

BEFORE THE DIVISION OF WATER RIGHTS  
Department of Public Works  
State of California

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DECISION A-2576. D-7.  
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IN THE MATTER OF APPLICATION NO. 2576 OF JAMES H. JONES  
FOR A PERMIT TO APPROPRIATE WATER FROM BUTTE CREEK,  
IN BUTTE COUNTY, FOR AGRICULTURAL PURPOSES.

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Decided May 1, 1924.  
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APPEARANCES AT HEARING:

Jerome D. Peters, for Applicant.  
Orville C. Pratt, Jr. and George T. Jones, for G. H. V.  
Land Company, Protestant.

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Edward Hyatt, Jr., Acting Chief of Division of Water Rights

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O P I N I O N

This application, for permit to appropriate 6 cubic feet of water per second, was filed with the Division of Water Rights on October 6, 1921. The application was duly advertised and protests to granting of permit thereunder were filed by the G.H.V. Land Company and J. W. Browning on April 5, 1922 and April 7, 1922, respectively.

The protest of J. W. Browning alleges in effect that he is the owner of over 5000 acres bordering on Butte Creek below the proposed point of diversion of applicant, said lands being located in Townships 17 and 18 North, Range 1 East, Mount Diablo Base and Meridian; that protestant's right is based upon a prior appropriation and beneficial use of water and

upon the ownership of land riparian to Butte Creek; that protestant and his predecessors in interest have occupied the lands above described for more than ten years prior to the filing of this application and have used the water of Butte Creek for irrigation, stock-watering and domestic purposes during this period; that diversion of water by applicant will interfere with and prevent the use of water by the protestant; that protestant has an appropriative right to Butte Creek waters by virtue of appropriation initiated in 1903 through diversion of 15 cubic feet of water per second at a point near the center of the Northeast quarter of Section 17, T 18 N, R 1 E, M. D. M., and continuous diversion and beneficial use of this water from this time to the present; that by virtue of a certain stipulation entered into by various parties in a suit instituted to determine the extent of Butte Creek water rights, the protestant was granted  $6/108$  of the natural flow of Butte Creek, or 6 second feet, the minimum natural flow having been determined upon as 108 second feet in the aforesaid stipulation.

The protest of the G.H.V. Land Company alleges in effect that this protestant is now purchasing under contract from the Trustees of the Leland Stanford Junior University 2300 acres of land bordering on Butte Creek in Township 20 North, Range 2 East, Mount Diablo Base and Meridian; that the basis of protestant's right lies in the riparian character of the land described and the beneficial use by the protestants of all of the water flowing in Butte Creek during the months of July, August and September of each of the years 1919, 1920 and 1921, for the irrigation of rice upon portions of said land; that this use of water by protestants has amounted to at least 15 cubic feet of water per second for 600 acres, more or less,

of the above described lands; that at times during the months of July, August and September there has not been more than 15 cubic feet of water per second flowing in Butte Creek at protestant's point of diversion which is located about 100 feet West of the state highway bridge over Butte Creek; and that permit under this application would deprive protestants of water to the extent of the amount granted, in the months of July, August and September.

The applicant filed answer to each of these protests on May 1, 1922. The answer to protest of J. W. Browning deals with the stipulation in that certain action entitled "Central California Investment Company, a corporation, vs. John Crouch Land Company, a corporation, et al" by virtue of which the protestant claims 6/108 of the natural flow of Butte Creek, and in regard thereto: alleges its due execution; alleges that J. W. Browning is a party thereto and by virtue of agreement therein accepts as his full water right in Butte Creek the amount decreed him therein; alleges that J. W. Browning in executing the agreement accepted as binding all the provisions therein, including those to the effect that the minimum natural flow of Butte Creek is conceded to be 108 second feet, and that in the division of this 108 second feet 24 second feet is not disposed of by agreement but is allowed to remain in the stream as constituting unappropriated water subject to appropriation under the laws of the State of California; and alleges that the applicant has complied with the provisions of the law in regard to appropriation and that therefore if his application for 6 second feet of the 24 second feet of unappropriated water be granted, such grant can in no way conflict with rights of protestant.

