

V. J. C.

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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In the matter of Application 2784 of Roy J. Ainsworth
to appropriate water from North Tule River tribu-
tary of Tule River system in Tulare County for
Agricultural Purposes

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DECISION A 2784 D 169

Decided September 7, 1927.

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APPEARANCES AT HEARING HELD At Visalia, California, March 13, 1925.

For Applicant:

Roy J. Ainsworth

In propria persona

For Protestants:

W. R. Osborn)

Crook Bros.)

E. D. Kenyon)

Lester R. Slocum (Clarabell Gobel))

Harry and Mary A. Amick)

Paul F. Showalter)

L. N. Cornell)

W. R. Bailey

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights.

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O P I N I O N

Application 2784 was filed March 9, 1922. It proposes an appropri-
ation of 0.20 cubic foot per second of direct diversion from North Tule River
from July 1st to November 1st of each season to be used for agricultural pur-
poses on 16 acres of land located in Sections 19 and 20, T 19 S, R 30 E, M.D.B.&M.
The application was protested by W. R. Osborn, Crook Brothers, E. D. Kenyon,
Lester R. Slocum, Harry and Mary A. Amick, Paul F. Showalter and L. N. Cornell.

The application was completed in accordance with the Water Commission
Act and the requirements of the Rules and Regulations of the Division of Water

Rights and being protested was set for a public hearing at the Supervisor's Room of the County Court House, Visalia, at 10:00 o'clock a.m. on March 13, 1925. Of this hearing applicant and protestants were duly notified.

L. N. Cornell and W. R. Osborn, to whom Mr. Cornell has sold his property on a contract of purchase, claim the right to divert water from the North Tule River through the Cornell ditch, the intake of which is about one-half mile below the proposed point of diversion of the applicant and allege in effect that the approval of the application would result in depriving them of their water right which had been in existence for thirty years, as the flow in North Tule River during the summer months is not sufficient to supply the ditches which are already in existence.

Crook Brothers, Harry and Mary A. Amick, Lester R. Slocum and Paul F. Showalter claim the right to divert water from North Tule River through the Crook-Showalter or Dennison ditch, the intake of which is about three-fourths of a mile below the proposed intake of the applicant, and allege in effect that there is no surplus water flowing in the North Tule River over and above the amount necessary to supply their existing rights and that if the proposed appropriation is approved it would result in depriving them of water to which they are lawfully entitled. Subsequent to the filing of his protest the property of Lester R. Slocum was transferred to Clarabell Gobel.

E. D. Kenyon claims the right to divert 3 second feet of water from the North Tule River through the Pharisses ditch, the intake of which is situated about eight or nine miles downstream from the proposed intake of the protestant. This ditch he claims has been in existence for more than sixty years and has been used to convey water for irrigation and stock watering purposes and he alleges in effect that there is insufficient water in North Tule River during the period in which applicant proposes to divert to satisfy the existing rights on the stream.

Field Investigation.

Prior to the hearing on this application, investigations were conducted under the supervision of this office on September 4th, 5th, 6th and 7th, 1922 and on June 19th and 21, 1923. Subsequent to the hearing another investigation was made on June 24, 1927.

This opinion is based upon facts as presented in the reports of the engineers of this office who conducted these investigations as well as upon the testimony presented at the hearing.

Stipulated Judgment of September 11, 1916.

As the result of an action entitled "Poplar Irrigation Company vs. A. A. Howard, et al" brought before the Superior Court of Tulare County a stipulated judgment was rendered on September 11, 1916 as between the various water users on the Tule River.

While certain definite amounts of water were allotted to the various water users on the stream the field investigation conducted in 1922 clearly indicated that some of the parties to the stipulation were making no use of the water and others were unable to utilize their full allotments due to the fact that the capacities of their ditches were not sufficient to carry the stipulated amounts.

Users of Water on North Tule River below the Intake of the Dennison Ditch.

Consideration of the testimony taken March 13, 1925 and the data obtained at the time of the three field investigations noted above, leads us to the conclusion that after about July 1st of a year of normal runoff practically the entire flow of the North Tule River is diverted by the Dennison ditch and other ditches above and the only water available for protestant Kenyon and other users below the intake of the Dennison ditch subsequent to about July 1st and until the stream flow is replenished by the fall rains is water which is re-

turned to the stream from the irrigated lands adjacent thereto or from springs in the river bed fed by underground waters. As a matter of fact during the summer months the North Tule River between the Dennison intake and E. D. Kenyon's diversion point is practically dry except for occasional places where the water seeps out of the river channel and flows for short distances only. The Dennison ditch users are the last ones on the stream^{above these protestants} and they apparently divert the surface flow during this period without objection on the part of the lower users.

