

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 13613 by the American River Pine Company to appropriate water from Spruce Creek Tributary via Duncan Creek to Middle Fork of American River in Placer County for fire protection, industrial and domestic purposes.

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Decision A. 13613 D. 712

Decided August 27, 1951

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT AUBURN, CALIFORNIA ON JANUARY 29, 1951:

Harry Abraham	Representing the Applicant
L. A. Davidson) (Harvey Davidson)	Representing Harvey Davidson et al., Protestants
G. E. Sindel	District Ranger, Tahoe National Forest
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

NOTE: James S. Colvin et al., protestants, were not present or represented at the investigation. Protestant James S. Colvin and Iris Colvin were however interviewed by Engineer Wheeler at Lodi on the following day.

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O P I N I O N

General Description of the Project

The application contemplates an appropriation of 0.1 cubic foot per second from May 1 to December 1 of each season from Spruce

Creek in Placer County, for fire protection, industrial and domestic purposes. The proposed diversion is to head at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T 14 N, R 13 E, M.D.B. & M. The project includes an earth dam 6 feet high by 100 feet long which will create an equalizing reservoir, 3/4-acre in surface area and 3 acre-feet in capacity. In lieu of a conduit system water is to be pumped directly into tank trucks. The water is to be used on an extension of Mosquito Ridge Road, P.R.A. Project 96, or spur roads to be developed therefrom. It is also to be used on occasion for fire protection at logging and construction camps and within a government timber sale area; also, for domestic purposes at one camp of some 50 men. The various places of proposed use lie within T 14 and 15 N, R 12 and 13 E, M.D.B. & M. According to the application there are 10,000 acres of timber to protect and an average of 10 miles of road to maintain.

Protests

James S. Colvin, Iris Colvin, W. D. Ledoux and Hedvig Sorensen filed a joint protest, asserting that there is insufficient water in Spruce Creek to satisfy prior rights and to allow the appropriation sought by the applicant. They claim riparian ownership. They state that their diversion heads at a point within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T 14 N, R 13 E, M.D.B. & M., and that use was discontinued in about 1940 but will soon be resumed.

Frederick C. Davidson, Jr., Harvey, Albert L., Lincoln A., and Kenneth Davidson, Nellie C. Douglas and Fannie L. Pennington unite in a joint protest, claiming that the proposed appropriation will deprive them of water which has been in use every year since 1897, for industrial

purposes. They claim that their right was initiated in 1897 and that the water was used that same year to the extent of 1000 inches, for mining purposes. They claim further that the water is needed and used at all seasons of the year.

Answers

In answer to the Colvin et al. protest the applicant asserts that the amount of water applied for can be taken as proposed without damage to the protestants.

In answer to the protest by Frederick C. Davidson, Jr. et al. the applicant requested that the amount of water applied for be reduced from 0.31 to 0.10 cubic foot per second, which lesser amount, it asserted, could be taken without damage to those protestants.

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 consisting of a conference at Auburn on January 29, 1951 and, on the following day, an interview with James S. and Iris Colvin at Lodi, was conducted by an engineer of the Division. The applicant and the protestants were present or represented at the conference at Auburn. The protestants, James S. Colvin et al., were present or represented at the interview at Lodi.

Records Relied Upon

Application 13613 and all data and information on file therewith.

Discussion

According to the report of the investigation, those present at the conference at Auburn agreed that normally, with overnight col-

lection of stream flow by protestants, water could be taken by the applicant until about August 1 without causing interference; whereas Protestant Colvin, interviewed the next day, was of the opinion that that condition obtained only until about July 1. According to the same report the flow of the source during the low flow period of 1950 was about 0.35 cubic foot per second, which condition necessitated curtailment of mining activities. In this connection, according to the report, the applicant's representative stated that the applicant might assist the protestants in providing regulatory storage and that arrangements would be made to secure water from other sources during low flow periods.

Other information in the report of investigation is to the effect that the Colvin et al. activities are now confined to completing their diversion system from Mosquito Creek but that a diversion system from Spruce Creek will be completed and in use (for hydraulic mining and domestic purposes) by 1953; that (according to Ranger Sindel) Colvin et al. have not used Spruce Creek water since 1933, that the diversion works formerly used no longer exist and that while riparian rights are claimed future use proposed by those protestants would be on non-riparian land; that mining on claims within the Spruce Creek watershed has been abandoned as unprofitable; that the protestants Davidson et al. use water year-round for domestic and mining purposes, that mining mainly involves washing gravel in sluice boxes with limited ground sluicing at times and that there has been no hydraulic mining use since 1935 nor is large scale mining expected to resume.

On behalf of the protestants Davidson et al. Messrs. Harvey Davidson and L. A. Davidson, on January 29, 1951, signed a withdrawal of their protest. The Colvins on the contrary elected to allow their protest to stand.

From the Colfax Quadrangle, U.S.G.S., it appears that the applicant's proposed point of diversion is at elevation 5500 and that the watershed tributary thereto is some 160 acres in extent and ranges in elevation up to approximately 6000 feet. According to the map of geographical distribution of precipitation published in Bulletin 26, Division of Water Resources, rainfall within that small watershed is of the order of 60 to 70 inches. According to Water Supply Paper 881, U.S.G.S., Middle Fork of American River near Auburn discharged an average of 1359 cubic feet per second from its 619 square miles of tributary watershed over the last 37 water-years of published record, which is equivalent to 2.19 cubic feet per second per square mile of watershed drained. In view of the indicated elevations and rainfall of the watershed supplying the applicant's proposed diversion, it may be inferred that that watershed will produce at least 2.19 cubic feet per second per square mile also, on average, or a total average flow for the 160 acres which it scales of some 0.55 cubic foot per second.

Insofar as the information at hand indicates, the protestants James S. Colvin et al. claim no water rights other than riparian rights and have not used water from Spruce Creek more recently than 1933. As to Protestant Colvin's statement to the effect that a diversion system would be completed and in use from Spruce Creek by 1953, it is a principle which has long been accepted and applied by this office that anticipated future use of water by a riparian owner is an insufficient bar to the approval of an application by another party to appropriate and use water meanwhile from the same source. It is evident that that principle is applicable in the matter presently at issue.

In view of the indicated flow during the low-flow period of 1950, the indicated long term average flow, both discussed in earlier paragraphs, the withdrawal of the protest by Frederick C. Davidson et al. and the apparent insufficiency of the protest by James S. Colvin et al., it is the opinion of this office that unappropriated water ordinarily exists in the source from which appropriation is sought under Application 13613 and that such water may be taken and used in the manner proposed in that application without injury to lower users.

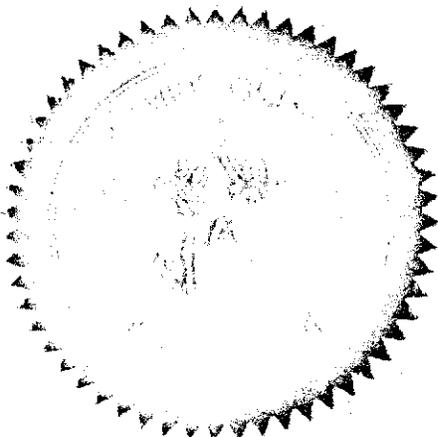
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O R D E R

Application 13613 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests 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 13613 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 27th day of August, 1951.



A. D. Edmonston

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State Engineer