

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 Matters of Application 13595 by Lloyd Dillaha to Appropriate Water from Atascadero Creek and Application 13643 by Emily S. Gallagher to Appropriate Water from Camp Creek, Tributary to Atascadero Creek, in Sonoma County, for Irrigation Purposes.

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Decision A. 13595, 13643 D. 709

Decided July 10, 1951

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APPEARANCES AT HEARING HELD AT SANTA ROSA ON DECEMBER 7, 1950:

For the Applicants

Lloyd Dillaha	In person
Emily S. Gallagher	D. D. Kingsbury

For the Protestants:

R. E. Cehlmann	In person
Robert A. Young	In person
Leno Martinelli	In person
Don Chapson	In person

Examiner - Harrison Smitherun, Supervising Hydraulic Engineer,  
Division of Water Resources, Department of Public Works,  
for A. D. Edmonston, State Engineer.

Also Present - Kenneth L. Woodward, Assistant Civil Engineer,  
Division of Water Resources.

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## O P I N I O N

### General Description of the Projects

Application 13595 initiates an appropriation of 0.062 cubic foot per second from April 15 to October 15 of each season, from Atascadero Creek, for the purpose of irrigation. Diversion is proposed at a point within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of projected Section 10, T 6 N, R 9 W, M.D.B. & M., by pumping at the rate of 80 gallons per minute. The water is to be applied by means of a portable sprinkler system, the place of use being a 5-acre pasture within the same quarter quarter section. The applicant claims no other water right or source of water supply.

Application 13643 initiates an appropriation of 13333 gallons per day (0.021 cubic foot per second) from April 15 to October 15 of each season, from Camp Creek, tributary to Atascadero Creek, for irrigation. The proposed point of diversion lies within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, T 7 N, R 9 W, M.D.B. & M. The water is to be pumped at the rate of 80 gallons per minute and applied by means of a portable sprinkler system to a 5-acre pasture within the same quarter quarter section. The applicant claims also a riparian right.

### Protests

R. E. Oehlmann, Domingo Martinelli, Leno Martinelli and Robert A. Young filed individual protests against both applications.

Protestant Oehlmann contends that further depletion of stream flow will hinder his irrigating. He claims a riparian right. He states that water was first used 20 years ago and is still used for the irrigation of 30 acres of hops. He states that he uses all the

water available, his diversion heading at a point within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T 7 N, R 9 W, M.D.B. & M.

Protestant Domingo Martinelli states that his livestock drink from Green Valley Creek which during the summer months is their only source of supply. He apprehends that if the proposed appropriation is allowed his cattle will be without water. He claims a riparian right, states that during the last two summers streamflow has been insufficient to supply his needs, states that the place where his cattle drink is 8 or 9 miles downstream from the applicants' proposed points of diversion.

Protestant Leno Martinelli claims a riparian right, states that he waters livestock at a location within the S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 1, T 7 N, R 10 W, M.D.B. & M., represents that the proposed diversion will stop the flow of water now reaching him.

Protestant Young states that for 50 years the livestock on his ranch have depended upon Green Valley Creek in summer time for drinking water, that he has owned the ranch since 1944 and that Green Valley Creek is the sole source of water supply in summer time available to his livestock. He states that his stock drink at a location along the last (lowermost) mile of Green Valley Creek. He apprehends that if the applications are approved no water will be available for his cattle. He claims a riparian right.

#### Answers

Applicant Dillaha answers all of the protests with the statement:

"Atascadero Creek dries up approximately a mile below my point of diversion during the summer months and therefore does not enter your source of supply during that time."

To two of the protestants (Domingo Martinelli and Leno Martinelli) his answers contain also the following statement:

"However, your source of supply is probably being depleted by the following:

N.O.Lindberg	26 acres hops
Rudy Oehlmann	30 acres hops
Al. Helweg	26 acres Ladino clover
Leslie Miller	15 acres Ladino clover
Ereetby	Hops and pasture."

Applicant Gallagher did not answer any of the protests.

#### Hearing Held in Accordance with the Water Code

Applications 13595 and 13643 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested were set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Thursday, December 7, 1950 at 10:00 o'clock A.M. in Room 116 of the Court House at Santa Rosa, California. Of the hearing the applicants and the protestants were duly notified.

#### Discussion

Camp Creek is tributary to Atascadero Creek, Atascadero Creek is tributary to Green Valley Creek, Green Valley Creek discharges into Russian River.

Applicant Dillaha's testimony at the hearing included the following statement (page 6 of transcript):

" - - I didn't realize I was going to be hurting anybody for the simple reason that this creek dries up a little further down the line and has no appearance of reappearing again. Whether I take this water or do not take this water, the protestants here will never receive it during the irrigating months."

Applicant Dillaha's testimony also included statements (pages 7 & 8 of transcript) to the effect that water is not always available in Atascadero Creek, that continuous flow in the river occurs through April and perhaps May and June but that the channel is practically dry by July 1, at the Bodega Bridge on the Bodega Highway and that he proposes to pump surface flow from natural pools without employment of either a dam or a sump.

