

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 13068 by California State Polytechnic College to Appropriate Water from Brizziolari Creek Tributary to San Luis Obispo Creek in San Luis Obispo County for Irrigation Purposes.

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Decision A. 13068 D. 673

Decided August 31, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES
AT THE SITE OF THE PROPOSED APPROPRIATION ON MAY 12, 1950:

Ralph W. Miller, Superintendent
of Buildings and Grounds

Representing the Applicant

Anita S. Johnson and
B. J. Connolly)

Representing the protestants
Johnson

Josephine L. Pereira

Representing the protestants
Pereira

J. J. Heacock

Associate Hydraulic Engineer,
Division of Water Resources,
Department of Public Works,
Representing the State Engineer.

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Opinion

The application contemplates appropriations of 0.06 cubic foot per second from April 1 to October 1 and 23 acre feet per annum to be collected between October 1 and April 1 of each season and temporarily stored. Diversion is to be effected by means of a concrete gravity dam,

8 feet high and 20 feet long, located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T 30 S, R 12 E, M.D.B.&M. From the diverting dam the water is to be conducted through 3000 lineal feet of earth ditch to "Drumm" Reservoir. The ditch is to have a capacity of 10 cubic feet per second. The reservoir, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23 of the same township is to have a surface area of 3 acres and a capacity of 23 acre feet. The storage dam is to be an earth structure 22 feet high and 105 feet long. The places of use are to be an 8 acre pasture in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and a 7 acre pasture in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of the same Section 23. According to the application the land to be irrigated has no other water rights or source of water supply than that currently applied for. Irrigation is to begin about April 1 and extend until about October 1. The applicant asserts ownership of both diversion site and place of use.

Protests

Charles F. and Anita S. Johnson protest against the proposed appropriations, claiming that insufficient water will remain in Brizziolari Creek to satisfy their prior rights. They claim rights based upon Application 3022 and also imply an earlier appropriative right dating from 1905. They state that their use amounts to approximately 0.25 cubic foot per second from May 1 to October 31, and that their diversion heads within the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 21, T 31 S, R 12 E, M.D.B.&M. They state that their protest may be disregarded and dismissed if the diversion proposed by the applicant does not at any time between May 1 and October 31 reduce the flow at their diversion point to less than 0.25 cubic foot per second.

Joaquin L. and Josephine L. Pereira protest the application, claiming that diversion of the amounts stated therein will deprive them

of water to which they are entitled by virtue of riparian ownership and long continued usage. They state that the existing supply is sufficient to enable them to irrigate 55 acres for summer crops and, at times, some pasture land also. They state that they irrigate from May 1 to November 1, and that their land is in alfalfa and permanent pasture, upon which they depend for feed for dairy cattle. They describe their point of diversion as being located within Lot 38 of Rancho Santa Fe, T 31 S, R 12 E, M.D.B.&M. They state that their protest may be disregarded and dismissed if the applicant's use of water is limited to the riparian interest of the tract upon which it is proposed to be used. They assert that there is no surplus water in the stream in question, that all water therein is subject to riparian right and that they have no objection to the use by the applicant of its just proportion.

In answer to the protests the applicant states that its proposed collection of 23 acre feet, in storage between October 1 and April 1 is advantageous to the protestants in that it will retard water that would otherwise be wasted, that the proposed diversion of 0.06 cubic foot per second from April 1 to October 1 is reasonable in the light of relative areas of watershed tributary to the parties' points of diversion. The applicant cites certain benefits which the protestants allegedly enjoy by virtue of their lower position on the stream system, mentioning specifically Perfumo Creek, San Luis Creek and Laguna Lake. It argues in effect that surpluses exist in the San Luis Obispo stream system in excess of the amounts applied for.

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 May 12, 1950 by an engineer of the Division. The applicant and the protestants were present or represented at that investigation.

Records Relied Upon

Applications 3022 and 13068 and all data and information on file therewith.

Discussion

Under protestants Johnsons' Application 3022, Permit 1407, License 514 a right was confirmed to divert 0.25 cubic foot per second from San Luis Obispo (also called San Luis) Creek from May 1 to October 31 for agricultural purposes, at a point within the E $\frac{1}{2}$ SW $\frac{1}{4}$ of projected Section 21, T 31 S, R 12 E, M.D.B.&M. In connection with an investigation of that application it was observed that the flow of San Luis Creek was approximately 13 cubic feet per second on May 2, 1933.

According to the report of the investigation on May 12, 1950 of Application 13068, the project thereunder has been in partial operation since about 1936, dams having been built and water diverted and stored to an extent, at first, of 8 acre feet, and later, by means of flashboards in the spillway, of 23 acre feet. The same report also refers to a report (to the Division of Water Resources) dated May 15, 1936 entitled "Report on Water Supply for California Polytechnic School at San Luis Obispo, California", by Messrs. E. L. Clark and E. C. Marliave of the Division. According to the last named report the runoff from the watershed tributary to the California Polytechnic School project is estimated to have been 28 acre feet per square mile in the driest season of record, and to be 239 acre feet per square mile in an average season.

According to the report of the investigation of May 12, 1950 the watershed above the point of diversion described in Application 13068 is 825 acres (1.29 square miles) in extent. Evidently the watershed yields enough water to satisfy the appropriation sought under Application 13068 provided that downstream users are not injured by the abstraction of the amounts applied for.

Objections to the proposed appropriation appear to be limited to those of the protestants Johnson and the protestants Pereira. The protestants Johnson modified the objection contained in their protest by stating, by letter of January 15, 1950, "if applicant will stipulate that its diversion of water will not at any time interfere with our prior right and if storage operations are conducted after October 31, we will withdraw our protest." As to the first of the two suggested conditions it is the view of this office that under any permit issued the rights of downstream users are sufficiently protected by the provision inserted in every permit subordinating that permit to vested rights. As to the second condition the same permit phraseology would protect the protestants against infringement of their rights under Application 3022 by excessive diversions during October. Since the rights referred to extend only until October 31, the protestants cannot reasonably object to diversions by the applicant after October 31 or before May 1. Again, inasmuch as but 825 acres of watershed are tributary to the applicant's proposed intake as compared with 42,600 acres above the Johnson's and 37,300 acres above the Pereiras' it is unlikely that any surface flow would occur at the applicant's proposed intake without an even larger flow being available to the protestants. The Pereiras' situation and their attitude in the matter is somewhat similar to the Johnsons'. They proclaim their riparian rights but concede that

the applicant possesses similar rights also. In view of their season of use, beginning May 1 and ending November 1 they cannot reasonably oppose diversions in other months by the applicant, nor is it apparent that they will be injured by diversions by the applicant, subject to vested rights, during the irrigation season proper.

For the reasons set forth in the preceding paragraph it is the opinion of this office that the objections raised in the Johnson and Pereira protests do not constitute a bar to the approval of Application 13068 which application therefore should be approved, subject to the usual terms and conditions.

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ORDER

Application 13068 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 13068 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 31st day of August, 1950.



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