

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 12398 by Florence M. Stephens and Application 12637 by Heidrick Brothers to Appropriate Water from Willow Slough in Yolo County for Irrigation Purposes.

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Decision A. 12398 and 12637 D. 665

Decided April 24, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON NOVEMBER 7, 1949:

Fred Heidrick	Representing both Applicants.
John M. Dinsdale	Protestant.
Alberta Lawson	Representing Protestants Colburn and Strawbridge.
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

Note: Floyd M. Eveland and Felix Karrer, protestants against Application 12637 were neither present nor represented.

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OPINION

General Description of the Project

Application 12398 contemplates the appropriation from April 1 to October 15 of each season of 6.17 cubic feet per second from Willow Slough, a tributary via Yolo Bypass, of Sacramento River. It is proposed to divert by pumping at either or both of two points of diversion, these

lying respectively within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 28, T 9 N, R 2 E, M.D.B.&M. It is proposed to install a 5000 gallon-per-minute pump at each of these locations. There are to be two open conduits, each of a carrying capacity of 5000 gallons per minute, 3500 feet long and 4600 feet long, respectively. The water is to be used for the irrigation of 246.88 acres located within the same Section 28 and planted to rice. According to the application construction was finished and the water was completely applied to the proposed use, both in 1945.

Application 12637 contemplates the appropriation of 7.42 cubic feet per second, from April 1 to October 15 of each season, at a point within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 28, T 9 N, R 2 E, M.D.B.&M. Diversion is to be by pumping, by means of a plant 10,000 gallons per minute in capacity, and delivery is to be by means of an open ditch of like capacity, 3400 feet long. The water is to be used for the irrigation of 296.62 acres of rice located within Sections 27 and 29 of the township mentioned. The applicants claim another water right or source of supply, i.e., a well yielding 2000 gallons per minute.

#### Protests

O. M. Colburn and Walter R. Strawbridge jointly protest each of the applications. They represent that the proposed appropriations will injure them because the supply carried by Willow Slough is insufficient. According to the protests Protestant Colburn has been using water since 1905 and Protestant Strawbridge since 1913 for the irrigation of alfalfa, rice, diversified crops and pasture, their lands lying within Sections 11 and 15 of T 9 N, R 2 E, M.D.B.&M. Their protests, they state, may be disregarded and dismissed in the event of consent thereto by all interested parties.

John M. Dinsdale protests both applications, asserting that there are no surplus waters in Willow Slough and that the proposed diversions will interfere with his riparian rights and rights based upon diversion since 1914. He claims to irrigate alfalfa and general crops with water diverted within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 11, T 9 N, R 2 E, M.D.B.&M. He states that his protest may be disregarded and dismissed if such permit as may be granted is made subject to existing rights.

Lloyd M. Eveland and Felix Karrer protest that if Application 12637 is approved they will be unable to irrigate as heretofore and will lose production and income. They claim an appropriative right based upon use prior to 1914. They assert that they use 4 cubic feet per second for the irrigation of 100 acres of general crops, their point of diversion being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 14, T 9 N, R 2 E, M.D. B.&M. They are unwilling that the protest be dismissed under any conditions.

Applicant Stephens answers Protestants Colburn, Strawbridge and Dinsdale by stating that the water filed upon is abandoned or excess irrigation water and therefore is not subject to riparian claim; and that the flow of Willow Slough is sufficient for all parties concerned.

Heidrick Brothers answer the protest by Colburn and Strawbridge and the protest by John M. Dinsdale by disclaiming intention of preventing any of the ranchers who have used water in the past from continuing such use. The applicants Heidrick also assert that their object in filing was primarily to protect themselves against interference by future appropriators.

### Field Investigation

The applicants and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code a field investigation was conducted at the site of the proposed appropriation on November 7, 1949 by an engineer of the Division. The applicants and the protestants were present or represented during that investigation.

### Records Relied Upon

Applications 12074, 12398 and 12637 and all data and information on file therewith.

### Discussion

During the field investigation of November 7, 1949 it developed, all parties present agreeing, that there has been ample water for all in 1949 and that at times in years of short supply the users had rotated. At the time of the investigation there was no water flowing in Willow Slough but there was standing water in numerous pools.

Protestant Dinsdale's position was that he had no objection to approval of the applications provided that approval be made subject to existing rights of any nature. Upon being assured by the investigating engineer that such would be the case, Protestant Dinsdale withdrew his protests.

Protestants Eveland and Karrer were neither present nor represented during the investigation. According to Protestant Dinsdale, Protestants Eveland and Karrer usually irrigate about 100 acres and their water supply comes mainly from a well.

According to Alberta Lawson, representing Protestants Colburn and Strawbridge at the investigation, those protestants usually irrigate

around 320 acres, and besides pumping from the slough obtain part of their supply from a well and also purchase some water from Clear Lake Water Company.

