

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

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In the Matter of Application 10422 of H. J. Phillips to
Appropriate from a Drainage Ditch (Ingram Slough) in
Placer County for Irrigation Purposes.

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DECISION A. 10422 D. 512

Decided April 26, 1944

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SITE OF THE PROPOSED
APPROPRIATION ON FEBRUARY 25, 1943.

For Applicant

H. J. Phillips

In propria persona

For Protestant

Nevada Irrigation District

Charles Law
E. A. Breckenridge
Charles Newcomb

For Division of Water Resources

A. S. Wheeler, Assistant Hydraulic Engineer for Harold Conkling,
Deputy State Engineer 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

DESCRIPTION OF PROPOSED APPROPRIATION

Application 10422, as originally filed and as advertised, proposed
an appropriation of 1.5 cubic feet per second from Auburn Ravine and 1.5

cubic feet per second from a "Drainage Ditch" both tributary to the Sacramento River in Placer County to be diverted from April 1 to November 1 of each season for the irrigation of 190 acres within the SW $\frac{1}{4}$ of Section 15 and the NE $\frac{1}{4}$ of Section 21, T 12 N, R 6 E, M.D.B.&M. The point of diversion from Auburn Ravine was described as being within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 15 and the point of diversion from the drainage ditch was described as being within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 15, T 12 N, R 6 E, M.D.B.&M.

PROTESTS

Application 10422 was protested by Nevada Irrigation District, Dr. J. L. Hardin and Albert J. Scheiber.

The Nevada Irrigation District alleged in effect that the only water flowing in Auburn Ravine at applicant's proposed point of diversion during the summer season was water which had been placed in the Ravine by the District and which is sold to the applicant and others and that the only water flowing in the drainage ditch was runoff water from the fields which had been irrigated by the District and which had been subsequently recovered for resale. It also claimed that as the point of diversion was within the boundaries of the Nevada Irrigation District, the water is not subject to appropriation in view of Section 56 of the California Irrigation District Act.

In a letter to the State Engineer dated December 23, 1942, the District stated that the drainage ditch from which applicant seeks to appropriate is one which the District uses for the return of water to Auburn Ravine where it is again sold for irrigation purposes. The District further stated that the fact that the applicant claims to own the land at the proposed point

of diversion would make no difference as Mr. Phillips is seeking to avoid paying for water that other land owners would have to pay for. It claimed that the water which applicant is seeking to appropriate is water which belongs to the District and if he wishes such water, the District could sell it to him at an appropriate rate.

Dr. J. L. Hardin claimed riparian rights and a right under licensed Application 7457 for an amount of water not to exceed 2.5 cubic feet per second to be diverted from Auburn Ravine at a point within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 28, T 12 N, R 5 E, M.D.B.&M. during the month of April of each year for the irrigation of 305 acres of rice. He stated that his protest might be dismissed if the months of April and May were eliminated from the season of use.

Albert J. Scheiber claimed a riparian right and a right by use initiated prior to the effective date of the Water Commission Act, to divert the waters of Auburn Ravine at a point within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 17, T 12 N, R 6 E, M.D.B.&M. The water is used for the irrigation of approximately 55 acres of land, and for domestic and stock watering purposes.

Under date of December 6, 1942, Mr. Phillips informed this office that he had decided not to apply for water from Auburn Ravine but wished to retain the filing on the drainage ditch as it did not concern any of those who had filed objections to the appropriation from Auburn Ravine and on December 8, 1942, Application 10422 was amended by striking therefrom all reference to the proposed appropriation from Auburn Ravine and by reducing the amount of water applied for to 1.5 cubic feet per second. This amendment resulted in the withdrawal of the protests of Dr. J. L. Hardin and Albert J. Scheiber.

FIELD INVESTIGATION

Stipulations under Regulation 12B of the Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings, having been signed by the applicant and protestant and having been approved by this office, an investigation was arranged at the site of the proposed appropriation on February 25, 1943. Of this investigation applicant and protestant were duly notified.

