

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

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In the Matter of Application 10990 of the City of
Napa to Appropriate Water from Conn Creek, Tributary
to Napa River in Napa County for Irrigation, Municipal,
Industrial and Domestic Purposes.

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Decision A. 10990 D. 564

Decided December 3, 1947

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Appearances at Hearing held at Napa, December 11, 1945.

For Applicant

City of Napa

(Charles Martin
(August Kempkey
(Nathan F. Coombs

For Protestants

Mary B. Grigsby

Clarence N. Riggins

Harvey D. Miller

No appearance

Charles F. Wagner

Sheldon Rutherford

Elizabeth Hulme Wood)

A. E. Chandler

William E. Cole)

Beaulieu Vineyard)

Theodore Roche, Jr.

Douglas Pringle)

Arthur L. and Rachel H. Wilcox

Clarence N. Riggins

R. H. and M. E. Gibson

Jefferson E. Peyser

W. E. Lawson

In propria persona

Examiner

Gordon Zander, Supervising Hydraulic Engineer in Charge of Water
Rights, Division of Water Resources, Department of Public Works,
State of California, for Edward Hyatt, State Engineer.

Also in Attendance:

M. S. Edson, Senior Hydraulic Engineer, Division of Water Resources.

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OPINION

General Description of the Proposed Development

Application 10990 was filed with the Division of Water Resources on March 1, 1945, by the City of Napa as represented by Charles F. Moffitt, Mayor. The application as submitted was for an appropriation, from Conn Creek, of 35 cubic feet per second by direct diversion from November 1 to July 31 and 35000 acre feet per annum by collection between November 1 and June 30 for temporary storage and later application to beneficial use. The proposed point of diversion lies within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T 7 N, R 5 W, M.D.B. & M. The project involves construction of an earth rolled fill dam some 120 feet high, a spillway, outlet, regulatory works, conduit and appurtenances. The application contemplates use of water for irrigation, municipal, industrial and domestic purposes, within Napa Valley from St. Helena to Vallejo.

PROTESTS

Mary B. Grigsby claims to divert from Conn Creek, below the applicant's dam, for domestic use, irrigation and for the washing of gravel deposited on her property naturally and periodically by Conn Creek storm waters and sold, profitably, as material for concrete, etc. She represents that the proposed development would impair her water supply and injure her gravel business.

Harvey D. Miller asserts diversion within Section 3 of T 7 N, R 5 W for domestic use and irrigation of 11 acres. He apprehends that in dry seasons the applicant will impound the total flow of Conn Creek, thus jeopardizing his water supply. This protestant entered no appearance at the Hearing.

Charles F. Wagner sells gravel on a basis of \$400 to \$500 per year, the gravel being replenished annually by Conn Creek when in flood. He argues

that the applicant's proposed dam will arrest future floods on Conn Creek and so deprive him of his income from the sale of gravel.

Elizabeth Hulme Wood claims ownership of 54 acres overlying water percolating from Conn Creek below the proposed dam, and use of water for irrigation and stock watering derived by pumping such underground water. This protestant also claims a right under License 1730 (Application 5463) to divert from the surface flow of Conn Creek. She considers that both sources are jeopardized by the proposed development.

William E. Cole represents that the proposed appropriation will lessen percolation from Conn Creek to his wells. He claims to irrigate 118 acres of orchard and to furnish domestic water for 5 buildings and 50 harvest workers, obtaining his supply by pumping. According to the protest his installation includes 3000 feet of concrete pipe and his right is based on ownership of overlying land.

Beaulieu Vineyard claims extensive irrigation use upon lands within Sections 10, 11, 14 and 15 of T 7 N, R 5 E, M.D.B. & M., these lands lying along Conn Creek below the proposed dam. Rights are asserted to be based upon riparian ownership and upon ownership of lands overlying a basin fed by percolation from Conn Creek. Injury apprehended by this protestant includes interruption of surface flow in Conn Creek and reduction of the rate of resupply, by percolation, of the ground water basin, thus interfering both with pumping and with natural subirrigation.

Douglas Pringle claims a riparian right to divert from Conn Creek and a right by virtue of ownership of overlying land to pump percolating water. He apprehends that both the surface flow of Conn Creek and the percolating supply fed therefrom, will be impaired by the proposed development, and, moreover that ground water levels will recede so far that the benefit of sub-irrigation, upon which he is partially dependent, will be lost.

Arthur L. and Rachel H. Wilcox claim to utilize water for stock watering, irrigation and domestic purposes within the $W\frac{1}{2}$ $SE\frac{1}{4}$ and $SE\frac{1}{4}$ $SW\frac{1}{4}$ of Section 36, T 3 N, R 5 W, M.D.P.&M., all of which lies upstream from the applicant's point of diversion.

R. H. and M. E. Gibson claim rights based upon riparian ownership, prior appropriation, and ownership of lands overlying percolating waters. They claim to irrigate 94 acres in fruit trees from about April 1 to about October 15, and to water stock and to utilize water for domestic purposes, throughout the year, obtaining their supply both by direct diversion of surface flow and by pumping from wells. Their land is located downstream from the applicant's proposed point of diversion.

