

BEFORE THE DIVISION OF WATER RESOURCES

DEPARTMENT OF PUBLIC WORKS

STATE OF CALIFORNIA

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In the Matter of Application 11788 of Gordon M. and Florence L. Robertson to appropriate Water from O'Neil Creek tributary via Calaveritas Creek to Calaveras River in Calaveras County for Irrigation, Domestic and Stockwatering Purposes.

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Decision, A. 11788 No. 586

Decided August 25, 1948

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SITE OF THE PROPOSED APPROPRIATION ON SEPTEMBER 19, 1947:

For the Applicants

Gordon M. and Florence L. Robertson - Gordon M. Robertson

For the Protestants

California State Fish and Game Commission - L. R. Garrett,
Game Warden and
Brian Curtis,
Supervising
Fisheries
Biologist

Calaveras Cement Company - No appearance

For the State Engineer - Biscoe Kibbey, Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works, State of California.

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OPINION

GENERAL DESCRIPTION OF PROJECT

Application 11788 was filed by Gordon M. and Florence L. Robertson on

March 20, 1947, for a permit to appropriate 5 miner's inches from O'Neil Creek in Calaveras County, for irrigation, domestic and stockwatering purposes. O'Neil Creek is tributary to Calaveritas Creek and the latter discharges into Calaveras River. The proposed point of diversion lies within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T 5 N, R 14 E, M.D.B. & M.

P R O T E S T S

The California State Fish and Game Commission protested that the proposed appropriation will result in the destruction of trout because of the reduction of summer flow which it will occasion. Trout are said to be naturally present in O'Neil Creek. The condition under which the protest may be disregarded and dismissed is said to be the inclusion in such permit as may be issued of a clause to the effect that the permittee shall for the protection of fish life at all times release into the natural stream channel immediately below the point of appropriation not less than 1 cubic foot per second, or the natural flow immediately above such point, whichever is less.

The Calaveras Cement Company protested that it will be injured by the diminution of flow in O'Neil Creek resulting from the proposed appropriation. It contends that the remaining streamflow will be insufficient to satisfy the right it enjoys under approved Application 4742 (Permit 2737) to divert 1 cubic foot per second for industrial purposes in connection with cement manufacture. The protest contains no statement as to conditions under which it may be disregarded and dismissed.

Field Investigation

Stipulations to an informal hearing under the provisions of Article 13, Section 733(b) of the California Administrative Code having been entered into by the applicants and protestants and the stipulations 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 19, 1947. Present

during the investigation in addition to the engineer mentioned were Applicant Gordon M. Robertson, Game Warden L. R. Garrett and Supervising Fisheries Biologist Brian Curtis. No representative of Calaveras Cement Company was in attendance.

General Discussion

During the investigation O'Neil Creek was observed at the proposed point of diversion, and the discharge was estimated to be 0.33 cubic foot per second. Along this reach the investigation developed that O'Neil Creek winds in and out among boulders, forming, at intervals, fairly extensive pools. Mr. Curtis stated that he and the warden, a short time before, had counted 20 fingerling trout in one of these pools. The observed flow (about 13 miner's inches) was said to be about the seasonal low. Mr. Curtis stated that he believed that a reservation of 10 miner's inches, instead of the 1 cubic foot per second mentioned in the protest, would be satisfactory to the State Fish and Game Commission; and Mr. Robinson stated that ordinarily the discharge exceeds 15 miner's inches and that a permit for 5 miner's inches with a proviso that 10 miner's inches or any lesser flow that naturally occurs be bypassed at all times, would be satisfactory to him. These statements were later confirmed in writing, the California State Fish and Game Commission agreeing, by a communication dated September 24, 1947, to a reduction in the release named in its protest from 1 cubic foot per second to 10 miner's inches and the applicants agreeing, by letter dated October 9, 1947, to the inclusion, in any permit issued them, of a clause incorporating such amended condition. The protest of the California State Fish and Game Commission was therefore dismissed, subject to the inclusion in the permit terms of the clause indicated.

As to the Calaveras Cement Company protest, the investigation developed that the grounds therein stated are insufficient to justify the denial of a permit; it appearing that practically all water used by that protestant is provided by Calaveras County Water District and that no water is pumped from Calaveritas Creek

under Application 4742 except on rare occasions when there is a breakdown in delivery by that District, on which occasions the protestant is protected in the use of water from Calaveritas Creek by the priority of its application. It is noteworthy that this protestant did not see fit to participate in or attend the investigation, nor did it submit argument or statement in support of its objections other than those contained in its original protest. In view of the circumstances mentioned the protest by Calaveras Cement Company is dismissed.

ORDER

Application 11788 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a stipulated hearing having been held in accordance with the provisions of Section 733(b) of the California Administrative Code, and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11788 be approved and that a permit be issued to the applicants, subject to such of the usual terms as may be appropriate, and subject also to the following special clause, to-wit:

Permittee shall at all times by-pass a minimum of 10 statutory miner's inches or the natural flow of the stream whenever it is less than 10 statutory miner's inches at the point of diversion to maintain fish life.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 25th day of August, 1948.




Edward Hyatt, State Engineer