

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 11717 by Roy E. Smith to Appropriate Water from Slate Creek Tributary to Deer Creek in Nevada County for Domestic Purposes and Irrigation.

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Decision A. 11717 D. 687

Decided December 20, 1950

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In Attendance at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriation on August 24, 1948:

Roy E. Smith	Applicant
Frank E. Finnegan	Applicant's Attorney
Charles T. Law )	Representing Protestant
)	Nevada Irrigation District
Arthur Boundy )	
Lloyd J. Brown	Protestant
Clifford W. Bridges	Protestant Brown's Attorney
William H. Carey	Representing Protestant Butler
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

Also in attendance: Mr. Boundy, Sr. and Mr. Luke Williams, both in support of the applicant.

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## OPINION

### General Description of the Project

The applicant seeks authority to divert 0.3 cubic foot per second year-round from Slate Creek at a point within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 22, T 16 N, R 8 E, M.D.B.&M., for domestic purposes and irrigation of 20 acres of general crops within the SE $\frac{1}{4}$  of Section 16, T 16 N, R 8 E, M.D.B.&M. Construction is already complete. Diversion is effected by means of a 4 foot high, 12 foot long, timber and rock dam. The conduit is an earth ditch 2,300 feet long, of a carrying capacity of 1.5 cubic feet per second. According to the application no other water right or source of supply is claimed. Irrigation extends from about March 1 to about December 31.

### Protests

The Nevada Irrigation District protests that the diversion in question will lessen the flow of Deer Creek and that the District has appropriated the flow of that stream and uses it in full from April until October. It states that its appropriations include appropriations from Deer Creek below the mouth of Slate Creek at the heads of Tunnel Ditch, China Ditch and Pleasant Valley Ditch, the latter being temporarily out of use. It asserts that its Pleasant Valley and Tunnel ditch rights are ancient rights, antedating 1914. It also claims rights under Applications 1615 and 8176 (Permits 5801 and 5811). It mentions in particular a diversion heading within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T 16 N, R 7 E.

Floyd J. Brown protests the application claiming a right to divert from Slate Creek at a point within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21,

T 16 N, R 8 E. He states that his claim is based upon an appropriation of 100 miner's inches initiated in 1877 and continuous use thereafter. He states further that his use, the irrigation of 100 acres of porous soil, requires the entire flow of the creek, that flow never reaching 100 miner's inches during irrigation seasons.

Cooley Butler also protests the application claiming to divert from Slate Creek at a point within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21, T 16 N, R 8 E, under an appropriation initiated in 1876. He states that diversions under that appropriation have been not less than 25 miner's inches, and that the water diverted has been used for ranching and domestic purposes. He states further that his protest may be disregarded and dismissed if he is not deprived of a supply of 25 miner's inches.

In answer to the Nevada Irrigation District protest the applicant denies that the proposed appropriation will injure the protestant or lessen the amount of water available in Deer Creek and denies that the protestant is or has been putting 50 cubic feet per second to beneficial use as alleged. He asserts that the water which he proposes to divert will be returned to Deer Creek above the protestant's point of diversion.

In answer to the protests by Lloyd J. Brown and Cooley Butler the applicant denies that the proposed appropriation will injure those protestants, and denies that either of them has put water to beneficial use as alleged. He alleges in particular that for more than 3 years prior to the filing of Application 11717 neither Protestant Brown nor Protestant Butler has beneficially used the amounts that they claim in their protests to have used, or any part thereof. He prays that the protests be dismissed.

### 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 August 24, 1948. The applicant and the protestants were present or represented at the investigation.

### Records Relied Upon

Application 11717 and all data and information on file therewith.

### Discussion

Slate Creek, the source filed upon, enters Deer Creek which in turn is tributary to Yuba River. There is a U.S.G.S. gage on Deer Creek about one mile above its junction with Yuba River (Deer Creek near Smartsville). The watershed tributary to that gage is 83.5 square miles in extent, and the runoff therefrom has ranged from a minimum of 0.1 to a maximum of 11,300 second-feet, and has averaged 159 second-feet, the figures applying to the 12 year period ending in 1947. Water Supply Paper 1091 reports that the flow at the station is regulated by Deer Creek Reservoir (capacity 1400 acre feet), that there are irrigation and power diversions above the station, and that sometimes water from South Fork of Yuba River is diverted into Deer Creek. Slate Creek is a relatively minor tributary of Deer Creek, its watershed being not over 2 square miles in extent, of which some  $3/4$  square mile is above the applicant's proposed point of diversion. Slate Creek just above that diversion point was discharging approximately 1.3 second-feet when the project was visited on August 24, 1948. At that time the applicant was diverting 0.23 second-foot and Protestants Brown and Butler jointly about 0.75 second-foot.