From the relative position of the parties' points of diversion it is apparent that the proposed appropriations will diminish the amount of water reaching the intakes of all downstream users, including all of the protestants. This circumstance does not mean that the proposed appropriations will necessarily injure the downstream users but it does mean that the applicants will be obliged to defer to the higher priorities of downstream appropriators in times of water shortage. The provision contained in every permit making that permit subject to vested rights is sufficient protection to downstream users in the matter at issue. In reliance upon that provision Protestant Dinsdale has elected to withdraw his protest. The other protests while not withdrawn voluntarily nevertheless appear of doubtful sufficiency inasmuch as the applicants seek only to appropriate unappropriated water and there are indications that such water at times exists.

Data are not available upon which to base an estimate as to the amount and/or the duration of surpluses in Willow Slough. Applicant Heidrick stated without contradiction by any one present during the field investigation, that they (Heidrick Brothers) have been pumping for 5 years without any one complaining, and that there is a surplus of water during seasons when there is a large acreage in rice upstream. As stated in an earlier paragraph the parties present or represented at the field investigation agreed that the supply was sufficient for all in 1949, a year in which the projects for which appropriative rights are now being sought were already in operation. Information adduced in connection with an

earlier filing on the same source is to the effect (page 7 of transcript of proceedings in the matter of Application 12074) that the flow in Willow Slough is very irregular, that in some years the flow is considerable while in other years it is little or nothing, that when the supply is deficient water is obtained from other sources but that when the supply from Willow Slough is plentiful that supply is very useful. According to the same transcript (on page 12), sometimes there is a good deal of water in the slough, and most of the time there is "quite a bit". The testimony of one witness (on page 16) that "sometimes we operate twenty four hours -- most of the time not twenty four because it is much more agreeable and satisfactory to irrigate in the daytime than at night" is an implication that surpluses exist. The following record of a series of weir measurements of the flow of Willow Slough at Protestant Colburn's property in 1927, submitted in connection with Application 12074, lends credence to the assertion that the flow of that stream is at times considerable:

<u>Date</u>	<u>Discharge</u> <u>in cu.ft./Sec.</u>
August 3	56.9
" 27	36.9
" 29	65.3
September 3	52.1
" 5	74.8
" 9	56.5
" 12	36.9
" 17	44.7
" 22	56.5
" 26	65.3
" 30	65.3
October 4	61.5
" 8	61.5

Application 12074 mentioned in the preceding paragraph, is an application by Woodland Farms Inc. to appropriate 200 cubic feet per

second from March 1 to October 31 from Willow Slough at a point within Section 8, T 9 N, R 3 E, M.D.B.&M. That point is downstream in relation to the intakes of the applicants and of the protestants in the matter of Applications 12398 and 12637. Application 12074 was protested and a formal hearing conducted. In due course Application 12074 was approved and Permit 7559 was issued. Ordinarily the fact that a permit in an amount greater than the usual flow of the stream has been granted would incline this office to disapprove later applications to appropriate at points upstream. However in this instance Woodland Farms Inc. has not seen fit to protest either Application 12398 or Application 12637. Furthermore the attorney representing that concern at the formal hearing in connection with Application 12074 volunteered as follows:

"..... There are other diverters upstream on Willow Slough and some of them have been taking water for a great many years from the Slough also. ....It was not our purpose and it is not our purpose now to interfere with any of the old rights that exist on the Slough."

In view of the omission of Woodland Farms, Inc. to protest Applications 12398 and 12367 and the statement above quoted, by that company's attorney it is concluded that Woodland Farms, Inc. does not desire to assert its advantage in priority against these particular applicants. The fact that a permit has been issued to a downstream user to divert a relatively large amount therefore is not considered in this instance as being a bar to the approval of the applications on Willow Slough now pending.

For the reasons above set forth it is concluded that surpluses at times exist in Willow Slough, which surpluses may be taken and used in

the manner proposed in Applications 12398 and 12367 without injury to the protestants and without objection by any other downstream user. Those applications should therefore be approved and permits issued, subject to the usual terms and conditions.

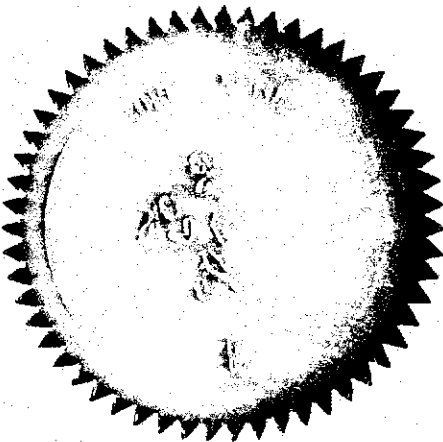
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ORDER

Applications 12398 and 12637 for permits to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12398 and 12637 be approved and that permits be issued to the respective 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 24th day of April, 1950.



*A. D. Edmonston*

A. D. Edmonston  
State Engineer.