

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of Applications 13160 and 13172 by John H. Lienau to Appropriate Water from Live Oak Creek Tributary via Bunch Canyon to North Fork of American River, and to Appropriate Water from Live Oak Creek and from an Unnamed Stream Tributary to Live Oak Creek, Respectively, in Placer County, for Fish Culture and Fish Propagation Purposes.

oOo

Decision A. 13160, 13172 D. 682

Decided November 6, 1950

oOo

OPINION

General Description of the Projects

Application 13160 contemplates an appropriation of 25 acre feet per annum, to be collected between December 1 and April 15 and used for fish culture. The source designated is Live Oak Creek, in Placer County and the proposed point of diversion (storage dam) is to be located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T 14 N, R 9 E, M.D.B.&M. The storage dam is to be 15 feet high and 300 feet long; it is expected to create a reservoir 5 acres in surface extent and 25 acre feet in capacity. The place of use is to be the reservoir itself.

Application 13172 contemplates an appropriation of 22 gallons per minute, year-round, from either of two sources, i.e. from Live Oak Creek or from an unnamed tributary to Live Oak Creek at points which are both situated within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T 14 N, R 9 E, M.D.B.&M. Diversion is to be effected by an earth dam 9 feet high by 200 feet long which will create a reservoir 1/3 acre in surface area and 1 acre foot in

capacity; and in conjunction therewith a pumping plant of a capacity of 88 gallons per minute. The purpose to be served by water applied for is fish propagation.

Protest

H. S. Milburn protested both of the applications, asserting that appropriations thereunder will seriously reduce the flow of water otherwise available to him, leave an insufficient amount in the stream to meet his necessities, and cause ground water levels to recede. Mr. Milburn asserts that the applicant built 2 dams across the stream in 1948, thereby holding up the natural flow of water. He further asserts that the only times that any water has passed the applicant's dams and reached him (Milburn) have been during periods of heavy rainfall. The protestant asserts a riparian right and use for domestic purposes, prospecting and mining. He states that his diversion point is located within Section 23, T 14 N, R 9 E, M.D.B.&M. He states further that his protest may be disregarded and dismissed if the applicant does not use water for fish propagation and/or fish culture or for any purpose other than domestic.

In answer to the protest the applicant asserts that there is no natural flow in Live Oak Creek during July, August and September, that seepage and leakage through his dam benefit parties downstream, and that on one occasion, in September, upon filling his reservoir with water obtained from another source the stream bed was observed, 2 days later, to have water running in it in an amount unequalled at that season for many years.

Records Relied Upon

Applications 12335, 13160 and 13172 and all data and information on file therewith.

Discussion

The applicant and the protestant stipulated respectively that the applications and the protest be submitted upon the official records of the Department in accordance with the provisions of Section 733(b) of the California Administrative Code. Inasmuch as the same reach of Live Oak Creek was visited and investigated recently in connection with Application 12335 and the Department is thereby sufficiently informed as to the conditions there obtaining a field investigation in connection with Application 13160 and 13172 was adjudged unnecessary and was dispensed with.

The investigation in connection with Application 12335 developed that Protestant Milburn uses water mainly for stockwatering, directly from the stream, that he also uses small amounts at times for mining purposes, that the flow of Live Oak Creek at the protestant's place (on May 4, 1949) was 1.0 cubic foot per second, that there is no surface flow in the reach in question after about June 15 but that there are numerous pools, fed by subsurface flow, and that the protestants' main objection to upstream storage arises from fear that the applicants' dams will intercept subsurface flow and prevent water from collecting in pools as it has done heretofore.

During the investigation of May 4, 1949 consideration was also given to the Lienau development, to cover which Applications 13160 and 13172 were later filed. The protestants against Application 12335, including Mr. Milburn, were considerably concerned over Mr. Lienau's operations which, according to the report, have included the excavation of a large basin, the construction of a smaller dam below his main dam to trap seepage from the main dam, and the pumping of that trapped seepage

back into his reservoir. Their concern centers about the possibility that the applicant's operations will intercept part or all of the underflow of Live Oak Creek that would occur in a state of nature and upon which they depend when surface flow fails.

The investigation of May 4, 1949 was supplemented by a visit on June 17, 1949 at which time the flow of Live Oak Creek at the reach in question was estimated to be 0.10 cubic foot per second. This circumstance coupled with the opinion shared by all of the parties to the investigation of May 4, 1949 that natural surface flow fails on or about June 15 indicates that there is little if any surplus water after about that time.

The investigation of May 4, 1949 was in connection with Application 12335 by Lawrence K. and Maryetta Snyder to appropriate 0.025 cubic foot per second from a certain spring and 0.05 cubic foot per second from a certain stream (Live Oak Creek), year round, both diversions heading within the same quarter quarter section and slightly upstream from the Lienau development. That application also covers an appropriation of 3 acre feet per season to be collected between October 1 and March 1. It is evident that Application 12335 is prior to Applications 13160 and 13172 and that the exercise of rights under that application would lessen accordingly the flows reaching Applicant Lienau.

In view of the observed flow of 1.0 cubic foot per second at the Milburn place on May 4, 1949 there appears little doubt that 25 acre feet per annum may be collected by Applicant Lienau between December 1 and April 15 without injury to Protestant Milburn. As to Application 13172 it appears that while surpluses occur in Live Oak Creek in excess of the protestant's needs prior to June 15 of an average season, these

surpluses then dwindle and disappear. Diversions under Application 12335 (Snyder) presumably will cause surpluses in Live Oak Creek to disappear somewhat earlier than heretofore. From some time in May therefore, until the effects of fall rains are felt, surpluses at Applicant Lienau's proposed points of diversion will evidently be non-existent. For the remainder of the year (late fall, winter and spring) surpluses probably will occur.

For the reasons set forth above it is concluded that surpluses exist in the sources in question from about November 1 of each year to about May 15 of the succeeding year. Application 13160 should therefore be approved subject to the usual terms and conditions and Application 13172 should be approved for the season during which such surpluses occur.

oOo

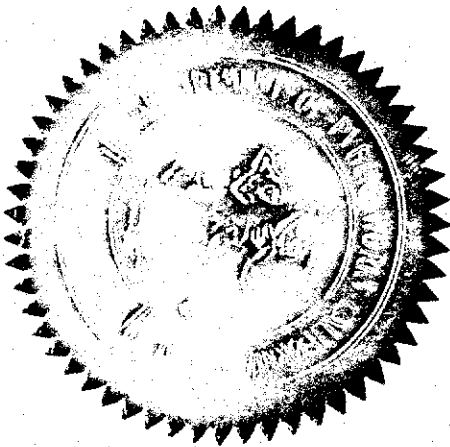
ORDER

Applications 13160 and 13172 for permits 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 13160 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that Application 13172 be approved as applied for insofar as the storage feature is concerned and that the season of direct diversion extend from about November 1 of each year to about May 15 of the succeeding year.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 6th day of November, 1950.



A. D. Edmonston
A. D. Edmonston
State Engineer