

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 12717 by Lucky McFall to Appropriate Water from Lone Tree Creek Tributary to San Joaquin River in San Joaquin County for Irrigation Purposes.

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Decision A. 12717 D. 657

Decided April 5, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON OCTOBER 28, 1949:

Lucky McFall	Applicant
Eugene D. Stevens	Protestant
Ruth Day	Representing Protestant Ralph E. Day, Dec'd.
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

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General Description of the Project

The application contemplates an appropriation of 0.625 cubic foot per second from May 1 to October 31 of each season from Lone Tree Creek tributary to San Joaquin River in San Joaquin County. The water is to be used for irrigation. The proposed conduit, a 20 inch diameter

gravity pipe line 2000 feet long, is to head at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T 1 S, R 8 E, M.D.B.&M. Diversion is to be effected by means of a concrete dam 6 feet high by 20 feet long. The place of use which is 50 acres in extent lies within the NW $\frac{1}{4}$ of the same Section 19. Irrigation is to extend from about May 1 to about October 31. The applicant claims also a riparian right to waters of Lone Tree Creek.

Protest

Eugene D. Stevens and Ralph E. Day protested jointly, claiming that the proposed appropriation would deplete and render inadequate the water supply available to them for irrigation and stockwatering on their ranches. They claim a right to the use of water from Lone Tree Creek under Application 6264. They state that they irrigate clover and pasturage and water 140 head or more of livestock, their diversion point being located within Section 24 of T 1 S, R 7 E, M.D.B.&M. They state that in 1948 Lone Tree Creek was dry for a 3 week period commencing September 20 and apprehend that an additional diversion upstream as proposed by Applicant McFall will diminish further the already scant supply.

No answer to the protest was submitted by the applicant.

Field Investigation

The parties 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 October 28, 1949 by an engineer of the Division. The applicant and the protestants were present or represented at the investigation.

Discussion

According to the report of the investigation of October 28, 1949 the parties agree that normally the flow of Lone Tree Creek is sufficient to satisfy the requirements of all concerned until about July 1 but disagree as to the flow after July 1. In the latter connection, reportedly, the applicant asserts that waste waters enter Lone Tree Creek at points above him at irregular times and in amounts considerably in excess of the protestants' needs, and the protestants' representatives while agreeing that this is the case at times nevertheless maintain that at other times as for example during July and August of 1949 the supply is deficient. The applicant asserted that for 3 years last past he had regularly irrigated a portion of the place of use described in Application 12717 without interfering with the protestants' water supply. He explained that the waste waters which he had mentioned included waste waters from the South San Joaquin Irrigation District and also included runoff from certain other lands which are irrigated from wells.

The engineer conducting the investigation observed that the lands of Protestant Stevens have been leveled and checked, and that irrigation is thereby facilitated whereas on the Day lands which have not been so prepared the method of irrigation is to build up the level of the stream sufficiently to permit water to spread over the lands by gravity, a method entailing large waste in filling depressions before higher points are benefited. That manner of using water was objectionable to Applicant McFall because beside requiring excessive quantities of water it raised the water table under a portion of his own lands to such degree that he has been unable to farm them.

The lowermost of the several applications which have been filed

on waters of Lone Tree Creek is Application 2358, Permit 1087, License 598 which now stands in the name of Jessie Carlson Gaer. That licensed application authorizes (subject to vested rights) the diversion of 0.56 cubic foot per second from March 1 to November 1 of each season at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T 1 S, R 7 E, M.D.B.&M. for the irrigation of 45 acres within the NE $\frac{1}{4}$ of the same Section 8.

