

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 15097 by Ervin N. and Dorothy B.
Anderson to Appropriate Water from Laguna Creek within Beach
Lake Watershed, in Sacramento County, for Irrigation Purposes.

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Decision A. 15097 D. 784

Decided February 4, 1954

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In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on June 10, 1953:

Ervin N. Anderson	Applicant
Dorothy B. Anderson	Applicant
L. F. Sheldahl	Applicants' Tenant
George Werre	Protestant
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

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OPINION

General Description of the Project

The applicants seek to appropriate 0.25 cubic foot per second from March 1 to November 30 from Laguna Creek, tributary to Beach Lake in Sacramento County, diversion to be effected by pumping from the unobstructed channel at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T7N R5E, MDB&M. The water is wanted for the irrigation of a 20-acre pasture within the same quarter-quarter section. The land to be irrigated is said to have another source of water supply, i.e. a well. The project includes a 450 gallon-per-minute pump, a pipeline 4 inches in diameter by 250 feet long and a sprinkler system.

Protest

The application is protested by George and Magdalena Werre. The Werres apprehend that injury will result from the proposed appropriation because, they state, the flow of the stream is insufficient, during early spring, to meet both the applicants' requirements and their own. They name Application 14524 as the basis of their claimed water right. They state that water has been diverted under that application from the source in question to irrigate some 25 acres of clover, from April 1 to November 1, and that they contemplate irrigating an additional 15 acres under the same filing. Their diversion heads, they state, within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T7N R5E. They state finally that their protest may be disregarded and dismissed if the

applicants by-pass sufficient water to meet their needs and do not obstruct the flow of the stream.

Answer

In response to the protest Applicant Dorothy Anderson wrote this office a letter under date of February 3, 1953, the letter reading in part as follows:

"I went to see Mr. Werre today at his place. We talked over the water protest. I promised him that I would not dam up the creek at no time. Also if I sold the place that there would be a written agreement. That he could not dam up the creek at no time. Mr. Werre said that this would be all right by him. That he would drop his protest against me. I am also sending him a copy of this letter"

Field Investigation

The applicants and the protestants with the approval of the Department, having stipulated to the submittal of the application and protest upon the official records of the Department, a field investigation was conducted on June 10, 1953, by an engineer of the Division. The applicants and the protestants were present or represented during the investigation.

Records Relied Upon

Applications 13264, 13835, 13964, 14524, 14843 and 15097 and all data and information on file therewith.

Information Secured by Field Investigation

The report of the field investigation of June 10, 1953, contains among others the following statements:

"The contributory watershed above applicants' place is, for the most part, slightly rolling, barren land having an area of about 20 square miles and an average annual rainfall of about 19 inches.

"There normally is no natural flow in the creek except during storm periods and for short times thereafter. All flow during other periods consists entirely of runoff from upstream irrigated areas which areas are irrigated from wells. It was noted that some of these areas were in rice indicating considerable runoff at times.

"It was stated that usually there is a short period in the spring when there is little or no flow. This occurs between the end of the winter storm period and the time when runoff from upper irrigated areas begins to arrive. The period varies between April 1 and May 31 and lasts for about 30 days. The protestant stated that in 1953 this condition existed during the month of May. Applicants stated that during that period there were times when there was water at their place but none at protestants'.

"Applicants and Protestant George Werre also stated that during a portion of each summer there was so much water present that some of their lands were flooded and unavailable for farming.

"At the time of this investigation no use was being made by applicants or protestants although they agreed that there was more water available than they required. A measurement of the flow could not be made nor could any reliable estimate be made because of the fact that the creek channel was badly choked with tules and other water loving vegetation.

"It was noted that at applicants' diversion point a pool in the creek channel formed a natural reservoir of 0.5 acre-foot or more capacity.

"Protestants irrigate about forty acres of leveled and checked land seeded to clover.

"They make one cutting for hay in the spring and thereafter the land is used for pasture. Irrigation extends from April 1 to October 1.

"Applicants' tenant had been irrigating, for three years prior to the investigation, about 16 acres of clover pasture.

"Mr. Sheldahl stated that prior to 1952 he used a 1½" centrifugal pump but in 1952 changed to a 3" centrifugal pump having a capacity of about 0.6 c.f.s.

"Mr. Werre stated that he had no objection to the approval of the application provided he was assured that the applicants would not place a dam or other structure in the creek that would obstruct the flow and that he would not be deprived at the times he needed it In spite of ... assurances, he was reluctant in signing a withdrawal"

The investigator summarizes his report as follows:

"There was ample water for all at the time of the investigation.

