrigates lands both in California and in Nevada, that its irrigation supply is obtained from West Fork Carson River, that it will be injured by any more appropriations of waters tributary to that stream. It claims riparian and appropriative rights commensurate with its irrigation and stockwatering requirements, asserts that it diverts at points downstream from the applicants' proposed point of diversion, asserts further that never during July, August, September and October is there sufficient water in West Fork Carson River to properly irrigate its lands together with other lands to which vested rights attach. It argues that approval of the applications would set a precedent

and that further appropriations though small individually would become so numerous as to seriously affect holders of earlier rights.

Answers

The applicants Joransen answer the protest against Application 15681 by asserting that the water which they seek to appropriate does not ever enter the West Fork of Carson River. No answer to the protest against Application 15956 is of record.

Field Investigation

The applicants and the protestant stipulated to the submittal of the applications and protests upon the official records and a field investigation was conducted on August 3, 1956, by an engineer of the State Water Rights Board. The applicants were in attendance during the investigation. The protestant was unrepresented.

Records Relied Upon

Applications 10480, 11568, 11711, 11911, 12749, 15350, 15681, 15956 and all relevant information on file therewith; Water Supply Paper 1244, United States Geological Survey.

Information Obtained by Field Investigation

Extracts from the report covering the investigation of Applications 15681 and 15956 and filed with the former of these

applications, are as follows:

"A semi-circular earth dam about 25 feet long and 3 feet high forms a small pond which is the spring named as the source ... and from which leads about 600 feet of ... pipe serving a total of six summer homes. Branch lines lead from the main conduit to the cabins of the applicants where each has installed a 500 gallon regulatory tank."

"The source under the two applications ... is the same as that under Applications 10480, 11568, 11711, 11911 and 15350 and the conduit is used jointly by all. The point of diversion for Application 12749 is located approximately 15 feet down hill within the same spring area and the main source of supply is spillage over the semi-circular dam."

"The unnamed spring is actually a collecting pool in a large spring area which extends up the side about 250 feet of a rather steep hillside from the West Fork Carson River and along the river about the same distance. The contributory watershed is steep and ranges from rocky crags to wooded hillside and is located at an elevation of about 7,000 feet. Seepage from the spring area drains directly into the river."

"At the time of the investigation it was estimated that 4,000 gpd were spilling over and seeping through the semi-circular dam, however, the entire spring area was producing considerably more than this amount. The point where the development work is located is about one-third of the distance down the hill from the top of the entire spring area and is located there for the purpose of maintaining the necessary head on the distribution system."

"The projects under both applications are essentially complete with the use being for household purposes at the applicants' summer cabins. Mr. Sorensen indicated that use of water has been made by three people for about one month each year at his summer cabin for three years and since 1942 for camping use prior to construction of the cabin. Mr. Barnett indicated that his first use began in 1939 by carrying water from the river and since construction of the cabin by six people for a period of two weeks each year from the spring."

"The only information concerning the protestant's use of water is that contained in the protest since it was not represented at the investigation; however, it should be noted that the protestant's California land is upstream from the spring area and could not be affected, that its Nevada land is located approximately 20 miles downstream, and that in accordance with the West Carson River decree on alternate weeks between July 1 and October 1 the entire flow of the river is allotted to California users."

Other Information from Office Files

Additional information as to the applications mentioned in the above quoted report, obtained by reference to the files of the State Water Rights Board, is as follows:

Application 13480 Permit 6578 License 3052, Harriet May Miller, 25 gallons per day from May 1 to October 31, protested by H. F. Dangberg Land and Live Stock Company. Protest dismissed upon applicant's amendment of application to protestant's satisfaction. In report of March 25, 1948 covering an inspection on August 16, 1947 it is stated "For use in other months a well by the house ... is depended upon."

Application 11568 Permit 7071 License 3329, Harriet May Miller, 175 gallons per day from about May 1 to about October 31, protested by H. F. Dangberg Land and Live Stock Company, also by Fred H. Bressler.

Application 11711 Permit 7072 License 3085, Ralph B. and May F. Smith, 200 gallons per day from about May 1 to about November 1, protested by H. F. Dangberg Land and Live Stock Company.

Application 11911 Permit 7073 License 1096, William I. and Velma L. Troutman, 110 gallons per day from about May 1 to about November 1, protested by H. F. Dangberg Land and Live Stock Company.

Application 12749 Permit 7774 License 4275, Rodney and Jennie Sienmiller, 100 gallons per day from about May 1 to about September 1, protested by H. F. Dangberg Land and Live Stock Company.

