

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

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In the Matter of Application 10811 of William H. Paulk to  
Appropriate Water from an Unnamed Stream Tributary to  
Lone Tree Creek in San Joaquin County for  
Irrigation Purposes

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DECISION A. 10811 D.-535

Decided May 27, 1946

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SITE OF THE PROPOSED  
APPROPRIATION ON OCTOBER 23, 1944.

For Applicant

Eichelberger-Hobin Company, Inc.  
(Predecessor of William H. Paulk)

A. B. Eichelberger  
R. B. Beardslee  
William H. Paulk

For Protestant

W. F. Cook

L. B. Raab

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer, for Gordon Zander,  
Supervising Hydraulic Engineer, 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 DEVELOPMENT

Application 10811 was filed by Edward F. Longeval on May 8,  
1944, and has been successively assigned to Eichelberger-Hobin Company,  
Inc., and to William H. Paulk, the present owner.

It proposes an appropriation of 3 cubic feet per second from an unnamed stream in San Joaquin County tributary to Lone Tree Creek to be diverted from April 1 to November 1 of each season for the irrigation of 194 acres of alfalfa within Section 5, T 1 S, R 9 E, M. D. B. & M. Two points of diversion are proposed, one being within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 5, and the other within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 5, T 1 S, R 9 E, M. D. B. & M.

#### PROTEST

Application 10811 was protested by W. F. Cook, predecessor in interest of Willma Cook, who has Application 10673, Permit 6343, before the Division for an amount of water not to exceed 3 cubic feet per second, to be diverted from the unnamed stream at a point approximately 5 miles below the proposed point of diversion of the applicant for the irrigation of 240 acres of general crops. Protestant alleges in effect that there is insufficient water in the stream during the irrigation season to supply the needs of both applicant and protestant. This statement is based upon measurements of the stream flow made during the months of July, August and September, 1943.

#### FIELD INVESTIGATION

Stipulations to an informal hearing under Regulation 12b of the Rules and Regulations of the Division of Water Resources (now Section 733b of the California Administrative Code) having been signed by the applicant and protestant and approved by the Division, a field investigation was conducted at the site of the proposed appropriation by an engineer of the Division on October 23, 1944, at which were present

A. B. Eichelberger and Mr. William H. Paulk, who was purchasing the property on contract, and their attorney, Mr. R. B. Beardslee. Mr. L. B. Raab, who represented the protestant, also was present.

In arriving at a decision in the matter, reliance is placed on the entire files of the following:

Application 10673, Permit 6343  
Application 10811  
Application 11238

#### GENERAL DISCUSSION

From statements made at the field investigation it appeared that the available summer flow was not dependable and at times was too small by itself and without regulation to serve any practical purpose, but that an increase in run-off was anticipated by the applicant by reason of a considerable acreage to be planted to Ladino Clover upstream which applicant claims was in prospect at the time the application was filed. At the request of applicant's attorney, action has been withheld in connection with Application 10811 to determine the feasibility of proceeding with the proposed appropriation, it being understood that the applicant would install a weir above the proposed point of diversion and maintain a record of the stream flow. Protestant's engineer agreed to the postponement for one year only with the understanding that no further postponement would be requested. On September 25, 1945, protestant's engineer directed the attention of this office to the fact that the period agreed upon was about to elapse and that no weir had been installed by the applicant as agreed upon.

On October 11, 1945, the matter was discussed by an engineer of the Division with Mr. Paulk, his attorney and protestant's engineer. As a result of the conference it was learned that Mr. Paulk had drilled

a deep well some distance from the water course upon which a pump already purchased was to be installed and that a pipe line system had been laid over a portion of his property. It was apparently Mr. Paulk's intention to install another pump on the stream channel and to connect it to the distribution system should the surface run-off prove sufficient to justify the installation.

Another possible source of supply for the applicant is water from a drainage ditch carrying waste water from Oakdale Irrigation District, to which water the applicant may have a right by virtue of an old agreement with the District. Mr. Paulk stated that during the early part of the season there was practically no run-off and thereafter the flow was sporadic, at times being as much as 5 cubic feet per second and at other times none. No weir had been installed and no specific information had been obtained as to the flow of the stream.

It was estimated that approximately 1,000 acres of Ladino Clover were to be planted upstream and applicant stated that if an extension of another year were granted and the surface run-off proved sufficient to proceed with the appropriation he would install a weir and take measurements of the flow, but if the flow was insufficient he would authorize the cancellation of the application.