Protestant Kenyon contends that there is a definite underground flow in the river as he has noticed an increase in the flow of the springs along the river bottom when the flow is increased at the head of the stream, although there was no connected surface flow. It is considered however that it would take an amount of water considerably in excess of the amount which the applicant proposes to divert to have any noticeable effect upon the water which rises in the lower reaches of the river, particularly at Protestant Kenyon's point of diversion which is eight or nine miles below that of the applicant.

While it may be true that a portion of the waters above the Dennison intake and the seepage losses from the Dennison ditch may find their way to the Kenyon intake, it is our opinion that the amount of water which the applicant proposes to divert would travel so slowly through the underground channels that it would be replenished by the recurring storms of winter before the effect could be felt by the protestant.

For the reasons given above, it is believed that the protest of E. D. Kenyon is without merit and therefore should be dismissed.

Cornell or Osborn Ditch.

The first intake below that proposed by the applicant is that of the Cornell or Osborn ditch through which W. R. Osborn diverts water for irrigation purposes upon land which he is purchasing on contract from L. M. Cornell.

This ditch is about three-quarters of a mile in length and takes out of the North Tule River at a point about one-half mile below the applicant's proposed point of diversion. Diversion is made directly through a wooden flume eleven inches square in cross-section which is placed in the channel of the stream, there being no dam at the head.

About 500 feet from the intake the ditch crosses Pine Creek, a tributary of the North Tule River by means of a wooden flume. At the time of the investigation in 1922, W. R. Osborn was diverting twenty miners inches at the intake which was almost the capacity of the flume the water depth therein being about 10 inches and the flume depth being 11 inches and of this amount only about 6 or 7 miners inches reached the place of use which consisted of about 4 acres of land. The conveyance loss which was 65 or 70% is exceptionally high, a large amount being lost from the flume which crosses Pine Creek.

Mr. Osborn irrigates from about June 1st to about October 15th, the ditch running continuously during this period.

Prior to 1922, testimony indicates that there were never more than 4 to 6 acres cleared although the ditch is alleged to have been built about 1890 and used continuously since for nothing but this land.

At the time of the investigation in 1922 Mr. Osborn contemplated clearing an additional 5 acres and planting it to orchard and from the testimony presented at the hearing this had been done and the additional land irrigated.

As Mr. Osborn's land is not riparian to North Tule River and he does not appear as an appropriator before this office ^{we} we do not know under what right this protestant proceeds to irrigate this additional area as it would appear that his right to additional water under his original appropriation had lapsed through non-use. The applicant has on the other hand filed an application with this office and is proceeding in a regular manner to obtain his water right.

At the time of the 1922 investigation the amount of water flowing in the North Tule River past the intake of the Cornell ditch exceeded in amount the quantity of water which the applicant seeks to appropriate and it has been shown above that the ditch was diverting to almost its maximum capacity. Testimony presented at the hearing indicated that this was the usual or normal condition (See Page 68 of transcript) and it would therefore appear that the protests of W. R. Osborn and L. N. Cornell may be dismissed.

Dennison Ditch.

The next intake on the North Tule River is that of the ditch formerly known as the Crooks-Snowalter ditch but now called the Dennison ditch, the users therefrom having incorporated under the name of the Dennison Ditch Company.

This ditch which was constructed in 1866, takes out from the North Tule River at a point about three-quarters of a mile below the applicant's proposed point of diversion and about one-quarter of a mile below the intake of the Cornell or Osborn ditch. Just above the intake of the Dennison ditch is the junction of North Tule River and Pine Creek.

The users of water from the Dennison ditch in downstream order are J. A. Rockwood, who did not protest the application, A. B. and F. A. Crook, Harry and Mary Amick, Clarabell Gobel (successor in interest to Lester R. Slocum) and Paul F. Snowalter.

By the terms of the stipulated judgment referred to above it appears that a right to divert 2.25 cubic feet per second through the Dennison ditch was recognized.

The water available at the intake of the Dennison ditch during the summer months appears to be that water which escapes past the intake of the Cornell or Osborn ditch together with some return water from North Tule River and its tributary Pine Creek after it has been used for irrigation purposes on lands adjacent to the river.

At the time of the 1922 investigation it was found that about 30 miners inches were being diverted from the river at the Dennison ditch intake, which amount was all of the available flow in the North Tule River at that point with the exception of perhaps 4 miners inches which leaked through the rock and earth diversion dam and disappeared into the gravels a short distance below. According to Mr. F. A. Crook the flow at the intake of the Dennison ditch at the time of the investigation was about one-third greater than it usually is at that time of the year.

The capacity of the Dennison ditch is limited by a flume which is located a short distance below the intake. Just below the flume, the water enters a natural creek channel which constitutes the ditch for a distance of approximately two miles or as far as the Rockwood property. This natural channel follows what appears to be an old glacial bed filled with boulders and the seepage loss therein is excessive. In fact at the time of the investigation in 1922 it was found that of the 30 miners inches diverted at the head of the ditch there were not more than 2 miners inches flowing in the channel about three-quarters of a mile below or a loss of more than 90%.