The answer to the protest of the G.H.V. Land Company denies that

permit under this application would deprive protestant of the amount of water taken by applicant in the months of July, August and September of each year; denies that protestant has beneficially used more than 6 second feet of water upon its land as described at any time; denies that at times during July, August and September in the years 1919, 1920 and 1921 there has been less than 15 second feet flowing in Butte Creek at protestant's point of diversion; denies the riparian rights of protestant and alleges that no part of protestant's land is entitled to riparian rights; alleges that formerly the lands of both protestant and applicant together with other adjoining lands, including those now owned by the State Land Settlement Board, were owned as one single parcel by the Board of Trustees of the Leland Stanford Junior University, that the latter Board, as a party to the stipulation by which the waters of Butte Creek were divided, (previously described) agreed to take as its full share of Butte Creek waters, 25 second feet, that subsequently a certain portion of the original parcel owned by said Board of Trustees was sold to the State Land Settlement Board, that with the land so conveyed there was also sold to the State Land Settlement Board all of the water rights in Butte Creek owned by the Board of Trustees of Leland Stanford Junior University, and that such sale therefore destroyed the riparian rights of the lands of both protestant and applicant; and finally alleges that since, in accordance with the stipulation, (previously described) there is a flow of 24 second feet of unappropriated water in Butte Creek, the applicant is entitled to permit under this application.

A field investigation in connection with this application and protests thereto was made by Engineer H. M. Stafford of the Division of Water Rights on July 8 and 9, 1922. Report of this investigation was filed under date of November 10, 1922. As reported, this investigation showed that the protestant, G. H. V. Land Company had installed two centrifugal pumps and electric motors on its land at a point on Butte Creek a short distance west of the state highway bridge over Butte Creek and several hundred feet downstream from the proposed point of diversion by applicant; that one pump of about 7 second foot capacity was newly installed for the 1922 irrigation season and that the other pump of about 6 second foot capacity, was installed for the 1919 irrigation season; that, as reported by J. F. Van Loben Selis, member of the G. H. V. Land Company, the protestant used water diverted by its pump on Butte Creek together with water pumped from wells and water from Hamlin Slough for the irrigation on its land of rice covering 450 acres in 1919, 625 acres in 1920 and 625 acres in 1921; and that in 1922 water through the newly installed pump only together with water from Hamlin Slough was being used to irrigate about 500 acres of rice on protestant's land. Relative to the quantity of water flowing in Butte Creek the report of this investigation brought out the following: Records of the flow of Butte Creek for a portion of 1921 as determined by the Division of Water Rights at a gage located at a point above the highest diversions for irrigation in the valley show that the average discharge for the latter thirteen days of July was 143 second feet, for August 105.5 second feet and for September 90.5 second feet; this flow as measured included a considerable amount of foreign water discharged to the creek through the power houses of the Pacific Gas and Electric Company and after deducting

the amount of this foreign water as determined from the records of its measurement as submitted by the Power Company the average flow of natural Butte Creek water was 71 second feet for the latter thirteen days of July, 68 second feet for August and 64 second feet for September. The rights to all of the foreign waters have been acquired by parties who divert these waters at a point a short distance downstream from the point at which the gage of the Division of Water Rights was located in 1921, and a considerable distance upstream from the proposed point of diversion of this application. Measurements of the flow of Butte Creek by Engineer Stafford on July 9, 1922, show a discharge of 79.7 second feet at a point about one-quarter mile below the upper diversion dam of the State Land Settlement Colony and 61.7 second feet at a point about one mile east of the town of Durham. A measurement on the same day of the amount of water being diverted to the canal of the State Land Settlement Colony by its upper diversion dam shows a diversion of 37.0 second feet. The point of measurement about one mile east of Durham is located below practically all users above the proposed point of diversion by applicant and the G. H. V. Land Company's point of diversion and these measurements therefore indicate that on July 9, 1922, there were diversions by users above the applicant and below the point where the foreign waters are diverted of at least 55 second feet. If, on the day of these measurements the upper users, parties to the Butte Creek stipulation, had been diverting the amount of water allowed them by this stipulation they would have been taking 78/108 of 116.7 second feet or 84.5 second feet, and there would have remained for the lower users 32.2 second feet. Similarly, if the upper users had made diversions according to the stipulation in 1921, there should have remained for the lower users

an average of 20 second feet during the latter thirteen days of July, 19 second feet in August, and 18 second feet in September.