Other applications which have been filed on Lone Tree Creek, excluding certain cancelled applications which yield no particularly significant information, and also excluding applications filed on tributaries to Lone Tree Creek, are listed as follows, locations of points of diversion being indicated for convenience by approximate distances upstream from the point of diversion under the lowermost application (Application 2358):

<u>Application Permit and License</u>	<u>Amount (Cu.Ft./Sec)</u>	<u>Mileage Above Gaer Intake</u>	<u>Present Owner</u>	<u>Footnote Reference</u>
A 9201, P 5121, L 2941	0.31	1.4	Castle	Note 1
A 6397, P 3389, L 2073	1.13	3.1 & 4.0	McFall	Note 2
A 9519, P 5367	0.7	4.0	Kelly	Note 3
A 6264, P 3287 L 1895	2.0	4.8	Stammerjohann & Stevens	Note 4
A 12717	0.625	5.3	McFall	Note 5
A 11104, P 6449	0.15	5.5	Due	Note 6
A 2547c	2.0	7.8	La Nicca	Note 7
A 8413, P 4641	1.0	8.0	Eastman	Note 8
A 6748, P 3880, L 2549	2.0	10.3	O'Donnell	Note 9
A 9494c	6.0	16.0	Oakdale I.D.	Note 10

Note 1: Engineer Kibbey in his report of an inspection of Application 9201 on April 25, 1948 states that the summer flow of Lone Tree Creek is mainly waste from Oakdale Irrigation District and that the flow is fairly well sustained and averages around 20 cubic feet per second.

Note 2: Engineer Kibbey in his report of an inspection of Application 6397 on May 31, 1939 estimated the flow on that date to be 10.5 cubic feet per second. He stated that that flow was made up entirely of waste

water from District irrigation and that all but 0.5 cubic foot per second of the flow was being diverted.

Note 3: Engineer Kibbey estimated the flow to be 11.0 cubic feet per second on April 29, 1947.

Note 4: Engineer Kibbey reported Lone Tree Creek as rising in foothills north of Oakdale, draining 70 square miles above the point of diversion in question and discharging an estimated 2.75 cubic feet per second on the date visited, April 12, 1938.

Note 5: The application under discussion.

Note 6: Engineer Wheeler estimated the flow to be 4 cubic feet per second on July 21, 1948.

Note 7: Engineer Simpson reported on June 20, 1923 that the entire dry weather flow is return water from Oakdale Irrigation District. The application was cancelled for failure to prosecute and complete.

Note 8: Friction developed between the holders of Applications 6264 and 8413 (discussed in Memorandum of October 24, 1944), one user complaining of excessive diversions by the other who replied that the complainant was himself using more water than entitled to and was also ignorant through lack of a proper measuring device as to actual quantities diverted.

Note 9: Engineer Kibbey visited on June 5, 1942, estimated the flow on that date as 10 cubic feet per second and stated the flow to be made up of wastage from Oakdale Irrigation District, variable in amount. Hearing testimony (Decision 312) indicates surpluses existing as of that time (in 1932).

Note 10: The application was cancelled on the applicant's request in reliance upon the decision in "Stevens vs. Oakdale Irrigation District" to safeguard claimed rights to recapture of waters released into Lone Tree Creek by that applicant.

That water shortages have occurred in Lone Tree Creek is evidenced by a letter from Henry L. Carlson (former owner of Application 2358), dated February 27, 1939, which reads in part, "I live on the lower part of Lone Tree Creek and by the time water gets to me there is hardly enough for stock water, let alone irrigate"; it is also evidenced by the controversy which arose between the holders of Applications 6264 and 8413 as mentioned in Note 8, supra. Mr. Carlson's statement, above quoted is partly supported but partly contradicted by statements contained in

Reports of Licensee (pertaining to Application 2358) as follows:

For triennium to include 1932: "In 1932 the crop was flooded and drowned out. Used during the months of February and March. I irrigate between 25 to 30 acres".

For triennium to include 1935: "Water used in April for irrigation of 20 acres of grain".

For triennium to include 1938: "Used during entire summer for watering stock and irrigation purposes, that is we irrigate when there is any water to irrigate with, supply very short".

For triennium to include 1941: "May to November. Irrigated clover and pasture land - 30 acres".

For triennium to include 1944: "Use for water for stock and irrigation purposes from March to October for 45 acres of land...."

For triennium to include 1947: "Used from April to October. 50 acres of pasture irrigated".