The testimony of D. D. Kingsbury (on behalf of Applicant Gallagher) included statements (pages 12 and 13 of transcript) to the effect that Camp Creek goes dry before it reaches Green Valley Creek, that Atascadero Creek at Graton was dry in July, and that the flow of Camp Creek at the point where diversion is proposed under Application 13643 is continuous.

Protestant Oehlmann testified (pages 30 to 32 of transcript) to the effect that numerous parties divert from the Atascadero Creek stream system, that some of them at times probably dam the entire flow of their particular branches, and that the amount that reaches him depends upon the amount of interference by those diverters.

Protestant Martinelli's testimony (pages 32 to 35 of transcript) included the following statement:

"I was born down there on that creek - - - and its always had water running in it until they started pumping up above. The only way you can get water running down there again is to stop them from pumping. - - - our stock, all they have to drink is stagnant water and that is no good - - -."

Protestant Martinelli also testified that the supply at his place fails between July 1 and 15 depending upon how many people pump at points

upstream and upon when they start, and that if pumping should increase the supply would fail earlier.

Protestant Young testified (pages 37 and 38 of transcript) that there is no running water on his place in summer time, that he is the lowermost user on Green Valley Creek, and that he irrigates about 3 acres while the flow lasts, and waters cattle.

Protestant Chapson testified (pages 40 and 41 of transcript) to the effect that he owns 42 acres riparian to Atascadero Creek above the applicants and therefore is unaffected by the diversions that they propose, but that he considers his supply for stock watering menaced by diversions in increasing amounts upstream. He states, " - - - that creek, from one end to the other, is lousy with pumps."

Applicant Dillaha and Applicant Gallagher's representative, Kingsbury, in response to questions by the examiner both stated (pages 43 and 44 of transcript) that no other sources of water are available for use on their lands than the sources filed upon, and that irrigation of their lands earlier than June 1 would not be worth while.

Another application recently acted upon within the same stream system is Application 12512 by R. E. Oehlmann to divert 0.5 cubic foot per second at points near the junction of Green Valley and Atascadero Creeks, from May 15 to September 15, for irrigation. The application was vigorously protested and was heard informally. From the information then at hand, including information gathered during a field investigation on November 4, 1949 it was concluded that the flow of the sources then considered, including Atascadero Creek is seldom if ever more than sufficient to satisfy the requirements of prior appropriators and

riparian users and that unappropriated water within the reaches and during the season then considered is non-existent except in small quantities for short periods at infrequent intervals. In the light of that information Application 12512 was rejected and cancelled.

The considerations that governed in the matter of Application 12512 apply in the matter of Applications 13595 and 13643 also. The sources from which Applicants Dillaha and Gallagher seek to appropriate are tributary to the reach in which unappropriated water was found to be non-existent when Application 12512 was under investigation. Atascadero Creek is shown on the U.S. Geological Survey quadrangle as an intermittent stream, channel losses may be considerable and it is to be doubted that flows occurring in the upper reaches will arrive at points farther down stream in their entirety. Applicant Dillaha's expressed opinion (on page 6 of transcript) to the effect that whether he takes the water he is applying for or not, that water will not reach the protestants, is qualified by his later statements (on page 8 of transcript) to the effect that the channel is not dry in April and that until July there is a possibility of flow continuing "clear through". Protestant Martinelli, after agreeing (page 10 of transcript) that the creek was dry at the Dillaha property at a certain time in 1950, nevertheless stated, "It never dried before," and added, "- - - just so much water taken out leaves less to go down." In view of the conflicting testimony as to whether or when Atascadero Creek goes completely dry it is concluded that the flow is ordinarily continuous and that diversions such as proposed by Applicants Dillaha and Gallagher will reduce the flow otherwise available to the protestants. It is further concluded that inasmuch as surpluses are non-existent on the reach whereon the protestants are located, unappropriated

ted water cannot be considered to exist at Applicants Dillaha's and  
Callagher's proposed points of diversion.

Inasmuch as no unappropriated water appears to exist in the  
sources from which appropriation is sought under Applications 13595  
and 13643 it is the opinion of this office that those applications  
should be denied.

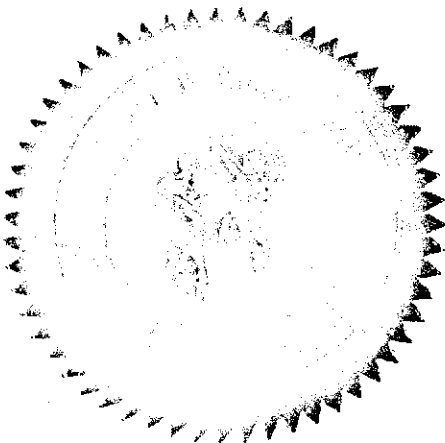
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ORDER

Applications 13595 and 13643 having been filed with the  
Division of Water Resources as above stated, protests having been  
filed, a public hearing having been held and the State Engineer now  
being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 13595 and 13643 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 10th day of July, 1951.



  
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A. D. Edmonston  
State Engineer