

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

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In the Matter of Application 9156 of Ben R. and Leona B. Cambron to
Appropriate from an unnamed spring, Tributary to
Silver Creek, Bear Creek and Lower Lake in
Modoc County for Irrigation Purposes.

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DECISION A 9156 D 427

Decided *September 14, 1938*

APPEARANCES AT HEARING HELD AT ALTURAS, AUGUST 12, 1938.

For Applicant

Ben R. and Leona B. Cambron

Ben R. Cambron

For Protestant

Frank H. Murphy

In propria persona

Gerlach Live Stock Co., & Gerlach and Waltz

Edward T. Waltz

EXAMINER: Everett N. Bryan, Supervising Hydraulic Engineer for Harold Conkling,
Deputy in Charge of Water Rights, Division of Water Resources, Depart-
ment of Public Works, State of California.

O P I N I O N

Application 9156 was filed by Ben R. Cambron and Leona B. Cambron on
October 23, 1937. Applicants seek to appropriate 0.30 cubic foot per second from
about April 1 to about October 1 of each season from an unnamed spring, tributary
to Silver Creek, Bear Creek and Lower Lake. Diversion is proposed in the SW $\frac{1}{4}$ SW $\frac{1}{4}$,
Section 36, T. 39 N, R 16 E, M.D.B. & M., and use is proposed for irrigation of the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 36.

PROTESTS

Application 9156 was protested by Frank H. Murphy, Gerlach Live Stock Com-
pany and Gerlach and Waltz. Frank H. Murphy and the Gerlach Live Stock Company

are the owners of riparian land downstream on Silver Creek and Bear Creek and claim appropriative rights antedating the Water Commission Act. Gerlach and Waits are lessees of the land of the Gerlach Live Stock Company. It is the position of these protestants that there is no surplus or unappropriated water during the irrigation season in the source from which these applicants seek to appropriate.

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

Application 9156 having been completed and being protested, the matter was scheduled for hearing on August 12, 1938. Of this hearing due notice was given to the interested parties.

The spring from which it is sought to appropriate rises on the land of the applicants and flows thence on to the land of protestant Murphy. It discharges only a very small stream, perhaps 15 to 20 miner's inches it is gathered from the testimony given by applicants and protestants. Some years ago protestant Murphy constructed a ditch by which he diverted the water from the spring onto land upon the sidehill which he irrigated and has continued to irrigate. Applicant Cambren indicated that only some 2 acres were irrigated but the protestant Murphy estimated the acreage to be 7.

At the time of the spring thaw the waters from the unnamed spring from which it is sought to appropriate commingle with the melting snow water and pass into a swamp upon the lands of protestant Murphy. From that point they pass on into Silver Creek and then on into Bear Creek and eventually find their way into Lower Lake unless previously diverted.

It was the testimony of Mr. Cambren that the water from the spring which he seeks to appropriate is largely wasted during the irrigation season. He testified that protestant Murphy diverts ^{it} upon his sidehill and irrigates a small area but the greater portion of the water is wasted and flows into a swamp upon the Murphy land, at which point it is dissipated by evaporation and transpiration in large

measure. He was of the opinion that there was no surface connection in flow between this swamp and Silver Creek during the irrigation season except in times of unusual flow.

Protestant Murphy, on the other hand, testified that there was no waste of water. He stated that whatever water flowed from his irrigated land passed into the swamp described above and thence passed on into Silver Creek and Bear Creek.

The testimony of the other witnesses called was not clear as to whether or not there is a waste from the swamp described above during a normal irrigation season into Silver Creek. There was testimony, however, that on the day preceding the hearing there was an outflow from the swamp into Silver Creek and the testimony of protestants was quite clear that the full flow of Silver Creek and Bear Creek is diverted and used for beneficial purposes during a normal irrigation season. The testimony indicates that protestant Murphy irrigates from 600 to 700 acres and that Waltz and Gerlach irrigate from 1500 to 2000 acres. The testimony is clear that during a normal irrigation season the full flow of Silver Creek and Bear Creek is beneficially used for this purpose. The spring from which these applicants seek to appropriate is tributary to these two streams. It may be that during the irrigation season protestant Murphy does not make the fullest possible beneficial use of the waters of the spring in question and some of the spring water may find its way into the swamp upon his land and there become dissipated by transpiration and evaporation. Whether or not this is true was not clearly established by the testimony of the applicants and in view of the fact that they are riparian to the source from which they seek to appropriate as is protestant Murphy, we see no reason why this application should be approved. Until there is a more conclusive showing with respect to surplus or unappropriated water it is felt that the applicants should be obliged to depend upon their position as riparian owners and proceed as Mr. Murphy has done under claim of riparian ownership. Application 9156 should be denied.

O R D E R

Application 9156 to appropriate water having been completed and advertised, protests having been received, a hearing having been held and the Division now being fully advised in the premises,

IT IS HEREBY ORDERED that said Application 9156 be rejected and cancelled upon the records of the Division of Water Resources without prejudice.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 14 day of *Sept*, 1938.

EDWARD HYATT, State Engineer

By HAROLD GONKELING
Deputy

(Seal)

ENB:m