

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 12628 by Allen Portus McGowan and Application 12680 by Maria B. Gardner to Appropriate Water from an Unnamed Spring Tributary via Hook, Little Bear and Deep Creeks to Mojave River, in San Bernardino County, for Domestic Purposes.

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Decision A. 12628, 12680 D. 674

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 APPROPRIATIONS ON MAY 19, 1950:

Allen P. McGowan	Representing both applicants
Trent Anderson	Representing the protestant
J. J. Heacock	Associate Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

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OPINION

General Description of the Projects

Both of the applications propose to divert from the same source, i.e. a spring within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T 2 N, R 3 W, S.B.B.&M. Each of the applications proposes to divert 200 gallons per day, year round. From the spring pipes lead to the 2 houses (one under each application) where the water is to be used. The pipe lines are both described as being 3/4 inch in diameter and 200 feet long. The places of use are

described in the two applications respectively as Lot 19 and one half of Lot 18 (Application 12628) and Lot 17 and one half of Lot 18 (Application 12680). The lots lie within the same quarter quarter section as the point of diversion and are parts of a subdivision designated as Tract 2191, Lakebrook Park, Unit No. 3. The number of persons to be served under the two applications are 8 and 10, respectively.

Protest

The Appleton Land, Water and Power Company protests both of the applications, claiming that diversions thereunder will result in an impairment of its riparian and appropriative rights on Mojave River, to which the source in question drains. It contends that none of the waters of Hook Creek or its tributaries nor of the upper Mojave River system are subject to appropriation, such waters already having been fully appropriated. The protestant asserts ownership of lands bordering Mojave River within Sections 1, 13 and 36 of T 4 N, R 4 W, such lands comprising some 2000 acres. It asserts that for many years it has irrigated such land extensively and that at present approximately 1400 acres are under cultivation. It asserts that all water available from Mojave River is used upon the land mentioned and upon some 75 acres in and about the Town of Hesperia to which it also furnishes an irrigation and domestic supply.

Answers

The applicants assert in their answers that they are riparian to Hook Creek and therefore are entitled to draw water from that stream but that they prefer to draw their supply from the spring because Hook Creek is subject to pollution. They state that for about 2 months per year when flood conditions prevail, water from the spring actually reaches

Hook Creek, but that during the remainder of the year the spring water does not reach the creek but instead is absorbed to a large extent by vegetation, the excess seeping into the soil. They state that under the projects which they propose the water will flow into Hook Creek directly or filter into the ground through a septic tank system, all unevaporated water eventually returning to Hook Creek. They argue that more water is now lost through absorption by trees than would be the case if the applications are granted. They maintain that the use which they propose will not damage or interfere with the protestant's rights.

Field Investigation

The applicants and the protestant 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 19, 1950 by an engineer of the Division. The applicants and the protestant were present or represented at that investigation.

Records Relied Upon

Applications 12628 and 12680 and all data and information on file therewith.

Discussion

According to the report of the investigation of May 19, 1950 the spring filed upon lies about 100 feet away from and about 40 feet higher than the channel of Hook Creek. According to the same report the spring was yielding at the rate of 360 gallons per day plus some seepage that could not be measured; water from the spring did not appear to be reaching Hook Creek and the investigating engineer gathered that most of it, during hot weather at least, is lost by evaporation and transpiration.

Applicant McGowan is reported to have stated, during the investigation, that he himself first developed the spring approximately 20 years ago, that since that time the use of water from the spring has been continuous and the yield of the spring has been stable.

According to maps of the locality the spring is roughly 18 miles, scaled along the course of Hook Creek, Little Bear Creek, Deep Creek and Mojave River, in turn, upstream from the upstream boundary of the protestant's lands. Any residue of the yield of the spring that may find its way into Hook Creek is necessarily exposed to further evaporation and transpiration losses in traveling those 18 miles. Whether or not the entire yield of the spring, if not diverted in the manner proposed, would be dissipated before reaching the protestant is not demonstrable from the data at hand, but the data point to the probability that the amount of the spring water that would reach the protestant would be relative small.

Again, it is not demonstrable from the data that the protestant would be materially damaged by the denial of such portion of the yield of the spring as would reach it in a state of nature. The protest against Applications 12628 and 12680 do not set forth the location of the protestant's point or points of diversion but in a protest against Application 11645 the same protestant mentions a ditch of a capacity of 1,500 gallons per minute heading on Deep Creek within the SE $\frac{1}{4}$ of Section 16, T 3 N, R 3 W, S.B.B.&M. as well as the taking of water by means of wells on the protestant's property. It is evident that a loss of a fraction of the 400 gallons per day currently applied for - whatever that fraction may be - would not appreciably affect a project of the scope of the protestant's.

For the reasons above outlined it is concluded that the water applied for under Applications 12628 and 12680 may be taken and used as

proposed in those applications without substantial injury to the protestant and that the applications should be approved, subject to the usual terms and conditions.

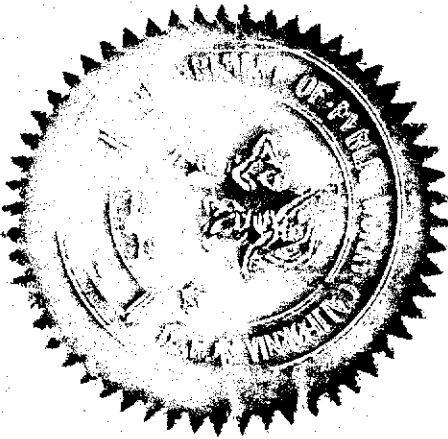
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ORDER

Applications 12628 and 12680 for permits 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 Applications 12628 and 12680 be approved and that permits be issued to the applicants 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.