

~~11/10/55~~

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 16703)	Source: Unnamed stream
by Henry and Amelia Schneider and)	tributary to
)	Sacramento River
Application 16752 by Paul V. Winters)	County: Glenn

Decision No. D879

Decided: December 9, 1957

In attendance at Investigation conducted by the staff
of the State Water Rights Board on May 2, 1957:

Henry Schneider	Applicant
Paul V. Winters	Applicant
Vinnie L. Johnson	Protestant
John A. Vereschagin	Representing Protestant Vereschagin Oil Company
J. V. Scammon	Associate Hydrographer, representing the State Water Rights Board

DECISION

Substance of the Applications

Application 16703, filed October 28, 1955, is for a permit to appropriate 0.75 cubic foot per second to be diverted between January 1 and December 31 of each year from an unnamed stream for irrigation and stockwatering purposes; 20 acres of

orchard and 57.1 acres of pasture are to be irrigated, and 50 head of dairy cattle are to be watered. Diversion is to be effected at a point within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 2, T21N, R3W, MDB&M, by means of pumping from a sump into a 10-inch concrete pipe, 600 feet in length. It is estimated that the capacity of the pumping plant is 500 gallons per minute. The applicants indicate that they own the land at the point of diversion and the land upon which the water is to be used. They also indicate that their land is supplied with water from a well.

Application 16752, filed November 29, 1955, is for a permit to appropriate 0.25 cubic foot per second to be diverted between April 15 and October 15 from an unnamed stream for irrigation purposes; 18 acres of alfalfa are to be irrigated. Diversion is to be effected at a point within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, T22N, R3W, MDB&M, by means of pumping from a sump into an earth ditch 1320 feet in length, 3 feet wide at water line, 2 feet wide at bottom and with a depth of water of one foot. It is estimated that the capacity of the pumping plant is 450 gallons per minute. According to the application the applicant owns the land at the point of diversion and the land upon which the water is to be used.

Protests

Paul D. and Vinnie L. Johnson protest Applications 16703 and 16752, alleging that the proposed appropriations will deprive them of water to which they are entitled by virtue of Permit 10770 (Application 16350) and riparian rights for

irrigation and stockwatering purposes. They claim to use a minimum of 1.7 cubic feet per second by direct diversion and 20 acre-feet per annum by storage.

Vereschagin Oil Company protests Application 16752, alleging that it will be deprived of water for irrigation to which it has claim of right under Permit 8597 (Application 14203). The protestant claims to use water for irrigation of clover and pasture between March 1 and November 1 of each year.

Raymond V. and Viola E. Hardie claim that the appropriation proposed under Application 16752 will further deplete an already inadequate supply of water in the source. They state that for the past 3 years, 40 acres of alfalfa have been irrigated and that stock have been watered. Their right to use the water is based upon Permit 9904 (Application 15223).

Answers

In answer to the protest of Paul D. and Vinnie L. Johnson against Application 16703, the applicants state that they realize some of the water taken by them would reach the Johnson Ranch, but that most of the water runs off their own land and they have the right to reuse it. The applicants claim that the only water in question is that in addition to their own runoff (which includes runoff from two of their neighbors' lands and which enters the source via the applicants' ditches) or the water that has traditionally flowed to the Johnson Ranch. Realizing that they are the "junior" appropriators and that they are only entitled to unappropriated water, the applicants propose the following plans:

"Plan A.' An attempt to be made to separate the waters as best possible. Since our (applicants') water mingles with the water in question, it would be a difficult procedure. The rate of flow changes often, seldom remaining consistent for over a few hours.

"Plan B.' We use the water as we need it. This plan, we think would work out best. We have a very small storage pond, about six to eight hours pumping at the most. This means that we must use the sump-pump for diversion, only when a sufficient amount of water is flowing. This can come either from our own runoff or from the waters in question. This would mean that much of the time water would be going on by our point of diversion because either we will not be irrigating or the flow will not be great enough to fill the head of water the pump will throw. We can only use so much water and we will usually be using both our main irrigation pump and the sump-pump simultaneously. This would mean that we would be irrigating about three days out of every week. It would also mean that there would be times when all of the waters, except that from our own land, would find its way down to the Johnson Ranch."

Rights of Record

Permit 8597 (Application 14203) of Vereschagin Oil Company allows an appropriation of 1.5 cubic foot per second from an unnamed drain between March 1 and November 1 of each year for irrigation purposes. The point of diversion is indicated to be within $SW\frac{1}{4}$ of $NW\frac{1}{4}$ of Section 2, T21N, R3W, MDB&M.

Permit 9404 (Application 15223) of Raymond V. and Viola E. Hardie allows an appropriation of 0.5 cubic foot per second from an unnamed slough, between March 1 and November 30 of each year for irrigation purposes. The point of diversion is indicated to be within $SE\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 2, T21N, R3W, MDB&M.