A record obtained from the Western Canal Company of its measurements of the flow of Butte Creek taken at two or three day intervals at a point approximately 1-1/2 miles below the point of diversion of the G.H.V. Land Company in the summer months of 1921 shows a flow of 627 second feet on May fifth, decreasing rapidly to 352 second feet on June 1st, 55 second feet on July 5th, 10 second feet on August 3rd and intermittent periods of no flow between August 3rd and August 23rd. Between August 23rd and September 30th the flow, as measured, varied from 7 to 16 second feet. According to Mr. Cauthard, of the Western Canal Company, the summer flow of Butte Creek in 1920 was about 20 percent less than that as given for 1921. According to Frank Robinson of the engineering firm of Polk and Robinson, Chico, Butte Creek was dry at the state highway bridge during the summer of 1920.

A public hearing in this matter was held at Sacramento on November 7, 1923, before Examiner Kluegel. No appearance was made by protestant J. W. Browning. Subsequent to the hearing a brief outlining points and authorities was filed by both applicant and protestant, and the entire matter is now ready for decision.

The evidence indicates that in 1921 the flow of water in Butte Creek at or near the proposed point of diversion of applicant was such that during the irrigation season, up to about July first there was an abundance of unappropriated water greatly in excess of the total of protestant's claims and that asked for by applicant; that there was probably sufficient water to satisfy these claims and this application up to about July 15th; that after about July 15th and for the remainder of the irrigation season the flow was very low,

probably amounting to practically nothing at times and throughout the greater portion of this latter period probably insufficient to satisfy protestant's claims and this application. It is indicated that in other years, notably 1920, the flow in the irrigation season has been considerably less even than that in 1921. A reference to Bulletin No. 5, "Flow in California Streams", published by the Division of Engineering and Irrigation of the State Department of Public Works, in which bulletin, on page 193, there is given an estimate of the seasonal run-off of Butte Creek and adjacent streams for the period 1871-72 to 1920-21, indicates that the run-off of these streams for the 1920-21 season may be considered as very close to that of a normal season and that therefore, with no other considerations, the data herein presented as to Butte Creek discharge in 1921 may be considered as representative of normal conditions.

It is considered that the evidence as to the existence or non-existence of unappropriated water furnishes the only proper basis for decision in this matter and in view of the evidence of this character as presented, the opinion is reached that prior to about July 15th of a normal year there is unappropriated water in Butte Creek available for this application; that subsequent to about July 15th and throughout the remainder of the irrigation season, except for short periods, there is probably no unappropriated water available, but that the applicant should be permitted to appropriate water at such times in this latter period as there may be unappropriated water.

#### O R D E R

Application for permit to appropriate water having been filed with the Division of Water Rights as entitled above, protests to the granting of such permit and answers to such protests having been received,

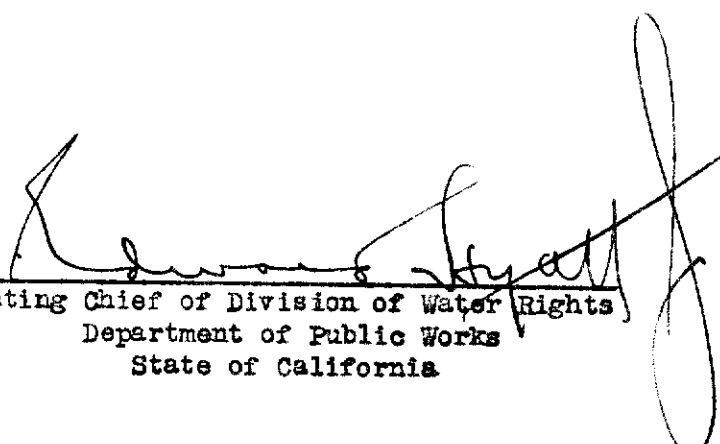


a public hearing having been held, briefs having been submitted, and the Division of Water Rights being now fully informed in the matter:

IT IS HEREBY ORDERED, that permit be granted under this application, the permit to contain such of the usual terms and conditions as may be appropriate and in addition the following clause:

"The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 6 cubic feet per second from about April 15th to about September 15th of each season when there is unappropriated water available at the proposed point of diversion, the season of unappropriated water extending in years of normal flow not later than about July 15th."

Dated at Sacramento, California, this 1st day of May, 1924.

  
Acting Chief of Division of Water Rights  
Department of Public Works  
State of California