

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 13845 by Alton E. Myers to Appropriate
Water from Napa River in Napa County for Irrigation Purposes.

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Decision A. 13845 D. 715

Decided August 27, 1951

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In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on May 18, 1951:

Alton E. Myers	Applicant
Jack R. Bradley	Protestant
M. E. Woods	Protestant's predecessor in interest
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer

Note: Arthur N. Webb, Junior Civil Engineer, Division of Water Resources also participated in the investigation.

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O P I N I O N

Description of the Project

The application contemplates an appropriation of 0.29 cubic foot per second from May 1 to October 1 of each season, from Napa River, for the purpose of irrigation. The proposed diversion is to head within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 16, T7N R5W, MDB&M. It is to be effected by means of a 500 gallons-per-minute pumping plant. The project includes

a 6-inch pipe line, 800 feet long. The water is to be used on 20 acres of alfalfa and a 3.5 acre pasture, the place of use being located within the same quarter quarter section as the point of diversion. Irrigation is to extend from about May 1 until about October 1. The land in question is said to have no other water right or source of water supply.

Protest

Jack R. Bradley protests the application stating in effect that he irrigates from 30 to 35 acres under Application 631, Permit 318, License 161, that he uses about 0.44 cubic foot per second for that purpose at a location some 12 miles downstream from the applicant, that at times supply falls below the amount that he requires and that any further decrease in supply would result in the loss of his pasture and a decrease in the value of his property. He states that his protest may be disregarded and dismissed if sufficient water is made available to him for the proper irrigation of his pasture and if unauthorized pumping at upstream points be stopped.

Answer

The applicant answers the protest by asserting that his land is riparian, that his ranch boundary is the middle of Napa River, and that water has been used for a number of years.

Field Investigation

The applicant and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on May 18, 1951 by an Engineer of the Division. The applicant and the protestant were both present during that investigation.

Records Relied Upon

Applications 631 and 13845 and all data and information on file therewith.

Discussion

According to the report of the investigation of May 18, 1951, the flow of Napa River was about 10 cubic feet per second at the applicant's property at the time of the investigation. The investigator quoted the applicant as stating that after about July 15 surface flow is intermittent but that sub-surface flow is ample for pumping; he quoted the protestant as stating that supply is normally sufficient for his (the protestant's) needs until about August 15. The report states that between the applicant's and the protestant's properties accretion occurs from Conn and Dry Creeks, also that a slough carrying runoff from lands irrigated from wells joins Napa River at the applicant's property. Further, according to the report of investigation, the applicant is riparian but owing to the presence of waste waters from lands irrigated from wells he desires to acquire an appropriative right; and the applicant also has 2 wells which themselves furnish a sufficient supply. The protestant's position, the report states, is that he does not object to approval of the application provided that his own rights are safeguarded; and that in his opinion the applicant should rely upon his wells during the latter part of the irrigating season, instead of upon pumping from the river.

Monthly mean discharges of Napa River at a gaging station located some 3 miles upstream from Applicant Myers' proposed point of diversion, according to Water Supply Papers of the U.S. Geological Survey, have been as follows:

Mean Discharges in Second-feet of Napa River near St. Helena

<u>Year</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
1931	3.98	0.80	0.14	0.10	0.10
1932	10.60	4.58	1.35	0.30	0.10
1940	22.9	11.5	4.75	2.56	1.25
1941	38.8	14.5	7.66	4.43	3.11
1942	51.7	15.9	7.00	3.16	1.63
1943	22.40	8.89	4.32	1.86	0.74
1944	13.90	6.95	2.81	1.25	0.59
1945	18.10	6.42	3.02	1.26	1.06
1946	12.10	4.26	1.63	0.92	0.46
1947	9.30	4.13	0.96	0.72	0.24
1948	60.6	15.3	4.09	1.79	0.84

Note: Discharges during 1933 to 1939, both inclusive, are not of record.

It is apparent from the tabulated figures that the flow of Napa River at the U.S.G.S. gage has exceeded the amount applied for by Applicant Myers in all but 5 of the 55 irrigation months of the 11 years of record, these being July of 1931, August of 1931 and September of 1931, 1932 and 1947. It has exceeded the amount applied for plus the amount necessary to satisfy the protestant's license (0.73 c.f.s. in all) in every May of record, every June, every July but one, every August but three and every September but 5.

In view of the distance, by river, from the U.S.G.S. gage to the applicant's proposed intake (some 3 miles) and from the latter point to the protestant's intake (some 12 miles), there is no assurance that all water passing the gage will be available to the applicant or to the protestant. Diversions exist below the applicant, some water may be diverted between him and the gage, and presumably there are channel losses. On the other hand there are important accretions in the reach between applicant and protestant. There is significance in the circumstance that no water user in the 12 mile reach saw fit to protest except Protestant Bradley, whose concern as expressed in his protest was not alone over the

applicant's diversion but also over the diversions by parties who allegedly divert at points above him, without authority. A condition set forth in his protest under which the protest may be disregarded and dismissed is that "those pumping from said river without a permit to pump are made to discontinue doing so."

That Protestant Bradley's concern over unauthorized diversions upstream may have a basis of truth is supported by statements contained in a letter from L. M. DuCommun, the protestant's predecessor in interest, dated June 16, 1939, which states in part:

"During the present year it has been almost impossible to do any irrigation on my ranch, due in part to the fact that the rainfall was far below normal, and also because there is improper use of the water at the present time. It is reported that some are using the water who do not have a permit or license and in some cases water is being taken from the river by ranches which do not border thereon. - - - -"

Protestant Bradley's concern is of the nature of an admission that unappropriated waters exist. The responsibility of defending rights under Application 631 devolves upon Protestant Bradley. Justification is not seen for denying a permit to an upstream applicant or in unduly restricting such permit when unappropriated water appears to exist but fails to reach a downstream licensee due to that licensee's omission to defend his own rights.

Conclusion

Unappropriated water apparently exists at times in the source from which appropriation is sought under Application 13845. In amount, the probable supply of such water is relatively firm until the end of July and intermittent during August and September; but it averages more than the amount applied for during August of most years and also during September of most years. The use proposed by the applicant is beneficial.

The intermittency of supply is offset by the availability of an auxiliary supply derived by pumping from wells. Under the attendant circumstances the protest is deemed insufficient to bar approval of the application. It is the opinion of this office that the application should be approved, subject to the usual terms and conditions.

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ORDER

Application 13845 for a permit to appropriate water 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 13845 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.

Original signed by

A. D. Edmonston
State Engineer