

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

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In the Matter of Application 10181 of Richard H. Bosse  
To Appropriate From Little Dry Creek,  
Tributary to Yuba River via Dry Creek  
in Yuba County, for Irrigation Purposes

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DECISION A. 10181 D. - 490

Decided

*July 7, 1942*

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APPEARANCES AT FIELD INVESTIGATION CONDUCTED ON JULY 24, 1941 UNDER THE  
PROVISIONS OF REGULATION 12B OF THE RULES AND REGULATIONS OF THE DIVISION  
OF WATER RESOURCES

For Applicant

Richard H. Bosse

In propria persona

For Protestant

Gottfried Zbinden

In propria persona

For other interested parties

Browns Valley Irrigation District

John R. Hardy, Director  
Ray C. Burris, Secretary

Harold Spurbeck

In propria persona

Ray C. Burris

In propria persona

INVESTIGATOR: A. S. Wheeler, Assistant Hydraulic Engineer for Harold  
Conkling, Deputy State Engineer, Division of Water Resources,  
Department of Public Works, State of California.

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O P I N I O N

Application 10181 having been filed and a protest against approval  
thereof having been received, was regularly set for a field investigation

of which applicant, protestant and other interested parties were duly notified and did agree, by signed stipulations, to abide by the report and subsequent findings of such investigation.

During the course of the investigation stream flow measurements were made which showed 0.79 cubic foot per second as being available at the intake to applicant's conduit and 0.85 cubic foot per second available at the intake to protestant's conduit and it was agreed by all parties present that all but about 0.2 cubic foot per second was waste water from lands irrigated by foreign water delivered by the Browns Valley Irrigation District.

It was further agreed that normally there was no natural flow in Little Dry Creek during the months of July, August and September and that the presence of some natural flow at the time of the investigation was due to above normal rainfall during the winter and spring months immediately preceding the investigation.

At the time of the investigation delivery of foreign water by the irrigation district to irrigators in the Little Dry Creek watershed was in progress and accordingly the approximate 0.65 cubic foot per second of waste water in the creek at that time probably represented about the normal waste water flow throughout the irrigation season at such times as delivery is made in the watershed.

Protestant in addition to a claimed riparian right also claims a recorded right to 200 miner's inches for irrigation and stockwatering purposes initiated during 1885 and further claims that such right covers waters emptying into or flowing in the creek. Protestant diverts from April 1 to October 31.

The Browns Valley Irrigation District was organized in 1888 and

commenced delivery of water to lands within the District about 1891 but it was not until 1896 that delivery to the extent of the District's rights was general throughout the District.

As shown above the recorded rights claimed by protestant were initiated three years prior to the formation of the irrigation district and at least five years prior to the commencement of delivery of water by the district and it is accordingly not probable and there is nothing in the description of the rights submitted by protestant to indicate that the initiation of rights to any flow in the creek caused by release of foreign waters in the watershed was contemplated or intended and certainly under the riparian doctrine no claim to such waters can be advanced.

As further evidence that waste waters resulting from imported waters was not in mind in initiating the right a judgment secured by protestant in 1939 against applicant's predecessor in interest restrained him from obstructing only the natural flow of waters, or any portion thereof, in the creek. This judgment was set aside on June 17, 1942.

Applicant seeks to secure a right to waste waters resulting from delivery of foreign waters to the Little Dry Creek watershed and such other waters as may from time to time be unappropriated to the extent of 0.5 cubic foot per second for irrigation from April 1 to October 30 and it would appear from the foregoing that, insofar as the waste waters are concerned, protestant has initiated no rights to such waters and there is no bar towards approval of Application 10181 in that respect.

Assuming, however, that protestant has established a right to such waste waters the report of the investigation indicates that, by means of a very liberal estimate, protestant's maximum requirement is 0.70 cubic foot per second and with a measured 0.86 cubic foot per second available to

protestant at the time of the investigation applicant could have been diverting over 30% of the 0.5 cubic foot per second which he seeks without interference with protestant if protestant had been diverting to the extent of his maximum requirements. However, protestant was diverting only a measured 0.35 cubic foot per second at that time and accordingly applicant could have been diverting to a beneficial use the full amount sought by him without interfering with protestant.

Relative to unappropriated natural flow in the creek, at such times as the flow exceeds protestant's full requirements or protestant was not diverting to the extent of his full requirements when sufficient natural flow was available water would be available for a beneficial use by applicant.

The use to which applicant proposes to put the water is a beneficial one and there now appearing to be no bar to approval of Application 10181 it is the opinion of this office that said application should be approved subject to the usual terms and conditions and the condition that insofar as waste or seepage water is concerned no continuance of flow is assured and the only purpose served is to establish priority as against subsequent appropriators.

Records Relied Upon

Amended Application 10181 .....Filed Apr. 22, 1941  
Map supporting Application 10181 .....Filed Apr. 10, 1941  
Protest by Gottfried Zbinden .....Filed Apr. 30, 1941  
Amended protest by G. Zbinden .....Filed June 2, 1941  
Stipulation by applicant .....Filed June 6, 1941  
Stipulation by protestant .....Filed June 10, 1941  
Letter from Browns Valley Irrig. Dist. ...Filed July 12, 1941  
Report of field investigation ..... August 18, 1941  
State Department of Engineering Bulletin  
No. 2 issued in 1917  
State Dept. of Public Works, Division of  
Engineering & Irrigation Bulletin #21..Issued in 1929  
Various reports and agreements filed with  
the Division of Water Resources by the  
Browns Valley Irrig. Dist. at various times.

ORDER

Application 10181 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Regulation 12B of the Rules and Regulations of the Division of Water Resources and the Division now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10181 be approved for the amount of water and season of use applied for and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and the condition that insofar as waste or seepage water is concerned no continuance of flow is assured and the only purpose served is to establish priority as against subsequent appropriators.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 7th day of July 1942.

EDWARD HYATT, STATE ENGINEER

BY Harold Conkling  
Deputy

ASW:m

