

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 13916 by Robert J. Romaggi to Appropriate
Water from an Unnamed Stream Tributary via Cowell Creek to San Antonio
Creek, in Calaveras County, for Irrigation and Recreational Purposes.

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Decision A. 13916 D. 752

Decided July 31, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources
at the Site of the Proposed Appropriation on August 22, 1951:

Robert J. Romaggi	Applicant
Gerald E. Spencer	Representing California Youth Authority, Protestant
Woodrow L. Gomes	Protestant
Ed. Letora	Representing Hengen Brothers, Protestants
Grace Ponte	Representing herself and Protestant N. F. Ponte
Frank Oneto	Representing Oneto Brothers, Protestants
Meriel Letora	Protestant
Virgil M. Airola	Representing the protestants Wiebe et al.
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

Also present: Mary Letora, Norval and Norman Tanner and John A. and
Walter R. Huberty.

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General Description of the Project

The applicant seeks to appropriate 25 acre-feet per annum, the water to be collected between January 1 and April 15, stored temporarily and later applied to beneficial use in irrigation and recreation. Diversion is to be effected by means of 2 storage dams, located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T5N R15E, MDB&M and within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31 of the same township, respectively. The uppermost of these dams, an earth structure 12 feet high by 200 feet long, is to create a reservoir 1.5 acre-feet in surface area and 15 acre-feet in capacity; the lowermost, also an earth dam, is to be 10 feet high by 250 feet long and to create a reservoir 1.5 acres in surface area and 10 acre-feet in capacity. Two small earth ditches, each about 4000 feet long, one on each side of the source, are to distribute water from the upper reservoir for irrigation; the lower reservoir is to be used for swimming and fishing. The land to be irrigated lies within the E $\frac{1}{2}$ of the above named Section 31. It consists of a 5 acre orchard and 40 acres of pasture. Irrigation is to extend from about July 1 to about September 30. The applicant claims ownership of the land involved; he makes no mention of any other water right or source of water supply.

Protests

The California Youth Authority protests that the proposed diversion will affect its rights on San Antonio Creek unless the applicant will observe or agree to certain terms. It claims a riparian right and an appropriative right under Application 12373. It states that its use for domestic, stockwatering, irrigation and fire protection purposes dates from 1886, that domestic use which extends all year round includes service to 300 wards and employees and

the watering of 40 sheep and 20 hogs, that 10 acres of orchard and general crops are irrigated from about March 1 to about November 1 and that its diversion heads within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T4N R14E, MDB&M. It states finally that its protest may be disregarded and dismissed "if the applicant will not divert water in excess of existing water rights and will return all surplus water to San Antonio Creek after storage and use and will not divert in excess of 25 acre-feet per year from January 1 to June 1."

Woodrow L. Gomes protests that the proposed diversion will affect his use of water by lessening or changing the flow in the creek unless the applicant will agree to and observe certain conditions. He claims a right based upon riparian ownership and upon use commenced prior to December, 1914. He states that he irrigates about 15 acres of mixed grasses and garden from about May 1 to about September 30 and waters livestock all year round. He states further that his intake is within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, T3N R13E, MDB&M. He states finally that his protest may be disregarded and dismissed if the applicant will agree to bypass a minimum of 5 miner's inches and will limit collections to periods extending from December 1 to April 1.

Hengen Brothers claim a right based upon riparian ownership and use commenced prior to December 19, 1914. They claim to water livestock continuously and to irrigate about 20 acres of alfalfa and clover from May to September, both inclusive, their diversion heading at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T4N R13E, MDB&M. They state that their protest may be disregarded and dismissed if the applicant will agree to bypass at least 5 miner's inches and will collect water in storage only from each December 1 to the following April 1.

N. F. and Grace Ponte claim a riparian right and a right based upon use antedating December 19, 1914. They claim that they water livestock continuously and that they irrigate about 9 acres of alfalfa and clover from about May 1 to about September 30. They state that they pump from the creek and that their diversion point is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T3N R12E, MDB&M. They are willing that their protest be disregarded and dismissed if the applicant will agree to bypass a minimum of 5 miner's inches and will collect water in storage from December 1 of one year to April 1 of the next, only.

N. F. Ponte also protests individually on the basis of a riparian right and an ancient appropriative right. He states that he waters livestock throughout the entire year, directly, all along the course of San Antonio Creek. He states that his protest may be disregarded and dismissed if the applicant will agree to bypass at least 5 miner's inches and will limit diversions to storage to periods extending from December 1 of each year to April 1 of the succeeding.

Oneto Bros. also claim a riparian right and a right based upon use since prior to December 19, 1914. They state that they divert at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T3N R12E, MDB&M, and that they water livestock continuously and irrigate about 20 acres of garden, domestic fruits and produce from about May 1 to about September 30. Their protest may be disregarded and dismissed, they state, if the applicant will bypass at least 5 miner's inches and will limit collection to periods extending from December 1 of one year to April 1 of the next.

Meriel Letora claims riparian, prescriptive and appropriative rights, use dating from about 1878. He states that he diverts at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T4N R14E, MDB&M, that he uses all water available up to about 150 miner's inches, that he irrigates nut and fruit trees, grasses, garden produce and other crops, his land being located within Section 24, T4N R13E and Section 19, T4N R14E, MDB&M. He is agreeable to the dismissal of his protest if the applicant will bypass a minimum of 5 miner's inches and will divert to storage only from December 1 of one year to April 1 of the next.

