

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 11782 by James R. and Myrtle E. Lamb to
Appropriate Water from Big Spring in Sierra County for Domestic Pur-
poses.

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Decision A. 11782 D. 689

Decided February 5, 1951

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER
RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON JUNE 21, 1949:

James R. Lamb	Applicant
Myrtle E. Lamb	Applicant
Robert Corbett	Protestant
Mattie Corbett	Protestant
Leon Gowan	Protestants' Engineer
A. S. Wheeler	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 the appropriation of 0.016
cubic foot per second, year-round, from Big Spring, tributary to the
North Fork of the South Fork of the North Fork of Yuba River, for

domestic purposes, including fire protection. It is proposed to divert by gravity by means of a log crib dam 3 feet high by 14 feet long, located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T 20 N, R 12 E, MDB & M. The conduit is to be a 2.5 inch standard iron pipe line, 1500 feet long. The place of use, to be located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of the same Section 15, is to consist of a group of 10 cottages with appurtenant gardens totaling not over one acre.

Protest

Robert and Mattie Corbett protest the application, claiming that they are in the process of building cabins on their property, that they are developing the same as a motel and resort location and that they will need practically the entire flow of Big Spring for domestic needs, fire protection and garden use. They state that if the water is appropriated by others they will be irreparably damaged. They claim a riparian right by virtue of ownership of the land upon which Big Spring is located. They claim to divert at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T 20 N, R 12 E, MDB & M, and to have utilized water from Big Spring since about 1932. They remark that the applicants have never approached them to discuss right of access to their proposed point of diversion.

Answer

On behalf of the applicants their engineer admits that the protestants are riparian to Big Spring and are entitled to all the water they can put to beneficial use. He takes the position, however, that it is unreasonable for the protestants to claim that there is insufficient water for both themselves and the applicants. He estimates

the flow of Big Spring at over 25 cubic feet per second as compared to the 0.016 cubic foot per second which the applicants desire to appropriate. He questions that the protestants can themselves use more than 0.016 cubic foot per second.

Field Investigation

The parties 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 development on June 21, 1949 by an engineer of the Division. The applicants and the protestants were present at the investigation.

Discussion

According to the report of the investigation of June 21, 1949, the flow of Big Spring was estimated to be from 2.0 to 2.5 cubic feet per second on June 21, 1949, and at least 1.5 cubic feet per second on August 31, 1949, when the writer of that report revisited the locality. According to the same report the protestants have installed 800 lineal feet of 4 inch pipe, falling a total of 300 feet, by means of which they propose to develop enough power to operate a small sawmill, the latter to be operated only long enough to cut the lumber required for their projected cabins. The investigating engineer gathered that after the abandonment of the sawmill the protestants' requirements will approximate 0.46 cubic foot per second. The investigating engineer concluded that the diversion of 0.016 cubic foot per second proposed by the applicants would not interfere with the uses proposed by the protestants. The investigating engineer reported also that the spring

from which appropriation is sought is located on land which the protestants own and that the protestants are disinclined to grant right of access thereto to the applicants.

Besides Application 11782 the applicants Lamb also filed Application 11783 under which it was proposed to bring 0.025 cubic foot per second from Sardine Creek, a separate though nearby source, to the same projected place of use, and for the same general purpose. Application 11783 was not protested. It was approved and Permit 7289 was issued on March 10, 1949. However, the progress reports set forth that no development work has been started nor construction accomplished under that approved application. By letter dated October 15, 1950, Permittee James R. Lamb stated:

" . . . After purchasing the property . . . with the idea of developing our 320 acres into summer home sites and resort cabins I accepted a position . . . and my present work affords me little time for my own development work. When prospects for resort business improve in this country and after the construction and improvements on . . . Highway 49, which are now well underway, have been completed and the highway is clear for more tourist traffic I do plan to go ahead . . . We would therefore very much appreciate a considerable extension of time on Permit 7289 . . . and would regret being forced to forfeit this permit at this time."

By office letter of November 3, 1950, the permittees were informed:

" . . . it appears that nothing has been done on the project to date. Under the circumstances we regret to inform you that no cause for an extension of time has been shown. It is therefore suggested that the enclosed form be signed and returned to this office. When you feel that you are in a position to proceed with construction work and the application of water to beneficial use another application should be filed . . ."

By form letter dated November 10, 1950, the permittees requested revocation. Permit 7289 was accordingly revoked.