W. E. Lawson claims to use water on 2 parcels of land located some 3 miles westerly of the proposed dam. He contends that the diversion proposed by the applicant will tend to deplete and lower the water table in Conn Creek alluvial cone, inferring that his land lies within such cone.

ANSWERS TO PROTESTS

The applicant answers each protestant (except the Wilcoxes) by statements to the effect that under the application the right is sought to impound and/or divert the unappropriated waters only, at the point designated; and that waters which have been appropriated heretofore or to which prior rights have been established, will be passed through the reservoir in question. As to the Wagner, Gibson and Grigsby protests the applicant denies that these protestants have rights on Conn Creek to gravel or vested rights thereon or therein which would be affected by the application. The answer to the Arthur L. and Rachel H. Wilcox protest is limited to a denial that these protestants have riparian or other rights on Conn Creek and a statement that condemnation actions are in progress where applicable. As to the W. E. Lawson protest the applicant denies that this protestant has any vested right or easement in and to the waters of Conn Creek that would be affected by the application.

HEARING HELD IN ACCORDANCE WITH THE WATER CODE

Application 10990 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing in accordance with Chapter 5 of Part 2 of the Water Code on Tuesday, December 11, 1945, at 10:00 o'clock A.M. in the Superior Court Room, Court House, Napa, California. Of this hearing, the applicant and the protestants of record were duly notified.

GENERAL DISCUSSION

At the Hearing, on motion, by the applicant, allowed by the Examiner, the application was amended by shortening the period during which diversion is proposed to that commencing November 1 and ending May 1; and by decreasing the amounts applied for to 35 cubic feet per second for direct application and 30,500 acre-feet per annum for diversion to temporary storage.

At the Hearing also the parties agreed to join in a stipulation, to be later formulated, executed and submitted to the Division of Water Resources as an aid in the resolution of the principal issues. Such stipulation was duly submitted and provided, in essence that (1) reservoir operation will be such as to maintain underground water conditions within the area within which the protestants' wells are located equivalent to what they would have been had the dam not been constructed; (2) the City will pass waters through Conn Reservoir under conditions specifically named but not otherwise; (3) the City will drill and maintain 3 certain wells for better observation of ground water behavior; (4) the City will periodically read and record water levels in the wells just mentioned and maintain such records; (5) the City will install mutually satisfactory measuring devices on Conn, Chiles and Sage Creeks, will pass through Conn Reservoir from November 1, to May 1 of each season such waters as enter that reservoir up to an aggregate of 10 cubic feet per second, and from May 1 to November 1 will pass the total surface inflow; (6) that the adequacy of the initial allowance of 10 cubic feet per second from November 1 to May 1 shall be determined every three years on the basis of

data secured by means of the pilot wells and that allowance changed accordingly; (7) that the Stipulation shall refer to the protestants only, and for irrigation and domestic use on lands presently owned by them; (8) that while the Stipulation is in effect the City shall not obtain rights by prescription; and (9) that the Stipulation in whole or in part may be incorporated in orders issued by the Division of Water Resources. The stipulation was signed by Protestants Wagner, Wood, Cole, Pringle and Gibson and by representatives of Beaulieu Vineyard and of the City of Napa. Of the four non-signers of the stipulation, Protestant Grigsby desires flood waters to continue to carry sand and gravel in suspension to his borrow pit, a use at variance with Section 100 of the Water Code; Protestant Miller, by virtue of his location above the other protestants, will have first opportunity to benefit by the agreement and is at present a non-user; Protestant Wilcox has no apparent cause for action, his lands lying above the proposed point of diversion; and Protestant Lawson, whose lands lie west of Napa River and therefore relatively remote from Conn Creek appears well safeguarded against injury, by the maintenance in statu quo of ground water levels, under the stipulation.

The magnitude of the flow of Conn Creek was established by runoff and rainfall records introduced in evidence. The existence of an annual surplus was not contradicted by the protestants, their objections to the proposed development being based in general upon apprehension of interference with the natural flow of Conn Creek at low stages. This apprehension of the protestants was relieved in large part by the stipulation outlined in the preceding paragraph.

SUMMARY AND CONCLUSIONS

The passage of sufficient water to satisfy the protestants' reasonable requirements appears insured by the stipulation to which all but four of the protestants have agreed. These four either appear sufficiently protected by the stipulation, or would not in fact be injured, or protest on grounds not recognized by the Water Code.

There are, at times, unappropriated waters in the stream from which the applicant proposes to appropriate which may be taken and used without injury to the protestants. In view of all the circumstances the application should be approved and permit issued subject to the usual terms and conditions and also subject to a special term or condition to the effect that it is issued expressly subject to the terms of that certain stipulation dated August 18, 1947, and placed on record in the office of the State Engineer on October 23, 1947.

ORDER

Application 10990 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises,

IT IS HEREBY ORDERED that Application 10990 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate, and subject also to the following special term or condition, to wit:

This permit is issued expressly subject to the terms of that certain stipulation dated August 18, 1947, and placed on record in the office of the State Engineer on October 23, 1947.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 3rd day of Dec, 1947.




Edward Hyatt, State Engineer