

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of Application 14618 by Howard H. Bowles to
Appropriate Water from an Unnamed Stream Tributary to North
Fork Willow Creek in Glenn County for Irrigation Purposes.

oOo

Decision A. 14618 D. 768

Decided December 22, 1952

oOo

In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on July 30,
1952:

Howard H. Bowles	Applicant
Clyde L. Larimer	Applicant's Attorney
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer

The protestant was not present and was not represented during
the investigation but was interviewed in Sacramento on August 6,
1952.

oOo

OPINION

General Description of the Project

The application initiates an appropriation of 1.0 cubic foot per second from April 1 to October 31 from an unnamed tributary of North Fork Willow Creek, for irrigation purposes. Diversion is to be effected by means of a rock and earth dam, 3 feet high by 30 feet long, located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T 21 N, R 3 W, MDB&M. The conduit is to be an earth ditch, 1100 feet long. The water is wanted for the irrigation of 80 acres of general crops located within the NE $\frac{1}{4}$ of the same Section 29. The application mentions no other water right or source of water supply than the one therein applied for.

Protest

Charles L. Maben Sr. protests the application, stating in effect that to the best of his information and belief the source in question is already over-appropriated. He states in this connection

"We watered thirty-five acres of corn in 1950 and sixty acres clover and alfalfa in 1951 under Permit 7615. We expect to develop twenty acres more to complete use area under Permit 7615 in 1952. Are prepared to use all water allotted under Permit 8377, starting April 1952 if such water is available."

He states further that his protest may be disregarded and dismissed if

"(1) Applicant will not attempt to operate under application number 14618 until the several pending applications have been completed, to determine if they can be filled. (2) That applicant does not divert any water to prevent an interrupted flow of 2.3 cubic feet per second at the diversion point of protestant."

He lists 6 applications including the applicant's and his own to appropriate amounts aggregating 10.3 cubic feet per second from the same source, raises the question as to how these applications are to be supplied, and states, finally,

"I estimated that from two to three feet of water flowed by my point during 1951. It should be understood that at times when I ran my one thousand gallon pump for forty-eight hours straight I could stop the flow, also, the applicants in some of the above permits have not completed their programs."

Answer

The applicant answers the protest by stating in substance that the appropriation which he seeks is from a tributary to North Fork Willow Creek, that the protestant's permits apply to diversions from the North Fork and not from the tributary, that when those permits were granted no water flowed in the tributary and that no water has flowed therein, that water will now flow in the tributary by reason only of upstream development, and, finally that the appropriation sought will not injure the protestant because the tributary has never contributed summer water to the protestant and therefore cannot have been appropriated by him.

Field Investigation

The applicant and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, an investigation was conducted at the site of the proposed appropriation on July 30, 1952 by an engineer of the Division. At the investigation the applicant was

present but the protestant was neither present nor represented. The protestant was interviewed by the investigator at Sacramento, after the investigation.

Records Relied Upon

Application 14618 and all data and information on file therewith.

Discussion

The stream to which the unnamed stream filed upon is tributary, is called North Fork Willow Creek in the application, and in other applications to appropriate water in the same locality, but is called Walker Creek on the Orland quadrangle, U. S. Geological Survey. North Fork Willow Creek and Walker Creek evidently are one and the same stream. The distance upstream from the protestant's intake to the point at which Unnamed Stream enters North Fork Willow Creek scales about 1.3 miles. It is about 0.5 mile farther upstream, via Unnamed Stream, to the applicant's proposed point of diversion.

According to the report of the investigation of July 30, 1952 the watershed above the protestant's project lies mostly in the valley floor and is about 45 square miles in extent. Included within that watershed, the area above the applicant's proposed intake is about 9 square miles. Rainfall within the general locality averages about 18 inches per annum.

With respect to the flow of the two streams the same report states:

"Except during storm periods there is no natural flow in applicant's source and little or no flow in Walker Creek.