Permit 10770 (Application 16350) of Paul D. and Vinnie L. Johnson allows an appropriation of 1.7 cubic feet per second by direct diversion between March 1 and November 1 of each year and 20 acre-feet per annum by storage between November 1 of each year and March 1 of the succeeding year from an unnamed drain for irrigation and stockwatering purposes. The points of diversion are indicated to be within (1) NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and (2) SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 12, T21N, R3W, MDB&M.

Sources

The unnamed stream referred to in Applications 16703 and 16752 is essentially a drain located in relatively flat territory undefinable as to origin and has two contributory branches which join in the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 11, T21N, R3W, MDB&M. The applicants holding Application 16703 are located on the east branch of the unnamed stream and the applicant holding Application 16752 is located on the west branch. Protestants Vereschagin Oil Company (Permit 8597) and Raymond V. and Viola E. Hardie (Permit 9904) are located on the west branch below the applicant holding Application 16752, and protestants Johnson (Permit 10770) are located below the junction of the east branch and the west branch.

Field Investigation

The applicants and protestants, with the approval of the State Water Rights Board, stipulated to proceedings in

lieu of hearing as provided for under Section 737 of the Board's Rules and a field investigation was conducted on May 2, 1957, by an engineer of the staff of the Board. Notice of said investigation was duly given to all interested parties. The applicants and protestants, with the exception of Raymond V. and Viola E. Hardie, were present or represented at the investigation. A further observation of stream flow conditions was made by the same engineer on June 17, 1957.

Records Relied Upon

Applications 16350, 16703 and 16752 and all relevant information on file therewith, with particular reference to the reports of field investigation conducted on May 7, 1956, May 2, 1957 and June 17, 1957; and Orland, Hamilton City and Glenn Quadrangles of United States Geological Survey, 7½ minute series, dated 1951, 1950 and 1951 respectively.

Information Obtained by Field Investigation

According to the report of field investigation of Application 16703, dated June 24, 1957, applicants Schneider had completed all of the proposed diversion works and had used them for the irrigation of clover during the summer of 1956. A ditch had been dug along the applicants' south boundary capable of diverting all of the summer flow in the source to a sump pump about 1/4 mile east of the point of diversion. It is stated that at the time of that investigation less than 0.25 cubic foot per second was flowing with none being diverted by the applicants. On May 7, 1956, little or no flow was observed in the source. It was the opinion of the investigating

engineer, based upon several observations, that there is not a sufficient quantity of water available to satisfy prior rights.

From the report of field investigation of Application 16752, dated June 21, 1957, it is stated that the source of the proposed appropriation is entirely dependent upon runoff from irrigated lands located upstream from the applicant during the normal irrigating season, that this water is, for the most part, from the Orland Project of the United States Bureau of Reclamation with waste water from land irrigated by wells also being present in the source in limited quantities. It is stated that the applicants' lands are subject to flooding during periods of high flow (estimated as flow greater than 3 cubic feet per second) which occur generally during the winter and periods of heavy rainfall. It was estimated that at the time of the investigation on May 2, 1957, the flow in the source at the applicants' point of diversion was 1.5 cubic feet per second; at protestant Vereschagin Oil Company's point of diversion, 1.5 cubic feet per second of which about 1.0 cubic foot per second was being diverted; at protestant Hardie's point of diversion, about 0.5 cubic foot per second was available and was being regulated by a small onstream reservoir pump; and that no water was available from this source for protestant Johnson. The investigating engineer, during his visits to the area, did not observe water in sufficient quantities to satisfy prior vested rights and was of the opinion that there would not be water in excess of that required for prior rights during the

season requested in the application.

Discussion

The field investigations in connection with the subject applications establish that the waters reaching the applicants' points of diversion during the irrigation season mainly consist of return flow from irrigation of lands upstream from the applicants. The record protestants have prior rights under permit from this office which, according to the reports of investigation, are not satisfied by the quantity of water available. There is no evidence that an increase in supply may be expected within the foreseeable future, and it is apparent that approval of the subject applications will aggravate the conditions further.

Applicants Schneider contend in substance that only the water that has "traditionally flowed" to protestant Johnson is subject to appropriation under his prior permit and that applicants may legally reclaim and use waste waters from their lands and diffused water from adjacent lands which is recovered by the construction of drainage ditches. To the extent they are correct, such water does not fall within the classification of unappropriated water as set forth in Section 1202 of the Water Code, and cannot be considered under Application 16703. In so far as waste water or other flow in the drain is subject to appropriation, it is subject to prior rights under Permit 10770 (Application 16350) to the extent of 1.7 cubic feet per second. In this instance, it appears that all available water

in the source during at least the major part of the irrigation season which is subject to appropriation has been appropriated.

Conclusion and Order

The information indicates and the Board finds water is not available for appropriation in the manner proposed in the subject applications. It is the conclusion, therefore, of the State Water Rights Board that Applications 16703 and 16752 should be, and each of them is, hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 9th day of December, 1957.

Henry Holsinger

Henry Holsinger, Chairman

John B. Evans, Member

W. P. Rowe

W. P. Rowe, Member