The aggregate of the amounts authorized under Applications 2358, 6264, 6397, 6748, 8413, 9201, 9519 and 11104 is 7.85 cubic feet per second. These are all of the applications which have been filed on Lone Tree Creek exclusive of cancelled applications, applications on tributaries and Application 12717, the application currently at issue. As earlier stated the parties in the matter of Application 12717 agree that surpluses normally exist through June, but disagree as to the occurrence of surpluses thereafter.

It is noteworthy that Engineer Kibbey's visits were in April, May and June and are therefore unconvincing as to conditions obtaining in later months; and that Engineer Wheeler found but 4 cubic feet flowing at or near the Due intake (Application 11104) an amount insufficient to supply lower users unless inflow occurs, a matter not ascertainable from the data thusfar discussed.

An unnamed tributary enters Lone Tree Creek from the northeast, at a point some 3.5 miles upstream from Application 2358. On that tributary are Applications 10673, 10811 and 12346, each for 3.0 cubic feet per second and Application 11238 for 4.89 cubic feet per second. Diversions under these applications head roughly 4.3, 9.0, 4.4 and 4.2 miles respectively above the junction of the unnamed tributary with Lone Tree Creek. Application 10811 was protested by the initiator of Application 10673, Application 10673 was protested by the holders of applications on lower Lone Tree Creek, a protest against Application 11238 was dismissed and Application 12346 was unprotested. All of these applications were approved and permits were issued; all were in operation in 1949. Applications 10673 and 10811 were heard informally and, incidental to those hearings, the flow of Lone Tree Creek below the mouth of the unnamed creek was investigated.

During the investigation just mentioned Engineer Kibbey ascertained that on August 13, 1944 the flow at Carlson Dam (Application 2358) was approximately 25 cubic feet per second of which some 5 to 8 cubic feet per second were being supplied by a drainage canal entering Lone Tree Creek a short distance above (within backwater influence of) that dam. The presence of such an amount of water at Carlson Dam is taken as strong presumptive evidence that upstream diverters were being sufficiently supplied. Again on October 23, 1944 Engineer Kibbey visited the locality, ascertaining that the flow of Unnamed Creek passing the Crane-Baliel project (Applications 10673 and 11238) was but 0.4 cubic foot per second but that no shortage existed at the Application 2358 intake, where the flow was still an estimated 20 to 25 cubic feet per second. Engineer Kibbey gathered that 1944 was a fairly normal year as to the flow of

Lone Tree Creek, that that flow had averaged from 20 to 25 cubic feet per second excepting during June and July when it was a little less, and that there had been no scarcity of water at the Gaer and McFall intakes (Applications 2358 and 6397) during the irrigation season of that year.

From the information developed in the investigation in connection with Application 10673 together with the information of record in connection with the filings on Lone Tree Creek proper it is concluded that surpluses, consisting mainly of return flow from upstream irrigation and therefore intermittent in occurrence, frequently exist in that stream and that such surpluses may be taken and used as proposed in Application 12717 without injury to the protestants or to other authorized users. Application 12717 accordingly should be approved and permit issued, subject to the usual terms and conditions.

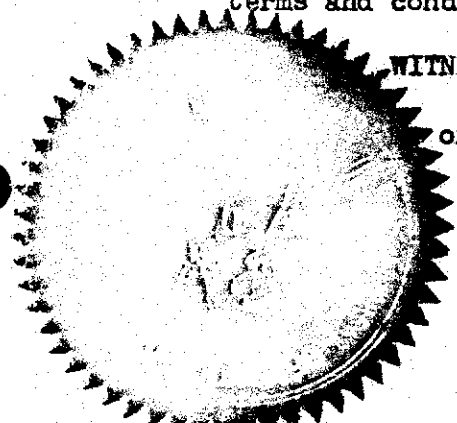
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ORDER

Application 12717 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 12717 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 California this 5th day of April, 1950.


A. D. Edmonston
A. D. Edmonston
State Engineer.