

BEFORE THE DIVISION OF WATER RESOURCES
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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In the Matter of Application 6891 of N. L. Apollonio
to appropriate from an Unnamed Creek Tributary
to Brush Creek and South Fork American River
in El Dorado County
for Irrigation and Domestic Purposes

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DECISION A 6891 D 310

Decided *March 22, 1932*

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APPEARANCES AT HEARING HELD AT SACRAMENTO December 22, 1931

For Applicant

N. L. Apollonio

Murie C. Sareck

For Protestant

Emil E. Larsen

Emil E. Larsen and Emil T. Larsen

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights,
Division of Water Resources, Department of Public Works,
State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Application 6891 was filed by N. L. Apollonio on February 8, 1931.

It proposes an appropriation of 0.044 cubic foot per second to be diverted throughout the entire year for domestic purposes and the irrigation of five acres of land within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 10 N., R. 12 E., M.D.B. & M. The point of diversion is within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 10 N., R. 12 E., M.D.B. & M. The application was protested by Emil E. Larsen.

PROTEST

Protestant Emil E. Larsen claims a right by appropriation initiated prior to the effective date of the Water Commission Act and continuous use for over 30 years. He also claims a prior right under Application C-10, Permit 3669 to the use of 0.5 cubic foot per second. He claims that the proposed diversion will interfere with use under his prior right.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 6891 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on December 22, 1931 at 10:00 o'clock A. M. in Room 401, Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified.

GENERAL DISCUSSION

From the testimony presented at the hearing the following facts were brought out by protestant.

- (1) Emil E. Larsen diverts about 15 miners inches when available from the south branch of Brush Canyon at a point a short distance below its junction with the unnamed Creek from which applicant proposes to divert.
- (2) The supply diverted by protestant is not sufficient for his needs during the irrigation season and the supply is supplemented by the purchase of water from the El Dorado Irrigation District.
- (3) Protestant claims an appropriative right initiated prior to the effective date of the Water Commission Act to 20

miners inches and that for the last 37 years he has diverted the entire stream flow during the irrigation season which usually does not exceed 15 miners inches.

- (4) Application 6410 was filed by Emil E. Larsen on August 16, 1929 for the purpose of establishing definitely a right which would be of record in this office. His old right has not been abandoned. Application 6410 was approved by issuance of Permit 3669 allowing an appropriation of 0.5 cubic foot per second.
- (5) There is at all times a continuous flow from applicant's proposed point of diversion to the protestant's point of diversion.
- (6) In addition to domestic and irrigation use the water is used a part of the time for mining purposes.

These facts brought out at the hearing by protestant remain uncontroverted. Applicant, himself, was not present being engaged in other matters, and no testimony was introduced on his behalf. His attorney was present, however, and stated that he was insufficiently informed regarding the situation to present his clients case and asked that the hearing be continued for the purpose of submitting testimony on behalf of Mr. Apollonio. Before granting the continuance, however, the Examiner requested that this office be informed of the character of evidence which applicant proposed to submit. In order to give applicant an opportunity to make a showing in the matter, action has been withheld for three months but the Examiner's request has not been complied with.

While it appeared at one time that protestant was agreeable to having Application 6391 approved for an amount of water not to exceed 0.025

cubic foot per second (1 statutory miners inch) for domestic purposes only he now feels that applicant has infringed upon his rights by installing two hydraulic rams and a pump and he no longer feels under obligation to concede to the applicant the 0.025 cubic foot per second.

Applicant stated in his application that he had no water right other than that applied for. In the answer to the protest, however, his attorney stated that Mr. Apollonio has a right for mining purposes and pays \$16.00 tax to the El Dorado Irrigation District for which he is entitled to receive water whenever it is available. Water, however, was not available to him last year. At the hearing applicant's attorney stated that Mr. Apollonio believed that he has a riparian right and that by filing Application 6891 he did not intend to waive that right.

CONCLUSION

From the record it appears that the irrigation season in that locality extends from about the middle of May until the commencement of the fall rains and that during this period the waters of the creek from which applicant proposes to divert are entirely appropriated. This testimony remains uncontroverted.

As the domestic use to which applicant proposes to put the water is a useful and beneficial one it is the opinion of this office that Application 6891 should be approved for the customary allowance for such purpose, i. e. 0.025 cubic feet per second to be diverted from about November 1 to about May 15 of each season.

ORDER

Application 6891 for a permit to appropriate water having been filed with the Division of Water Resources, as above stated, a protest having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises

IT IS HEREBY ORDERED that Application 6891 be approved for an amount not to exceed 0.025 cubic foot per second from about November 1 to about May 15 of each season.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 22nd day of March, 1932.

Edward Hyatt, State Engineer

By Harold Cockburn
Deputy

WES:MT
March 19, 1932

