

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 11814 by the Estate of H. G. Kelsey to Appropriate Water from the South Fork of Dry Creek and from Certain Unnamed Streams Tributary Thereto, in Mariposa and Merced Counties, for Irrigation and Stockwatering Purposes.

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Decision A. 11814 D. 650

Decided March 24, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON JULY 21, 1949:

H. G. Kelsey, Jr. and)	Applicant's representatives
James A. Coby)	
J. C. Rosasco	Protestant
L. B. Raab	Protestant's Engineer
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, representing the State Engineer.

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OPINION

General Description of the Project

Application 11814 contemplates the direct diversion of 3.4 cubic feet per second from April 1 to October 31 of each season from the

South Fork of Dry Creek, and the diversion from November 1 to May 31 of each season, to temporary storage, of 1002.6 acre feet per annum, from that stream and from certain of its tributaries. Of the stored water, 70% is to come from South Fork of Dry Creek (tributary via Dry Creek to Merced River) and 6% is to come from each of 5 designated tributaries, the location of the several points in question being as follows:

<u>Designation of Source</u>	<u>Name of Source</u>	<u>Location of Point of Diversion</u>
1	South Fork of Dry Creek	NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 21
2	Unnamed Stream	SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 28
3	" "	NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 28
4	" "	SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 28
5	" "	NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 33
6	" "	SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 31

The proposed points of diversion are all located within T 4 S, R 15 E, M.D.B.&M. At Source 1 a timber diversion dam 3 feet high by 40 feet long is to be installed. No dams are contemplated on Sources, 2, 3, 4 or 5. Storage is to be effected on Source 6 by means of a riprapped earthfill dam, 6 feet high by 1000 feet long. The project is to include an earth ditch, 100 cubic feet per second in capacity, and 9000 feet long. The water applied for is to be used in irrigating 267 acres of pasture within Sections 29, 30, 31 and 32 of T 4 S, R 15 E and Section 25 of T 4 S, R 14 E, M.D.B.&M., and for the watering of 500 head of livestock. The irrigation season is to extend from about April 1 to about October 31. The applicant claims another water right under a contract with Merced Irrigation District, and also claims a riparian right.

Protest

J. C. Rosasco protested the application, representing that the proposed appropriation will reduce the flow of the South Fork of Dry Creek to a rate less than the 4 cubic feet per second to which he is entitled under his prior Application 10255. The protestant states that he began using water in 1946 and at present is irrigating 30 acres of permanent pasture, his diversion heading at a point within Section 21 of T 4 S, R 14 E, M.D.B.&M. The protestant further states that in 1947 the applicant put in a small dam on Dry Creek and diverted water without apparent authority, so reducing the available supply as to limit the extent of irrigation by the protestant to the 30 acres mentioned. He states that this diversion by the applicant was not asked for in Application 11814 which application therefore, he contends, is defective in not showing the true state of affairs. He states that the protest may be disregarded if he is given adequate assurance that the flow of the South Fork of Dry Creek up to 4 cubic feet per second will not be diverted or interfered with.

On behalf of the applicant, Horace G. Kelsey, Jr. answered the protest by stating that whereas the applicant's property lies along the South Fork of Dry Creek the protestant's diversion heads on Dry Creek below the point where the South Fork joins that stream; that several tributaries enter Dry Creek besides the South Fork thereof; that never except for a few hours has the flow of the South Fork of Dry Creek equalled 4 cubic feet per second during the irrigation season. The answer also alleges that the dam referred to in the protest was built to recapture and reuse water already appropriated; that after June 1 there

is no natural, direct flow in the South Fork of Dry Creek, and that in some seasons the supply fails before April 1; and that the only substantial amount of water present in the South Fork watershed after June 1 is water stored in the reservoir.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code a field investigation was conducted at the site of the proposed appropriation on July 21, 1949 by an engineer of the Division. The applicant and the protestant were present or represented during that investigation.

Records Relied Upon

Applications 10255 and 11814 and all data and information on file therewith.

Discussion

Under Application 10255, Permit 5965, J. C. Rosasco is authorized to divert 4 cubic feet per second from about March 1 to about December 1 of each season from Dry Creek at a point 2541 feet north and 1695 feet west from the southeast corner of Section 21, T 4 S, R 14 E, M.D.B.&M., for domestic and irrigation purposes. This point of diversion is some 600 feet downstream from the point where the South Fork of Dry Creek enters Dry Creek proper. According to Division Order dated December 8, 1948, Permittee Rosasco was granted an extension until December 1, 1951 within which to complete construction and to complete the application of the water to beneficial use.

Permittee Rosasco according to the record has experienced continuing difficulty in obtaining sufficient water. He initially used

3 points of diversion but early petitioned and was authorized to shift his points of diversion to a single location (the one presently used) in the hope of decreasing seepage losses. By progress report for 1945 he stated the summer flow of Dry Creek to be seepage and return flow only - no more than enough to enable him to irrigate 80 acres - and that he was thinking of putting down a deep well to augment the supply. His report for 1946 mentioned a deep well as started but not finished; and 20 acres under irrigation. By letter written during January 1947 he reported his well a failure (dry) and his last apparent chance the addition of a storage reservoir to his project. His report for 1947 mentioned 30 acres as under irrigation which in his opinion is as much as the summer flow of the stream will support; he intimates he will drill a well in a new location. The same irrigated acreage was reported for 1949.

The Rosasco intake scales some 4 miles downstream from the lower limit of the place of use under Application 11814. In view of Protestant Rosasco's experience as outlined in the preceding paragraph it would be disastrous to him for the summer flow of the South Fork of Dry Creek (or any other upper tributary to Dry Creek) to be depleted further; and under his Application 10255 he is entitled to divert a greater summer flow (up to 4.0 cubic feet per second) than appears yet to have occurred since his operations under that application commenced.

The investigation on July 21, 1949 in connection with Application 11814 yielded information to the effect that the summer flow of South Fork of Dry Creek below the Kelsey Estate property is of the order of 0.5 cubic foot per second; that that flow seems to consist entirely of waste waters; that normally no water is available for direct diversion by the applicant during the period mentioned in that Application

(April 1 to October 31); that the applicant is agreeable to eliminating direct diversion from the application; and that normally no water is available for storage except between November 1 and April 1.

Inasmuch as no flow ordinarily occurs in South Fork of Dry Creek from April 1 to October 31 and any flow that should occur (up to 4.0 cubic feet per second) would be required for the satisfaction of Permit 5965 (Application 10255) it is plain that Application 11814 insofar as it relates to a diversion of 3.4 cubic feet per second from April 1 to October 31 should be denied. On the other hand the proposal in the application to divert 1002.6 acre feet per annum to temporary storage does not appear in conflict with the protestant's prior rights and the application to that extent should be approved with diversions thereunder limited however to periods extending from November 1 to March 31 only, and with approval made subject to the usual terms and conditions.

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ORDER

Application 11814 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11814, insofar as a direct diversion of 3.4 cubic feet per second from April 1 to October 31 is concerned, be denied and that diversions under the proposed appropriation of 1002.6 acre feet per annum for accumulation in temporary storage be restricted to periods from November 1 to March 31 of each season; and

IT IS FURTHER ORDERED that Application 11814 as so modified

and restricted 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 24th day of March, 1950.

A. D. Edmonston

A. D. Edmonston
State Engineer