This flow increased somewhat however below this point and at a point just above the Rockwood property where the water leaves the old channel and enters the ditch proper there was an estimated flow of about 8 miners inches. At a point below the Rockwood property where the ditch crosses the road there was a flow of about 6 miners inches and at the Crook Brothers' property there was not more than 3 or 4 miners inches in the ditch and not more than 2 miners inches in the branch leading to the other users. At the Amick property there was about 1 miners inch flowing in the ditch and no water reached either Gobel or Showalter.

From the amounts shown above, and assuming that a portion of the 30 miners inches diverted rose again in the ditch bed after once disappearing it

seems probable that of the 30 miners inches diverted there were only 3 or 4 miners inches which were actually applied to beneficial use and that about 85% of the water originally diverted was lost. During the summer of 1924, the driest year according to the testimony, the North Tule River fell to an estimated flow of 8 miners inches at the applicant's point of diversion and was dry a short distance below the intake of the Cornell or Osborn intake and above the Dennison ditch. At this time W. R. Osborn intercepted all the flow except seepage and could get no water in his ditch after August 1st.

Testimony presented at the hearing was to the effect that during this low flow period the intake to Dennison ditch was dry, but in spite of this, water raised in the lower portion of the natural channel section of the Dennison ditch so that at all times throughout the season Rockwood had some water at his place. The physical situation is such that just above Rockwood, some of the water that raises and flows from springs may be and probably is water which has been diverted from Pine Creek through the Childer's ditch and after being used by Childers for irrigation purposes has seeped underground to the Dennison ditch.

This condition leads us to believe that the increase of water in the Dennison ditch is due to return irrigation water and /or underground flow over an extended period of time rather than to the uprising of any of the water which is diverted at the head of the ditch.

This theory is substantiated by the report of the engineer who investigated the project in 1927. In the report of this investigation it is stated that near the point where the ditch crosses the road, there is a low saddle over an intervening ridge and it seems improbable that any water could pass through this divide to the lower ditch.

The lower users on the ditch claim that the withdrawal of the water by the applicant would lengthen the time required to fill the underground basin

alleged to underlie the channel utilized as a conduit and hence delay the flow to them when the river is increased in the Fall.

Even if such were the case, this objection has little merit in that the lower users would not irrigate after the increase in the Fall anyway and the winter precipitation and runoff would replenish the underground flow. (Transcript Page 35, Line 19 to Page 36 Line 23).

In June 1923, the flow in the Dennison ditch measured at a point about 600 feet below the intake and below the flume was 1.15 second feet and it was estimated that 20% of the water diverted at the intake was lost at the flume.

On June 24, 1927 a measurement was made of the flow in the ditch above the flume about 200 feet below the intake. The flow at this point was 2.2 cubic feet per second and the conveyance loss in the section of the ditch between the intake and the point where it crosses the road in the NE₁ of Section 25 was approximately 60%.

As early as 1920 the users of water from the Dennison ditch, realizing the enormous seepage losses therefrom, contemplated the installation of a pipe line to conserve these losses and make more water available for their use.

Upon investigation however in June, 1927, no pipe line had been installed and the ditch appeared to be in practically the same condition as at the time of the 1922 investigation.

The users of water from the Dennison ditch expect to increase their irrigated area in the future presumably on account of the conservation of water by the installation of the proposed pipe line.

It is our opinion that the applicant who has proceeded in the regular and prescribed manner to obtain the right to appropriate eight inches of water is entitled to that amount rather than the users of water under the

Dennison ditch whose intent it is to eventually conserve water which has heretofore been allowed to go to waste.

An appropriative right is measured by the amount of water that has been actually applied to beneficial use and while an appropriator is entitled to an allowance for reasonable losses in transit to the place of use, the losses observed at the times of the field investigations conducted under the direction of this office were greatly in excess of losses which would have occurred had the users under the Dennison Litch Company employed a ditch in lieu of the old channel utilized by them.

In other words, measured by a standard of what would constitute a reasonable loss by evaporation and seepage from a usual and ordinary means of conducting water in the locality involved, with due consideration to natural conditions, soil traversed and all other proper factors, it is found that the losses occurring in transit to use by these users are unusual, excessive, unreasonable and unnecessary and therefore the rights of use initiated and maintained by these users are not inclusive of all of the waters diverted through the Dennison intake.

Conclusion.

The purpose to which the applicant intends to put the proposed appropriation is a beneficial one and it is the opinion of this office that during the season proposed by the applicant there is sufficient water in North Tule River which is not being put to a useful or beneficial purpose, to justify the approval of the application.

O R D E R

Application 2784 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held, field investigations having been made and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 2784 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 7th day of September, 1927.



(Edward Hyatt, Jr.)
TEMPORARY CHIEF OF DIVISION OF WATER RIGHTS

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