The engineer conducting the investigation gathered that the flow of Slate Creek was somewhat above the normal for that time of year.

Protestants Butler and Brown, according to the investigation report, use the so-called "Slate Creek Ditch", jointly. "Slate Creek Ditch" apparently heads downstream from the "Cragan Ditch" which the applicant owns and proposes to use under Application 11717. It was claimed at the investigation that during the past 5 years Slate Creek Ditch had been serving 33 acres of which Brown had 20 acres, Butler 3 acres and 3 other users (non-protestants) a total of 10 acres. The investigating engineer reported that in 1948 only 23 acres were irrigated on Slate Creek ditch and some 10 or 11 acres irrigated by Applicant Smith, from Cragan Ditch, making a total of 33 or 34 acres irrigated by/parties concerned during 1948, for which, assuming reasonably efficient operation, the 1.3 second-foot flow observed on August 24, 1948 should have been more than sufficient. Indeed that supply would seem sufficient for the 33 acres claimed to have been irrigated from Slate Creek Ditch within the 5 years preceding the investigation plus the 20 acres which Applicant Smith proposes to irrigate. It is concluded that insofar as Slate Creek alone is concerned, unappropriated water existed during 1948 and probably occurs at times during years of normal supply.

The protest by Nevada Irrigation District is based upon the proposition that that protestant holds appropriative rights to the entire flow of Deer Creek that are prior to any rights that may be acquired by the filing of Application 11717. The rights asserted by Nevada Irrigation District include "ancient" rights and also rights initiated more recently by the filing of Applications 1615 and 8176. Under Application 1615, Permit 5801 was issued to divert 100 second-feet from Deer Creek

from April 1 to October 1 for irrigation. Under Application 8176, Permit 5811 was issued to divert 325 cubic feet per second and 40,000 acre feet per annum; however, that permit contained a clause limiting diversions thereunder to such waters as may be diverted under approved Applications 1614 and 1615. Application 1614 (Permit 1481) relates to a diversion of 60,000 acre feet per annum, collected throughout the year, from Deer Creek within Section 2, T 16 N, R 9 E.

Under the permits mentioned in the preceding paragraph, together with asserted ancient rights, Nevada Irrigation District undoubtedly is entitled to divert all of the water supplied by Deer Creek except possibly some scattering, prior rights. The Nevada Irrigation District project is not yet complete and a portion of the water which it has filed upon has not yet been put to beneficial use. Temporary surpluses therefore occur but such surpluses occur mainly during late fall, winter and early spring, when runoff is greatest. This is a matter of common knowledge and it is also born out by the records of discharge at the U.S.G.S. station referred to in an earlier paragraph, those records indicating for example that monthly discharges of Deer Creek near Smartsville in second feet, in recent years, have averaged as follows:

<u>Month</u>	<u>1946-47</u>	<u>1947-48</u>	<u>1948-49</u>
October	30.8	28.9	5.9
November	116.	37.7	17.4
December	154	27.7	47.3
January	33.4	138	43.9
February	157	32.6	149
March	260	147	402
April	112	240	138
May	15.9	140	12.8
June	17.8	47	6.4
July	5.50	14.0	1.9
August	4.54	5.0	1.9
September	2.0	5.8	1.6
Year	75.1	72.1	68.6

In view of the rights held by the Nevada Irrigation District which in the aggregate more than account for the total runoff from the Deer Creek watershed it is apparent that no unappropriated water will exist in that stream when the district projects now in course of development have been completed. It may also be accepted as a fact that the late spring, summer and fall flow of Deer Creek and tributaries has already been appropriated, practically in its entirety. Inasmuch as the appropriation sought under Application 11717 (for irrigation and domestic purposes) requires a firm supply, especially during the summer months, and no firm supply exists beyond that required to satisfy rights already existing it is concluded that the approval of Application 11717 is unwarranted and that the application should therefore be denied.

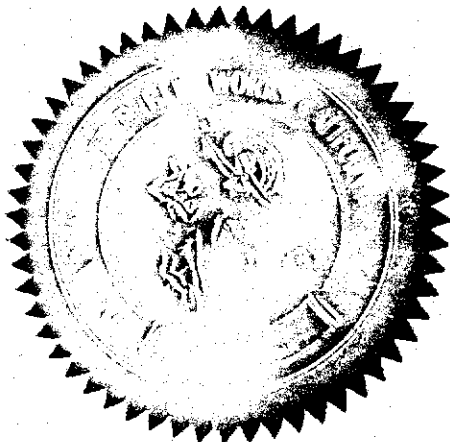
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ORDER

Application 11717 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 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11717 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 20th day of December, 1950.



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