

Before the Division of Water Resources  
Department of Public Works  
State of California

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In the Matter of Application 11237 of Thomas Edward Dee  
to appropriate water from Squirrel Creek, Tributary  
to Yuba River in Nevada County for Irrigation,  
Domestic and Fire Protection Purposes.

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Decision A. 11237 D- 543

Decided Dec. 19, 1946.

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APPEARANCES AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER  
RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON SEPTEMBER 20,  
1946.

For Applicant

Thomas Edward Dee

In propria persona

For Protestant

Nevada Irrigation District

P. J. Bosanko

For Division of Water Resources

S. C. Whipple, Associate Hydraulic Engineer for Gordon Zander,  
Principal Hydraulic Engineer, Division of Water Resources,  
Department of Public Works, State of California.

O P I N I O N

General Description of Project

Application 11237 was filed with the Division of Water Resources  
by Thomas Edward Dee on December 12, 1945. It proposes an appropriation  
of 0.20 cubic foot per second from Squirrel Creek tributary to Yuba  
River in Nevada County to be diverted from June 1 to November 1 of  
each season at a point within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 33, T 16 N,  
R 7 E, M.D.B. & M. for domestic and fire protection purposes and for the  
irrigation of 20 acres within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 33, T 16 N,  
R 7 E, M.D.B. & M.

### PROTEST

Application 11237 was protested by Nevada Irrigation District. It alleges in effect that the approval of Application 11237 will conflict with prior applications of the District and its right to divert its waters at any point or points within the District. It claims that water is diverted from Squirrel Creek at a point within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 29, T 16 N, R 7 E, M.D.B. & M.

### Field Investigation

Stipulations to an informal hearing under Regulation 12B (now Section 733(b)) of the Rules and Regulation of the Division of Water Resources having been made by both applicant and protestant and having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on September 20, 1946. Accompanying the engineer were the applicant and P. J. Bosanko, a hydrographer of the Nevada Irrigation District.

### RECORDS RELIED UPON IN ARRIVING AT A DECISION

In arriving at a decision in the matter, reliance is placed upon the entire files on Applications 11237 and 8176. Particular reliance is placed upon the report of Mr. Whipple who conducted the field investigation.

### GENERAL DISCUSSION

Squirrel Creek, the source of the proposed appropriation, rises in the foothills in the vicinity of Grass Valley, Nevada County, at an elevation of approximately 2500 feet above sea level and flows in a general westerly direction a distance of about 10 miles to its junction with Deer Creek at an elevation of about 1000 feet above sea level. Its main tributary is Clear Creek.

Squirrel Creek and its tributaries drain an area of approximately 24.7 square miles of moderately wooded terrain. Of this area about 23.5 square miles are above the intake of protestant's "Union Ditch", approximately 21.9 square miles are above applicants proposed point of diversion and about 18.6 square miles are above the point of diversion described in Application 8176 of the Nevada Irrigation District.

The mean seasonal precipitation at Grass Valley (Elevation 2690 feet) for the 74 seasons, 1872-73 to 1945-46 inclusive is 52.16 inches. The seasonal precipitation during the season 1945-46 was 56.44 inches or about 108% of normal.

At a point approximately 1-3/4 miles below the applicant's proposed point of diversion the Nevada Irrigation District diverts water from Squirrel Creek by means of a concrete dam 8 feet high and 60 feet long into its "Union Ditch". This ditch constructed by Coolie labor in early mining days, is substantially built and is estimated to have a present carrying capacity of approximately 20 cubic feet per second. At the time of the investigation this ditch was carrying the entire flow of the creek with the exception of about 0.1 cubic foot per second which was seeping through the dam. The District claims a vested right of long standing to divert the entire flow of Squirrel Creek up to the capacity of the ditch, asserting that this right originally initiated in 1851 was purchased from the Excelsior Water and Power Company. This right remains unchallenged by the applicant.

The District also has Application 8176 before the Division for mining and domestic purposes which has been approved for an amount of water from Squirrel Creek not to exceed 100 cubic feet per second by direct diversion throughout the year and 20,000 acre-feet per annum to

be collected to storage from about November 1 to about June 30 of each season in Anthony House Reservoir on Deer Creek. Although the point of direct diversion and diversion to storage is within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 34, T 16 N, R 7 E, M.D.B. & M. about 1.3 miles above the applicant's proposed point of diversion, the application clearly indicates that it is the intention of the District to use natural streams and water courses within the boundaries of the District as conduits and distributaries and that any and all points on such streams and water courses are potential points of rediversion. Use under Application 8176 is now being made but has not yet been completed to the extent contemplated.

The watershed of Squirrel Creek lies entirely within the boundaries of the Nevada Irrigation District and it may be inferred that any return water from irrigation use within these boundaries which reaches Squirrel Creek is of District origin and is recoverable by the District within its boundaries. (Stevens v. Oakdale Irrigation District 13 Cal. 2nd 343). Although at the time of the investigation there was no indication of the presence of return water in the stream at applicant's proposed point of diversion it is entirely conceivable that at times return water from irrigation above may reach the channel of Squirrel Creek to be rediverted and used by the District as necessity demands.

The applicant has some 3 acres of the 20 acres which he proposes to irrigate under his Application 11237 already under irrigation and the District apparently recognizes the fact that he may be entitled by virtue of riparian ownership and continued use to continue to pump sufficient water to irrigate the 3 acres which have heretofore been irrigated but denies that he is entitled to increase his present use, contending that no unappropriated water exists in Squirrel Creek during the irrigation season.

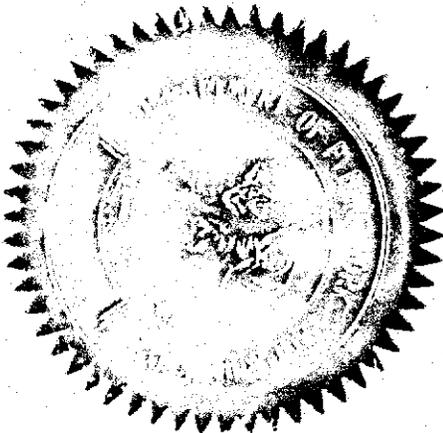
The result of the investigation indicates that the contentions of the District are correct and that there is insufficient unappropriated water in Squirrel Creek during the irrigation season to justify the approval of Application 11237. Therefore, this application should be cancelled upon the records of this office.

O R D E R

Application 11237 for a permit to appropriate water having been filed with the Division of Water Resources, as above stated, a protest having been filed, a field investigation by the Division having been made, a stipulated hearing having been held in accordance with Regulation 12B (now Section 733(b)) of The Rules and Regulations of the Division of Water Resources and the Division of Water Resources now being fully informed in the premises.

IT IS HEREBY ORDERED that Application 11237 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 19th day of December, 1946.



  
State Engineer