The flow in both streams is very irregular and during the summer months consists of runoff from upper irrigated areas which areas are irrigated in part from wells and in part by Stony Creek waters brought into the area by the Orland Project
.....

"Applicant stated that his source had no summer flow until 1951 when irrigation activities, with water from wells, commenced on 3 areas in the watershed and that, therefore, it had never previously contributed to protestant's water supply.

"Applicant also stated that, due to irrigation activities in the Orland Project there was always considerable flow in Walker Creek and that this had increased during the past 2 years due to areas outside the project having been placed under irrigation with water from wells. These areas, he claimed, had nearly all previously been dry farmed.

"Protestant stated that in the past his pump, most of the time, would take all flow but that there were short periods when there was more water than he could pump. He also stated that the flow had been increasing as new lands were placed under irrigation."

As to the flow occurring at the time of the investigation the report states:

"At applicant's proposed diversion point, 1.7 cfs as measured. This was said to be about the average flow.

"At point where stream enters protestant's lands, about 4.0 cfs. Channel conditions were such that a satisfactory measurement could not be made.

"At point below protestant's lands where the stream crosses U. S. Highway 99 W, estimated to be 6.0 cfs of which about 0.25 cfs was entering the stream from a small drainage ditch just above the highway crossing."

The report of investigation concludes with the following:

"Applicant and his attorney stated that they recognized that protestant had prior rights and that they would respect such rights. They felt, however, that changing flow conditions would permit applicant to divert, at all times he desired, the 1.0 cfs he sought without injury to protestant.

"Protestant stated that he had no objections to approval of the application provided it was shown that he would be protected. The regular terms of approval of an application were then explained to him but he preferred not to sign any written withdrawal of his protest."

The protestant holds two approved applications to divert from North Fork Willow Creek. These are Application 13276, Permit 7615, to divert 1.3 cubic feet per second from March 1 to November 1 and Application 13913, Permit 8377, to divert 1.0 cubic foot per second from March 1 to December 1, diversion to be effected in each instance at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, T 21 N, R 3 W, MDB&M. His water requirements therefore may be supposed to be of the order of 2.3 cubic feet per second, an amount which accords with the capacity of the 1000 gallons-per-minute pump mentioned in his protest.

Inasmuch as the protestant stated, after the investigation, that there were short periods when there was more water in the source than he could pump and that the flow had been increasing as new lands came under irrigation, inasmuch further as the applicant also stated that return flow from upstream irrigation is increasing, and inasmuch finally as the flow in the source was about 4 cubic feet per second above the protestant's lands and some 5.75 cubic feet per second below his lands at the time of the field investigation, it is evident that supply at times is in excess of the protestant's needs, and that supply is apt to become more abundant as upstream irrigation further expands. It is significant that the protestant himself stated, after the field investigation, that he did not object to the approval of the application provided that his rights are protected. It is obvious that existing law offers the protestant ample protection in the enjoyment of his rights under Applications 13276 and 13913.

Conclusion

In view of the circumstances above outlined it appears that unappropriated water exists at times in the source from which appropriation is sought under Application 14618. The diversion of such water subject to existing rights in the manner proposed in that application will not injure the protestant. In the opinion of this office the protestant's objections are an insufficient bar to the approval of the application which should therefore be approved, subject to the usual terms and conditions.

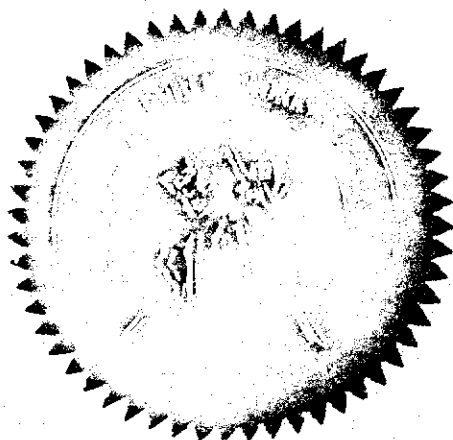
oOo

ORDER

Application 14618 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest 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 14618 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 22nd day of December, 1952.



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