The investigation was made as scheduled by an engineer of the Division, accompanied by the applicant and by Charles Law, E. A. Breckenridge and Charles Newcomb representing the protestant.

RECORDS RELIED UPON IN ARRIVING AT A DECISION

Application 10422 Complete file

Application 7457 Complete file

GENERAL DISCUSSION

At the time of the investigation it was found that Mr. Phillips proposed to irrigate 38 acres only and he agreed to reduce the amount of water named in Application 10422 to an amount not to exceed 0.48 cubic foot per second. It was also found that the general change from his original plans involved a change in the location of the proposed point of diversion to a point approximately 460 feet downstream from the original point. Applicant also agreed to reduce his season of diversion to the period from about April 1 to about July 1 of each season as he conceded that normally there was no natural flow in the slough after July 1 and the District's representatives believed that this reduction in season would prevent applicant from taking any water which the District might turn into Ingram Slough for its lower constituents.

Protestant's representatives then stated that the application could be considered as being unprotested by the Nevada Irrigation District subject to the approval of its general manager Mr. William Durbrow and that upon notification from the Division that the application had been amended as to the amount of water and season of diversion a written withdrawal of the protest might be expected.

In reviewing the entire situation it appeared that possibly Dr. Hardin had not been informed of the fact that Ingram Slough was tributary to Auburn Ravine above his point of diversion and in order that there might be no misunderstanding in the matter he was invited to the office to discuss the situation with us.

On April 18 he appeared at the office and the situation was explained to him in detail, including the report of the engineer who conducted the investigation. Dr. Hardin stated that he did not see wherein the proposed appropriation would interfere with his rights so long as the diversion season was confined to the period from April 1 to July 1 but wished to be placed in the same category as the Nevada Irrigation District as he felt that possibly the District might not favor the withdrawal of the protest. Apparently, as he is purchasing water from the District, he did not wish to incur its displeasure by not cooperating with it. His protest was therefore reinstated and he signed a stipulation under Regulation 12B agreeing to abide by our decision based upon the facts now before us without the necessity of further investigation.

Subsequent to the investigation applicant has apparently been negotiating with the Nevada Irrigation District in an effort to have the boundaries

of the District changed to exclude from the District certain nonirrigable lands of the applicant and to include within the District all of his irrigable land thereby permitting the applicant to purchase water from the District at a much lower rate. Apparently, however, little progress, if any, has been made and we see no reason for delaying action further.

It was admitted by the District's representatives at the time of the investigation that Ingram Slough was not being used for the delivery of water to consumers although it was intended to use the slough for this purpose in the future. Applicant proposes to use only the natural flow of the slough as long as it is available and to reuse any return flow from his own property which may be available. During a portion of the irrigation season he expects to augment his supply by purchasing water from the Nevada Irrigation District.

Applicant has asked that his proposed point of diversion be moved to a point outside of the District's boundaries within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21, T 12 N, R 6 E, M.D.B.&M. at a point on his own property.

It is the opinion of the Division that Application 10422 should be amended as agreed upon by applicant at the time of the investigation and approved subject to the usual terms and conditions.

O R D E R

Application 10422 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a field investigation by the Division 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 with Respect to Protests and Hearings, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10422 be approved for an amount of water not to exceed 0.48 cubic foot per second to be diverted from about April 1 to about July 1 of each season from Ingram Slough at a point within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 21, T 12 N, R 6 E, M.D.B.&M. for the irrigation of 13.5 acres within SE $\frac{1}{2}$ of NE $\frac{1}{2}$ and 13.5 acres within NE $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 21 and 11.0 acres within the SW $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 22, T 12 N, R 6 E, M.D.B.&M., and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that the remaining amount of water applied for, the balance of the season applied for, and the irrigation of lands in excess of 38 acres, be denied.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 26th day of April, 1944.

EDWARD HYATT, STATE ENGINEER

BY

Harold Conkling
Deputy State Engineer

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