Application 15350 Permit 9558, Robert B. Ladley and Alma Jean Ladley, 250 gallons per day from about May 1 to about October 31, not protested.

Action upon Applications 11568, 11711, 11911 and 12749 was based upon proceedings in lieu of hearing. A field investigation on November 10, 1947 disclosed that the spring designated as the source under those four applications issues from a cienega which is some 250 feet square and borders on West Fork Carson River, that an estimated 14,000 gallons per day was draining from cienega to river at time of investigation, that the place of use under each application is within a private subdivision consisting of 17 lots, that each owner owns at least two lots, that four owners have completed cabins on their lots (as of date of investigation) and three owners have cabins under construction but have not yet filed applications for water. The investigation disclosed further that the protestants are in the cattle business and use water mainly for stockwatering and for irrigating extensive pasture and hay growing areas, that protestants' California lands are upstream from the cienega and

that their Nevada lands are some 20 miles downstream, that the cienega supports a dense growth of water grasses and willows, indicative of heavy loss of water by transpiration. It disclosed also that the applicants propose to divert from a common point where an excavation has been made and a box emplaced, that a pipe line leads from the box and that branches from that pipe line serve the various users, that the purpose of the development is to provide water for household purposes^{and} for the watering of small gardens and lawns, that the ultimate use of water within the subdivision may amount to 2,000 gallons per day, that a portion of the waters diverted will return underground. In view of the lack of positive evidence that protestants would be materially injured by the appropriations sought by the applicants the four applications were approved, subject to the usual terms and conditions.

The flow of West Fork Carson River at the United States Geological Survey station "West Fork Carson River at Woodfords, Calif.", according to the Water Supply Papers, has varied between a minimum of 8.4 and a maximum of 4,730 cubic feet per second and, over the 16 full years of published record, has averaged 117 cubic feet per second. This gaging station scales approximately four miles downstream from the applicants' proposed point of diversion.

Discussion

Appropriations from the common point of diversion in the cienega, including those initiated by the present applicants, total

1,160 gallons per day, equivalent to about 0.0018 cubic foot per second or enough at the usual rate of one cubic foot per second to 80 acres to irrigate about 0.14 acre. The abstraction from West Fork Carson River of an amount only sufficient to irrigate about 0.14 acre evidently cannot materially injure the protestant, an irrigator of extensive pasture and hay growing areas. The loss to the protestant by appropriations from the cienega is unlikely, actually, to average as much as the 1,160 gallons per day or 0.0018 cubic foot per second mentioned: it is improbable that all appropriators will divert continuously at full capacity and it is quite certain that a portion of the water that they do divert will find its way into West Fork Carson River by percolation.

The apprehension, expressed in the protest, that applications, while small individually, will accumulate to such extent as to seriously affect holders of earlier rights is an insufficient basis for the denial of an application. An application cannot be denied merely because others of its kind may be filed later.

For the reasons above stated the protestant's objections to the appropriations initiated by the filing of Applications 15681 and 15956 are insufficient to warrant the denial of those applications. The use to which the applicants propose to apply the water which they seek to appropriate is a beneficial use of the highest order. Any diminution of flow in West Fork Carson River that might result from the proposed appropriations will be too small to affect the protestant's operations materially.

Utilization by the applicants of a portion of the increment to the flow of West Fork Carson River that is furnished by the applicants' proposed source will increase the over-all, beneficial use from West Fork Carson River and tributaries. The Water Code declares that the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable. In view of that declaration and in view of all attendant circumstances, the waters of the applicants' proposed source, in the amounts stated in the applications, are deemed subject to appropriation.

Conclusion

The information indicates that a portion of the flow from the source from which the applicants seek to appropriate is subject to appropriation and that such portion may be taken and used beneficially in the manner proposed in the applications without injury to any downstream user. It is the opinion therefore of the State Water Rights Board that Applications 15681 and 15956 should be approved and that permits should be issued to the applicants, subject to the usual terms and conditions.

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ORDER

Applications 15681 and 15956 for permits to appropriate unappropriated water having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Water Rights Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 15681 and 15956 be approved and that permits be issued to the applicants, subject to such of the usual terms and conditions as may be appropriate.

Wated at Sacramento this 30th day of November, 1956.

/s/ Henry Holsinger
Henry Holsinger, Chairman

/s/ John B. Evans
John B. Evans, Member

/s/ W. P. Rowe
W. P. Rowe, Member

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