

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 12956 by Emil J. Smith to Appropriate  
Water from Kemp Creek Tributary via Price Creek to Eel River in  
Humboldt County for Domestic Purposes.

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Decision A. 12956 D. 699

Decided March 8, 1951

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER  
RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON AUGUST 8, 1950:

Emil J. Smith	Applicant
Fred Bahnsen	Protestant
Paul C. Ward	Engineer for State Department of Health
Harrison Smitherum	Supervising Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

The investigation was preceded by a conference at Eureka  
attended by the parties above named and also by Milton L. Huber (Appli-  
cant Smith's attorney), Protestant Gerald G. Young, and Charles V. Moore,  
counsel for both of the protestants.

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OPINION

General Description of the Project

The applicant seeks authority to divert 500 gallons per day  
year-round from Kemp Creek tributary to Eel River via Price Creek, in

Humboldt County, at a point within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27, T 2 N, R 1 W, H.B. & M. for domestic purposes. Diversion is to be effected by means of a concrete dam 2 feet high by 8 feet long. The conduit is to be a 3/4-inch steel pipe, 1250 feet long. The project includes also a 1000-gallon wooden storage tank. The proposed place of use lies within the S $\frac{1}{2}$  NE $\frac{1}{4}$  of the same Section 27. It includes a dwelling and an appurtenant one-half acre garden.

#### Protests

Gerald G. Young protests that the proposed appropriation will deprive his land of sufficient water for domestic and irrigation purposes. He states that his land is downstream from the applicant's proposed point of diversion though upstream from the applicant's land. He states that the applicant's land is not riparian to Kemp Creek but is riparian to the larger and more readily available Price Creek. He states that the flow of Kemp Creek is sometimes not over 500 gallons per day and that, if the applicant diverts as he proposes, there will be no water left in that stream. He (the protestant) states that he has not utilized the water yet, having purchased his land but recently (August 27, 1949), but that it is his intention to utilize it for domestic and irrigation purposes under his asserted riparian right.

Fred Bahnsen also protests the application claiming that approval thereof will deprive him of sufficient water for domestic, irrigation and stockwatering purposes. He states that he purchased his property in January, 1949, that the former owner (W. F. Early) had used water from Kemp Creek for stockwatering for many years, and that he (the protestant) is presently using the water to the same

extent. He states that his property lies within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  and within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27, T 2 N, R 1 W, H.B. & M., and that it is riparian to Kemp Creek. He states that the summer flow of Kemp Creek is too small to permit a diversion of 500 gallons per day as proposed without deprivation to riparian owners.

In answering the protests the applicant takes the position that there is ample water in Kemp Creek during all times of the year to satisfy the protestants' requirements and that approval of Application 12956 will have no injurious effect on the protestants' rights. He states that he cannot use water from Price Creek because that water is not suitable for domestic use and causes clogging of pipes. Furthermore, he states, Price Creek is sometimes flooded by Eel River.

#### Field Investigation

The applicant 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 August 8, 1950. The applicant and Protestant Bahnsen were present at the field investigation but Protestant Young was neither present nor represented. Mrs. Young was interviewed at her home in the course of the investigation.

#### Records Relied Upon

Application 12956 and all data and information on file therewith.

#### Discussion

According to the report of the investigation of August 8, 1950 the flow of Kemp Creek on the date mentioned was estimated to be

about 3000 gallons per day. That flow may be supposed to be representative of the low stages which prevail in the Eel River watershed in late summer and early fall. According to the same report a pumping system installed on Protestant Young's property supplies that protestant with water for domestic purposes including the irrigation of a small garden; Protestant Bahnsen's use of water from Kemp Creek is limited to stockwatering, and in the investigating engineer's opinion the 3000 gallons per day then flowing was sufficient to supply the appropriation sought by Applicant Smith without injury to the other users.

It is recognized that the protestants, should their operations sufficiently expand, may be in a position by virtue of riparian ownership to divert larger quantities than at present. However, it is an accepted principle that prospective, future use by a riparian owner does not bar the approval of an application to appropriate from the same stream, such appropriation being effective except at such times as the riparian owners or holders of other prior rights desire and are prepared to put the water in question to beneficial use.

In view of the above circumstances it is concluded that unappropriated water exists in the source from which appropriation is sought under the above numbered application and that such unappropriated water may be taken and used in the manner therein proposed without injury to downstream users. The application should therefore be approved and permit issued subject to the usual terms and conditions.

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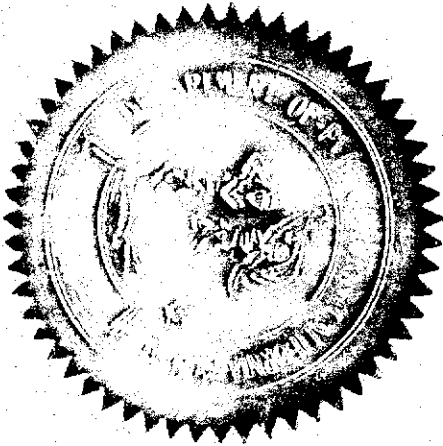
ORDER

Application 12956 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing

having been held in accordance with Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12956 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 8th day of March , 1951.



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