Paragraph 20 of Application 11782 states that the applicants Lamb do not own the land at the proposed point of diversion under that application but that they would take steps to secure right of access thereto by seeking an easement from the owner. The application was accepted, advertised and heard on the supposition that such easement would be secured. During the field investigation of June 21, 1949, it developed that the applicants were experiencing difficulty in securing the easement which they were seeking. By office letter dated December 30, 1949, the applicants were informed:

"Action . . . is being delayed because of non-showing thus far of right of access . . . It is noted that . . . you requested ample time be allowed for the adjustment of this essential matter. This office for good cause shown will be pleased to defer action for a reasonable time. It is suggested therefore that you inform us as to whether access has yet been secured and as to how much time if any you desire for that purpose."

In reply the applicants' engineer wrote on January 15, 1950:

"We have again written Mr. and Mrs. Corbett regarding an easement for Mr. and Mrs. Lamb . . . When we have had a reply from Corbett I shall advise you."

On April 13, 1950, the same engineer wrote:

"On January 15 I wrote Mr. and Mrs. Corbett, requesting an easement . . . No answer has been received . . . I do not know what we can do if the Corbetts fail to answer letters."

In reply to the letter just referred to, this office wrote on April 18, 1950:

"In view of your letter of April 13, this office will defer action . . . until July 1, 1950 in order to allow negotiations for right of access to continue."

No reply was received to office letter of April 18, 1950. On November 17, 1950, this office wrote the applicants as follows:

"We cannot defer action on Application 11782 indefinitely. Inasmuch as your letter of November 10 requests revocation of your permit under Application 11783 and the two applications relate to the same development it is presumed that you are not in a position to proceed with Application 11782. If that is indeed the case we suggest that you authorize the cancellation of Application 11782 and file a new application when you are actually ready to proceed. If on the other hand you desire to maintain Application 11782, please submit evidence that you have secured right of access to the spring from which you propose to divert.

"As above stated we cannot extend Application 11782 indefinitely. We will however hold the matter open for one month longer in order to afford you an opportunity to perfect that application if it is practicable for you to do so."

No reply has been received to office letter of November 17, 1950.

As set forth in Section 778 of the California Administrative Code,

"It is not the purpose of the Water Code to provide a means whereby a reservation of water may be made by one who has no immediate plan or purpose to proceed promptly and diligently The Department is disposed to be liberal in its allowances of time where progress is being made, or where a serious effort is being made but the Water Code does not allow the Department to countenance any attempt to place rights in cold storage where there is no intent to proceed promptly with development."

The section of the Administrative Code just quoted would seem to preclude further temporizing in the matter of Application 11782. Nearly four years have elapsed since the application was filed, over two years have elapsed since it was protested, over a year and a half since it was investigated in the field. The applicants conceded non-ownership of the proposed point of diversion in their application and apparently they have endeavored to negotiate

for a right of access to that point but their endeavors appear to have been without avail. The applicants have been remiss in the matter of answering letters, including our office letter of November 17, 1950, quoted in part in an earlier paragraph. Applicant James R. Lamb's letter of October 15, 1950 (also above quoted, in part) indicates an intention on the part of the applicants to defer development indefinitely. These circumstances support a conclusion that the applicants have no immediate plan or purpose to proceed promptly and diligently and that neither progress nor serious effort is being made. The conclusion finds support also that further deferment of action in the matter by this office would be in effect the unwarranted placing of water rights in cold storage.

In view of the circumstances summarized in the preceding paragraph it is the opinion of this office that the applicants have not addressed themselves to the perfecting of Application 11782 with the degree of promptness required under the provisions of the California Administrative Code and that the application should therefore be denied.

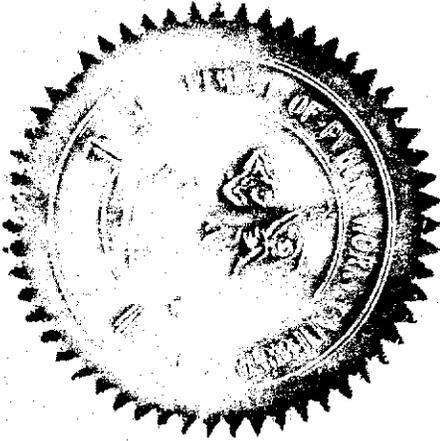
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ORDER

Application 11782 having been filed with the Division of Water Resources as above stated, a protest having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11782 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 5th day of February, 1951.



A. D. Edmonston

A. D. Edmonston
State Engineer