

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 13122 by James Malone to Appropriate Water from an Unnamed Stream Tributary via Elk Creek to Klamath River in Siskiyou County for Domestic Purposes and Irrigation.

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Decision A. 13122 D. 680

Decided SEP 29 1950

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IN ATTENDANCE AT CONFERENCE CONDUCTED BY THE DIVISION OF WATER RESOURCES AT HAPPY CAMP, CALIFORNIA ON MAY 24, 1950.

Lee Bagby

Applicant's Attorney

Edna Ruth Reynolds

Protestant

P. E. Stephenson

Senior Hydraulic Engineer
Division of Water Resources
Department of Public Works
Representing the State Engineer

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OPINION

General Description of the Project

The application contemplates an appropriation of 0.05 cubic foot per second, year-round, from an unnamed stream tributary via Elk Creek to Klamath River. The proposed point of diversion is in Siskiyou County and lies within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T 16 N, R 7 E, H.B.&M. The water is wanted for domestic purposes (2 people, house and garden)

and the irrigation of a 1 acre orchard and 3 acres of general crops, irrigation extending from May to September, both inclusive. The applicant proposes to divert by gravity through a small ditch approximately 1 mile long. According to the application the project is already in use and has been for more than 40 years. The application also states that the land to be irrigated has no other right or source of water supply than therein applied for.

Protest

One Edna Ruth Reynolds protested the application, asserting in effect that if the application prevails, all of the water that she has and needs will have been appropriated by the applicant. She asserts both a riparian right and a right based on use prior to 1914, the water having been used for domestic, stockwatering, irrigation and mining purposes. She states that her diversion heads about 0.5 mile downstream from the applicant's intake. She states further that the applicant has an ample water supply and did not interfere with her water supply until June or July, 1949. She states finally that the protest may be disregarded and dismissed if she is given water sufficient to meet her requirements including any mining work that may develop.

Answer

The applicant in his answer asserts that the ditch leading to his property was constructed in 1900 and that ever since that time all the water from the springs (supplying the stream referred to as the source) has continuously flowed through that ditch to the Sunflower Flat Claim (his property); that he knows from personal observation that ever since 1905 all of the water from said springs has been diverted to the Sunflower Flat Claim; that in 1935 one Harold Lippen, Protestant Reynolds' predecessor

in interest, sought under Application 8524 to appropriate water from the source serving Sunflower Flat Claim, which application however was withdrawn; that owners subsequent to Lippen have refrained from interfering with the diversion to Sunflower Flat Claim; that Protestant Reynolds' immediate predecessor, one Clem Gavenette, in June 1949 tore down that ditch and diverted the water therefrom to his (Gavenette's) property; that the water from the springs in controversy has never been a known stream; that the flow therefrom aggregates 1 cubic foot per second in early spring, diminishing thereafter to 0.5 miner's inch in late summer and fall; that the flow sometimes disappears entirely; that the protestant's property is not riparian to the water coming from the springs.

Accompanying and supplementing the answer are affidavits, in essence as follows: Lee Effman asserts familiarity with the Sunflower Flat Claim since 1888, states that a prior owner of that claim was diverting water from the source now in controversy to that claim in 1900 or 1901, and that no one has ever used water from that source except successive owners of Sunflower Flat Claim, until 1949. Ira Williams states that he and his brother G. C. Williams owned the Sunflower Flat Claim from 1928 to 1938, that the water diverted from the springs was used by them for domestic purposes and irrigation and by no one else, that Harold Lippen sought unsuccessfully to appropriate some of that water, that Lippen's successors in interest, Humphry and Wright, did not use water from the Sunflower Flat ditch. Philip M. Toleman asserts that he is a professional engineer, that he was employed by Harold Lippen in 1936 to investigate matters relating to Lippen's water supply, that he made such investigation and concluded therefrom that the water from the springs was already appropriated and in use on Sunflower Flat Claim and had been so

used continuously since 1901, and that there was not enough water from the springs in summer and fall for two users.

Field Investigation

The parties having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code a conference was conducted at Happy Camp, California, on May 24, 1950 by an engineer of the Division. The applicant's attorney and the protestant were present at the conference.

Records Relied Upon

Application 13122 and all data and information on file therewith.

Discussion

According to the report of the engineer who conducted the conference on May 24, 1950, the protestant admitted at that conference that the applicant has used water continuously in the past by means of the diversion described in Application 13122 and that that use has not prevented the satisfaction of her (the protestant's) demands. That admission by the protestant indicates that the supply which the source affords is sufficient to meet the requirements of both applicant and protestant. In view of the indicated sufficiency of supply the protest is dismissed. The application should be approved and permit issued, subject to the usual terms and conditions.

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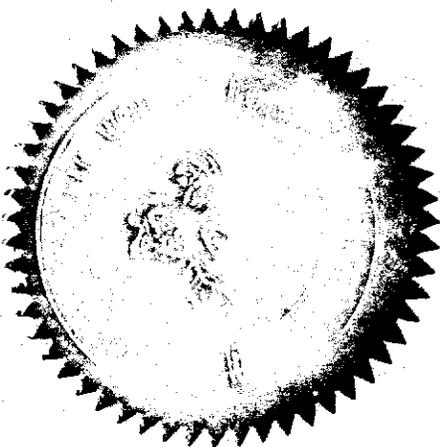
ORDER

Application 13122 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a hearing having been held and the State Engineer now

being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13122 be approved and that a permit be issued to the applicant, 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 29th day of *September*, 1950.



A. W. Edmonston
A. D. Edmonston, State Engineer.