Protestant's engineer, however, did not believe that the flow would be materially increased by irrigation above and questioned whether the new acreage of Ladino Clover was in prospect at the time Application 10811 was filed. He was of the opinion that the original applicant had in mind only the run-off from the property of one Bordenave, who is preparing Section 9, T 1 S, R 9 E, M. D. B. & M., just above applicant's

property for irrigation and that, if such were the case, little or no return water from the irrigation of this land would be available for use by the applicant as Mr. Bordenave proposes to obtain his water supply by pumping from wells, collecting all tail water and boosting it back for use on other portions of the Section. The lift from the water table is about 80 feet and by recovering and utilizing the tail water the saving due to pumping head would be considerable. This method of operation, however, would materially decrease the flow which would be available at applicant's proposed point of diversion.

Under Application 10673 Willma Cook may appropriate 3 cubic feet per second throughout the year for irrigation purposes, and it was the opinion of protestant's engineer that, although as a rule there is summer flow to that amount, at times it diminished to 2 cubic feet per second and, in view of the questionable prospect of increased run-off, a permit issued to the applicant in approval of Application 10811 would needlessly complicate the situation.

On September 25, 1945, the protestant's engineer directed our attention to the fact that no weir had yet been installed by the applicant. He also stated that the applicant had dug a well thereby developing approximately 4 cubic feet per second which was to be delivered to the land by means of concrete pipe lines which had been installed. He stated that this amount of water was sufficient for the irrigation of approximately 300 acres of land, whereas the place of use named in Application 10811 contained 160 acres of land only. He requested that action upon Application 10811 be taken without further delay.

On December 6, 1945, the use of water under Application 10673 of Willma Cook was reported complete. The report indicated that 240 acres of rice had been irrigated, whereas the application proposed the irrigation of 240 acres of general crops, which would require approximately one-half the amount of water required for the irrigation of rice. It would appear, therefore, that more than 3 cubic feet per second had been diverted by the protestant.

On December 15, 1945, Willma Cook filed Application 11238 with the Division seeking an appropriation of 4.89 cubic feet per second to be diverted from the unnamed creek at a point approximately 1100 feet downstream from the point of diversion described in her Application 10673.

It is proposed to utilize the water for stockwatering purposes and the irrigation of 391.6 acres of pasture. This application was filed for a permit to appropriate "unappropriated water of the State of California" and under date of February 13, 1946, the attention of protestant's engineer was directed to the apparent inconsistency on the part of his client in alleging that there was insufficient unappropriated water in the stream to justify the approval of Application 10811 for an appropriation of 3 cubic feet per second and, at the same time, applying for 4.89 cubic feet per second of unappropriated water. In reply, protestant's engineer stated that there are several streams which are tributary to the unnamed stream between applicant's and protestant's points of diversion which have been connected by a drainage canal recently constructed by means of which waste water from irrigation above is discharged into the stream immediately above protestant's point of diversion, whereas the supply of water which applicant is seeking to appropriate is derived from one stream only.

The fact that the protestant has had sufficient water with which to irrigate 240 acres of rice, which requires approximately twice as much water as that required for the irrigation of ordinary crops, would in itself indicate that there is unappropriated water in the stream subject to appropriation by the applicant. This opinion is also strengthened by the fact that protestant has filed another application with this office to appropriate a larger amount of water than that which applicant seeks to appropriate. The protest may therefore be dismissed.

Under date of February 26, 1946, applicant's attorney was requested to inform this office whether Mr. Paulk intended to proceed under his Application 10811, or whether he intended to rely upon his underground supply and the supply from the drainage ditch of the Oakdale Irrigation District. No satisfactory reply to this letter has been received.

#### SUMMARY AND CONCLUSION

The water which applicant is seeking to appropriate is return water from irrigated lands above. Although there is no assurance of regularity of flow, there is apparently unappropriated water available at times which can be taken and used by the applicant without interfering with the prior rights of the protestant.

We are not at all certain whether applicant will proceed under any permit which may be issued in approval of Application 10811, but the opportunity should be afforded him if he so desires to augment his present supply with gravity water, thereby reducing his pumping costs.

The fact that protestant has applied for additional unappropriated water by the filing of an application which is later in priority than

Application 10811 and has reported the irrigation of 240 acres of rice under Application 10673, instead of the irrigation of 240 acres of general crops as indicated in the application, would appear to be sufficient grounds for the dismissal of the protest, and the protest is dismissed without prejudice.

It is the opinion of the Division that Application 10811 should be approved subject to vested rights and to the usual terms and conditions. The permittee, however, should be held to strict diligence in the compliance with the terms of the permit.

O R D E R

Application 10811 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been received, a field investigation having been made, a stipulated informal hearing having been held in accordance with Regulation 12b of the Rules and Regulations of the Division (now Section 733b of the California Administrative Code), and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10811 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 27 day of May, 1946.



  
EDWARD HYATT, STATE ENGINEER