"There is no natural flow except during storm periods.

"A 30-day shortage normally occurs between April 1 and May 31.

"At times there is water present at applicants' and no water at protestants'.

"At times there is considerable excess water present.

"Protestants have no objection to approval of the application provided they are assured that there will be no interference with their rights."

Information Secured from Other Sources

Protestant George Werre submitted a document dated March 4, 1953, on behalf of himself and the co-protestant, that reads as follows:

"On condition that Ervin N. Anderson and Dorothy B. Anderson sign an agreement to the effect that they will not block the flow of water in Laguna Creek and will at all times by-pass sufficient water to satisfy the requirements under our water right Application 14524 Permit 8891, we hereby withdraw our protest against Application 15097."

Applicant Dorothy B. Anderson visited the Division office on March 19, 1953 and stated that the agreement proposed in the document just mentioned is not satisfactory. Although agreeable to that part providing for non-obstruction of the stream, it was her position that water at times reaches her point of diversion that would not reach the Werre property, and that such water should be available to her.

Applications to appropriate from Laguna Creek, starting with the lowermost, include besides Application 15097 the following: Application 14843 Permit 9100, Zraggen, 0.25 cubic foot per second, April 15 to October 31, irrigation, unprotested. In progress report dated October 6, 1953 Permittee Zraggen writes

"No waste water came through this season ... a neighbor above me has installed a pump to catch the waste water. So this year we haven't had any waste water. But we understand that our neighbor adjoining my property is going to put in a rice field so next year there should be plenty of waste water again."

Application 14524 Permit 8891, the Werres (protestants against Application 15097), 0.5 cubic foot per second, April 1 to November 1, irrigation, unprotested. These permittees report about 25 acres irrigated during 1953, use full and complete.

Application 13835 Permit 8343 License 3680, the Werres, 0.56 cubic foot per second, April 1 to November 1, irrigation, unprotested. Report of inspection made on May 5, 1952 contains statements to the effect that the source carries natural flow only after heavy winter rains but also carries summer flow consisting of drainage from nearby irrigation; that

summer flow was said to be just beginning despite the inspector's observation that "there was little if any noticeable movement of water in the weed-choked channel"; and that, according to permittee, during the period of maximum summer supply, the pump (600 gallons per minute in reported capacity) can only be operated about 10 hours per day.

Application 13264, Permit 8002, the Kramers, 3 cubic feet per second, March 1 to October 30, irrigation, unprotested. The permittees report under date of November 17, 1953, "No use made in 1953 since exploratory oil drilling undertaken on property."

Application 13964 Permit 8387, the Joneses, 2.12 cubic feet per second, April 1 to November 1, irrigation; stockwatering requirements throughout year. Unprotested. In progress reports for 1952 and/or 1953 permittees assert that they have irrigated 30 acres, that use is not yet full and complete, that tule growth impedes flow in creek channel and is yet to be removed.

Distances upstream from the mouth of Laguna Creek on Beach Lake to the points of diversion of the water users mentioned scale approximately as follows:

<u>Water user</u>	<u>Application</u>	<u>Miles</u>
Zraggen	14843	2.4
Werre	14524	3.7
Anderson	15097	4.1
Werre	13835	4.6
Kramer	13264	5.0
Jones	13964	5.4

Discussion

The existence, at times, of unappropriated water in Laguna Creek at the point where the applicants seek to appropriate is indicated by the statement by the applicants and by Protestant George Werre, during the field investigation, that during a portion of each summer certain lands are flooded and "unavailable for farming"; and by the investigator's observation that on June 10, 1953 "there was ample water for all." The non-existence, at times, of unappropriated water is indicated by the mention, during the field investigation, of a period of little or no flow, perhaps a month long, between the end of storm runoff and the beginning of return flow from up-slope irrigation.

That the amount of such unappropriated water as exists is not large is apparent from the report of the investigation of May 5, 1952 of the project under Application 13835 (Werre) that summer supply at that intake was only enough to enable a 600 gallon-per-minute pump to operate 10 hours per day -- indicative of an average flow at that season and place of about 0.56 cubic foot per second. That it is not large is also indicated by Permittee Zraggen's statement that no waste water "came through" in 1953. That it was sufficient for the Werres at their intake under Application 14524 (1.3 miles above Zraggen's) is indicated by the statement by the Werres, in their progress report, that use during that year was full and complete.

