

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 12121 of Clement C. Floersch to Appropriate Water from La Zanja Creek, tributary to San Dieguito River in San Diego County for Irrigation, Domestic and Stock Watering Purposes.

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Decision A. 12121 D. 603

Decided March 24, 1949

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O P I N I O N

General Description of the Project

The application, filed October 7, 1947 contemplates a diversion of 91 acre-feet per annum from La Zanja Creek, a tributary of San Dieguito River. The proposed point of diversion lies within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, T 14 S, R 3 W, SBB&M; and water is to be collected between October 1 and May 1 of each season, stored in a reservoir which will lie within the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$  and SW $\frac{1}{4}$  SE $\frac{1}{4}$  of the same Section 2; and used to irrigate 20 acres of general crops and 71 acres of pasture in the SE $\frac{1}{4}$  of Section 2 and the SW $\frac{1}{4}$  of Section 1 of the same township, to meet the domestic needs of two families and to water approximately 100 head of livestock. The storage reservoir which is to be known as the Floersch Reservoir is to have a surface area of 7.03 acres and a capacity of 73.62 acre-feet. An earth storage dam is proposed, 25 feet high (streambed to overflow level) and 325 feet long. The conduit proposed is a 6 inch pipe 1000 feet long through which water is to be lifted 75 feet. The estimated capacity of the diversion works

is 200 gallons per minute. The irrigation season is contemplated to extend from about May 1 to about November 1.

#### Protests

✓ Gus L. Stelling protested on November 29, 1947, contending that the dam proposed by the applicant will arrest the natural flow of water needed by this protestant for irrigation, domestic and stock watering purposes. Protestant Stelling describes his point of diversion as lying within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, T 14 S, R 3 W, SBB&M, bases his claim upon riparian ownership and use prior to December 19, 1914, and asserts that his use approximates 5000 gallons per day. He objects to the exportation by the applicant of La Zanja Creek water to points outside of the watershed of that stream but is willing that his protest be disregarded and dismissed if the applicant withdraws his application and diverts from La Zanja Creek only as a riparian proprietor.

In reply to the Stelling protest the applicant asserts that the proposed earth dam will probably not be water tight and that seepage through and under the dam should more than equal the protestant's requirement. Likewise he argues that the water to be stored would be applied to lands riparian to La Zanja Creek and that return flow therefrom would tend to equalize, stabilize and increase the low flow of the stream to the protestant's advantage. He agrees if leakage past the dam plus return flow is insufficient to meet protestant's requirements he will make up the deficit by releases from the reservoir. He contends that 1500 gallons per day rather than 5000 more accurately represents this protestant's reasonable needs, and that the yield of La Zanja Creek is sufficient to meet the requirements of both protestant and applicant.

Levi Gonzales protested on December 22, 1947 on grounds somewhat similar

to those advanced by Protestant Stelling, i.e., the interruption, by the construction of a dam such as the one proposed, of the free flow of La Zanja Creek to riparian lands downstream. Protestant Gonzales claims rights based upon riparian ownership and upon use prior to December 19, 1914. He asserts that use commenced in 1880 and has since continued, for domestic and stockwatering purposes and for the subirrigation of his bean land. He describes his point of diversion as being located within the  $S\frac{1}{2}$   $SE\frac{1}{4}$  and the  $SE\frac{1}{4}$   $SW\frac{1}{4}$  of Section 3 of the township previously named. He implies that his water supply is obtained from wells which, he apprehends, will turn brackish if the proposed dam is built. He argues likewise that subirrigation by which he successfully raises beans will suffer, both by impairment of quality of water and by a lowering of the ground water level. He estimates the amount of water used in subirrigation at from 30,000 to 40,000 gallons per day.

In the applicant's answer to the Gonzales protest he asserts that leakage past the proposed dam and return flow from the land to be irrigated will probably afford a supply sufficient for this protestant's needs and if necessary that this leakage and return flow will be supplemented by releases from the reservoir. The applicant represents also that the water table, estimated as from 10 to 50 feet below the valley floor, is too low for effective subirrigation; and he points out that the protestant disclaims a right to water that comes down in winter flash floods, and that this, mainly, is the water which it is sought to appropriate.

#### Field Investigation

The applicant and the protestants stipulated to an informal hearing under the provisions of Section 733(b) of the California Administrative Code. Subsequently by Order of Reference dated June 11, 1948, the case of Gus L. Stelling v. Clement C. Floersch, et al., Superior Court, San Diego County,

No. 142466, filed September 15, 1947, was referred to the Department of Public Works, Division of Water Resources for its investigation and report as referee. Judgment in the case was entered on February 11, 1949.

Plaintiff Gus L. Stelling and Defendant Clement C. Floersch are respectively one of the protestants and the applicant in the matter of Application 12121. Levi Gonzales the other protestant against the approval of said application was not a party to said action. However, the data collected by the Division as referee and incorporated in its Report of Referee in said case, and the terms of the court judgment <sup>in</sup> there are sufficiently comprehensive to determine all issues posed by both protests against the approval of said application. Thus the record in the case of Stelling v. Floersch serves the purposes of the hearing stipulated to by applicant and protestants in the matter of Application 12121 pursuant to Article 13, Section 733b, California Administrative Code.

#### Records Relied Upon

Application 12121 and all data and information on file therewith, and the Report of Referee, Judgment and other data in the case of Stelling v. Floersch.

#### Discussion

The judgment in Stelling v. Floersch, which closely follows the findings set forth in the Report of Referee in the matter, establishes, among other things, that the plaintiff and defendant can beneficially use on their respective riparian lands the waters of La Zanja Creek, if available in sufficient quantity, and when needed, to the amounts of 112.5 and 300 acre-feet per year, respectively; that the amount of plaintiff's riparian uses and the amount of his present reasonable requirements for all riparian uses has been and is 600 gallons per day; that the amount of defendant's like uses and requirements has been and is 300 gallons per day; that plaintiff's and defendant's riparian rights in and to the waters of La Zanja Creek for use on their riparian lands are 28% and 72%, respectively, of the surface and sub-

surface flow of said creek or so much of said 28% and 72% as they can reasonably put to beneficial use on their respective lands; and that there is a surplus of water in La Zanja Creek which defendant is entitled to appropriate, store and use subject to the riparian and vested rights of plaintiff and others on said creek.

Accordingly the protests of Gus L. Stelling and Levi Gonzales are dismissed and Application 12121 should be approved subject to the usual terms and conditions and to the provisions of said judgment.

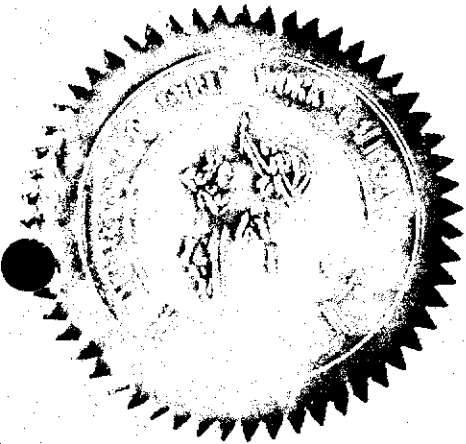
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ORDER

Application 12121 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733b of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12121 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject also to the provisions of the judgment entered February 11, 1949, in the case of Gus L. Stelling v. Clement C. Floersch et al., Superior Court, San Diego County, No. 142466.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 24th day of March, 1949.



  
Edward Hyatt, State Engineer