Rose R. Wiebe, John B. Roberts and Orvis Roberts claim a riparian right and an ancient appropriative right, use on their property allegedly having commenced in 1855. They state that they use water year-round for domestic purposes and stock watering and that they irrigate about 2 acres of garden and fruit trees from May 1 to September 30 of each year, their diversion heading within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31, T4N R13E, MIB&M. They state that their protest may be disregarded and dismissed if the applicant will agree to bypass a minimum of 5 miner's inches and will limit his diversion to storage to periods extending from December 1 of each year to April 1 of the year following.

Answers

The applicant's answers to the several protests are substantially the same. In each of them the applicant argues that the storage of unappropriated waters in the season of excessive runoff cannot affect a riparian right to the beneficial use of the flow of the stream; and he asserts that he does not

dispute or intend to interfere with the protestants' claims of riparian right and beneficial use of water. He remarks that the protestants do not indicate the amounts claimed under riparian rights. He states that he cannot agree to bypass any certain amount of water after June 1 of each year but will agree to bypass all of the flow of the stream after that date. He states that the period of diversion to storage cannot be reduced to April 1 of each year because records indicate that high flows sometimes occur as late as June. In one instance (the protest by N. F. Ponte) the applicant remarks that the protestant's point of diversion is not described specifically and remarks further that it does not seem logical that the protestant's use can extend to the entire length of San Antonio Creek.

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, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on August 22, 1951 by an engineer of the Division. The applicant was present and all of the protestants were present or represented during the investigation.

Records Relied Upon

Application 13916 and all data and information on file therewith.

Discussion

According to the report covering the investigation of August 22, 1951 the watershed tributary to the applicant's lower dam site is heavily wooded and is about 1 square mile in extent, rainfall at Arnold (within that watershed)

averages about 45.6 inches and the bed of the stream was dry at the time of the investigation, except for a small spring which was unmeasurable because submerged in the pool above the lower dam. According to the same report it was the feeling of the protestants that any diversion by the applicant after April 15 of a normal year would leave too little flow in the stream to satisfy their requirements. After a general discussion (during the investigation) of the situation the applicant authorized in writing that diversions under Application 13916 (which originally contemplated collection from January 1 to June 1) be limited to periods extending from January 1 to April 15. The protestants thereupon, or their representatives, signed written withdrawals of their protests, on condition however that proper provision be made for the bypassing of natural flow occurring after April 15.

The protestants' apprehension that onstream storage, above their respective points of diversion, will interfere with the passage to them of the flow necessary to satisfy their asserted rights is not unusual in situations of the sort. Clearly it is the applicant's obligation, if his application is approved, to so equip and operate his installation as to pass the full flow of the stream to lower users when he is unauthorized to collect it, and to pass such amounts during an authorized collection period as may be necessary to satisfy prior downstream rights. To impress this obligation upon the applicant and to allay the protestants' apprehension it is fitting that an appropriate special clause be inserted in any permit issued.

No record of the flow of the stream filed upon appears to exist. However according to USGS Water Supply Paper 1121 Calaveras River at Jenny Lind has discharged an average of 247 second-feet from its 395 square miles of

tributary watershed over a 39 year period. That indicates an average runoff of 0.625 second-feet or 37.5 acre-feet per month, per square mile. The square mile of watershed tributary to the applicant's proposed development may therefore be supposed to produce considerably more, on average, from January 1 to April 15, than the 25 acre-feet per annum that the applicant proposes to collect.

Summary and Conclusions

Unappropriated water appears to exist at times in the source from which Applicant Romaggi seeks to appropriate. Such water may be taken and used beneficially in the manner proposed in his application without injury to downstream users, provided the reservoir outlets are operated with due regard to the rights and requirements of such users. The responsibility of such operation rests upon the applicant. The applicant has revised the limiting dates between which water is to be collected to dates acceptable to the protestants.

In view of the situation presented it is the opinion of this office that Application 13916 should be approved and permit issued subject to the usual terms and conditions but subject also to a further special term and condition apprising all concerned that it is the applicant's responsibility to pass downstream all water which enters the proposed reservoir or reservoirs from April 15 to January 1 and to pass downstream also such water entering either reservoir from January 1 to April 15 as may be required at points downstream for the satisfaction of prior rights.

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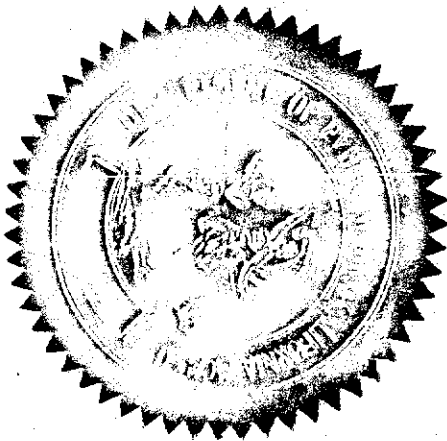
ORDER

Application 13916 having been filed with the Division of Water Resources as above stated, protests having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13916 be approved
and that a permit be issued to the applicant, subject to such of the usual
terms and conditions as may be appropriate and subject also to the following
special term and condition to wit:

Permittee shall install, maintain and
operate facilities to ensure that all
flow entering either of his reservoirs
between April 15 and January 1 and such
flow entering either of his reservoirs
between January 1 and April 15 as may
be required for the satisfaction of
prior rights will pass downstream
unhindered by any of his works.

WITNESS my hand and the seal of the Department of Public Works
of the State of California this 31st day of July 1952.



A. D. Edmonston

A. D. Edmonston
State Engineer