From the information at hand it appears that the flow of Laguna Creek, being limited during most irrigating months to return

flow from irrigated lands, varies in amount with the acreage upstream that is irrigated and with the requirements of the particular crops to which that acreage is planted. Such a stream cannot be wholly satisfactory as a source of supply: its flow is little or nothing until upstream irrigation is under way and in some years one or more upstream irrigators may elect not to irrigate at all. Such a stream however may afford a supply that can be used to advantage if it can be supplemented as necessary from another source of supply, such as the well mentioned by the applicants Anderson.

With reference to the protestants' offer to withdraw their protest if the applicants agree not to block the channel and further agree to by-pass sufficient water at all times to satisfy requirements under approved Application 14524, the agreement therein proposed appears superfluous, the protection sought by the protestants being afforded by the wording of any permit that would be issued. Should the application be approved and permit issued the permittees would be bound at all times to by-pass sufficient water to satisfy downstream rights; they would be authorized to divert only at such times as their diversion would not prevent the exercise of prior rights held by the protestants or by anyone else.

Summary and Conclusions

The applicants seek to appropriate 0.25 cubic foot per second from March 1 to October 1 from Laguna Creek in Sacramento County for the irrigation of a 20-acre pasture. The applicants state that they have another source of water supply, i.e. a well. The protestants, whose intake is approximately 0.4 mile below the applicants', contend that the flow of the source is insufficient in spring to meet both the applicants' requirements and their own. They state that their protest may be disregarded and dismissed if the applicants by-pass sufficient water to meet their (the protestants') needs and do not obstruct the flow of the stream.

At the time of the field investigation of June 10, 1953 it was determined that there normally is no natural flow in the source except during and briefly following storms, and that flow at other times is due to return flow from irrigated areas that are served from wells. It appeared to the investigator that for a period of approximately 30 days in spring, between the end of the stormy season and the arrival in the source of runoff from irrigated lands, flow in Laguna Creek is practically non-existent. It appeared further to the investigator that there was ample water for all parties at the time of the investigation, that at times supply considerably exceeds demand, that protestants do not object to approval of the application provided they are assured that there will be no interference with their rights.

Subsequent to the investigation Protestant George Werre offered to withdraw his protest contingent upon a written agreement by the applicants not to block the flow of the source but to by-pass sufficient water at all times to satisfy requirements under the Werres' approved Application 14524. Applicant Dorothy Anderson rejected that offer, her position being that water allegedly reaches her point of diversion at times that would not reach the Werre property and that such water should be available to her.

According to filed progress reports (Division Form 67) "no waste water came through" at the Zraggen place (Application 14843, Mile 2.4) during the 1953 irrigating season but "plenty" is expected next year due to increased rice irrigation upstream; use under approved Application 14524 (Werre, Mile 3.7) during 1953 was full and complete; no use was made of water under approved Application 13264 (Kramer, Mile 5.0) during 1953, exploratory drilling for oil having been undertaken on that property; use under approved Application 13964 (Jones, Mile 5.4) is not complete, tule growth impeding flow in channel and having yet to be removed.

According to an inspection on May 5, 1952 of the project under approved Application 13835 (Werre, Mile 4.6), the permittees' pump (reportedly 600 gallons per minute in capacity) can only be operated, a permittee stated, for about 10 hours per day, during the period of maximum summer supply.

From the information summarized it is concluded that the flow in the source from which the applicants seek to appropriate is variable

and uncertain but is greater at times than necessary for the satisfaction of existing rights, that the excess of supply over demand, when such excess occurs, is subject to appropriation and that said water which is subject to appropriation may be taken and used beneficially in the manner proposed by the applicants without injury to the protestants. In view of these circumstances it is the opinion of this office that Application 15097 should be approved and permit issued, subject to vested rights.

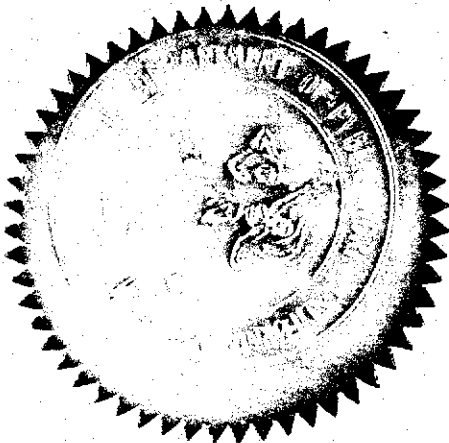
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ORDER

Application 15097 having been filed with the Division of Water Resources as above stated, a protest having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15097 be approved and that a permit 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 4th day of February, 1954.



A. D. Edmonston

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State Engineer