

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 14924 by Grover Hot Springs to
Appropriate Water from an Unnamed Spring Tributary via Hot
Springs (Markleeville) Creek to East Fork Carson River, in
Alpine County, for Domestic and Recreational Purposes.

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Decision A 14924 D 823

Decided March 8, 1955

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In Attendance at Investigation Conducted by the Division of
Water Resources at the Site of the Proposed Appropriation on
September 2, 1954:

William D. Teeple

Representing the Applicant

K. L. Woodward
Associate 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 initiates an appropriation of 0.011 cubic foot per second from May 1 to December 1 of each year, from an unnamed spring, tributary via Hot Springs (Markleeville) Creek to East Fork Carson River, for domestic and recreational purposes. The spring is

described as being located in Alpine County at a point within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T10N R19E, MDB&M. Diversion is to be effected by gravity. The proposed works include a 7,000 gallon steel regulating tank, 800 lineal feet of galvanized iron pipe ranging from one to three inches in diameter. The applicant -- Grover Hot Springs -- appears from the application to be in fact a partnership, the partners being William D. Teeple and Merle R. Coffee. The water is wanted for domestic use at a trailer camp and for recreational use at a 24 by 50 by 5 foot swimming pool. According to the application, the applicant does not own the land at the proposed point of diversion, has applied to Toiyabe National Forest for a special use permit.

Protest

The application is protested by Truckee-Carson Irrigation District. Extracts from the protest are as follows:

" ... the proposed appropriation will ... deprive us of water that has been and is being used on the Newlands Project for irrigation, power generation, domestic and other uses."

"Protestant claims a right to the use of water ... based upon appropriation made by posting notice on the Carson River on May 30, 1903."

" ... extent of present and past use ... : Appropriation made May 30, 1903. First use of water on lands now within the Newlands Project in 1863. Waters now stored in Lahontan Reservoir from January 1 to December 31 of each year. Irrigation use March 15 to November 15 each year. Amount used -- 450,000 A.F."

" ... diversion point located (within) SE $\frac{1}{4}$ of Section 33, T19N R26E, MDB&M."

"On May 30, 1903, the United States of America, acting as agent and trustee for the water users of the Newlands Project, posted notice on the Carson River in the SE $\frac{1}{4}$ of Section 33, T19N R26E, MDB&M, claiming all of the then unappropriated waters of the Carson River, both surface and underflow at all seasons of the year, to the extent of 5,000 C.F.S."

"Relying on this appropriation, the United States constructed, under authority of contracts to the water users of the Newlands Project, Lahontan Dam on the Carson River ... and other irrigation and drainage works"

"All of the waters of the Carson River stored in Lahontan Reservoir and diverted into our other irrigation works have been and are now being used for irrigation, power generation, domestic and other uses. Any initial diversions made of the waters of the Carson River above Lahontan Reservoir will result in shortages and crop damages on the lands of the Newlands Project."

Answer

Extracts from the applicant's answer to the protest are as follows:

"Injury to protestant is not proven. There is no direct flow from said unnamed spring into any stream used by protestant. Water merely sumps underground onto land owned by applicant, and water will not be dissipated by applicant but will be used for "Natural Uses" and then be allowed to sump into land at least 1000 feet closer to any stream that does flow into diversion area of protestant, therefore protestant will be aided by applicant delivering water to underground watershed that will be nearer protestant's diversion point."

"Protestant claims right based on filing claim on May 30, 1903. This unnamed spring sumps onto land now owned by applicants, and this land was used by one original homesteader of this land, Harry C. Hawkins, in 1853 and has been used continuously since that time by a so called Common Law Riparian Right of Use to Water which in the State of Nature passed thru and under this land."

"California Section 3 Article XIV, State Constitution, recognizes an upstream diverter's right to use water for so called Natural Uses arising out of the necessities of life on the Riparian Land. Water from this application will be used for so called "Natural Uses", and there will be no dissipation, willful waste, or unreasonable methods of use or diversion."

Field Investigation

The applicant and protestant with the approval of the Division having stipulated to the submittal of the application and protest upon the official records of the Division, a field investigation was conducted on September 2, 1954, by an engineer of the Division. The protestant was not represented although it advised, by mail, prior to the investigation, that one H. B. Richards, Irrigation Superintendent, would be present.

Records Relied upon

Application 14924 and all data and information on file therewith; Decision 609, Division of Water Resources, August 4, 1949, in the matter of Application 12415.

Information Secured by Field Investigation

The report covering the field investigation of September 2, 1954, contains among other statements the following:

"The investigation was limited to the vicinity of the applicant's project to determine the possible effect the appropriation may have on the Carson River, one of the protestant's sources of supply."

"The source of the proposed appropriation is an undeveloped cienega of about 50 feet in diameter on the south slopes of the Hot Springs (Markleeville Creek) Canyon. One end of a short length of pipe has been buried in about the center of the swampy area and water was flowing therefrom at a measured rate of one quart in $1\frac{1}{2}$ minutes. The water was disappearing underground about 150 feet down the slope. The natural drainage of the cienega is toward the north and in order to reach Hot Springs Creek the water must flow down a moderately wooded slope a distance of about 800 feet and thence for a similar distance through a relatively flat meadow. The soil appears to be well weathered decomposed granite and would undoubtedly require a considerable flow to reach the creek on the surface. There appeared to be no evidence whatsoever that water at any time from this source ever flowed beyond the edge of the meadow."

"Mr. Teeple stated He stated that during last season the minimum flow was about one gallon per minute through the above mentioned pipe although the water never flowed much beyond the present point except during periods of storm or snow melt. It is his intention if the application is allowed to dig out the spring and he believes a sufficient amount can be developed to meet the needs of the resort."

"To date only limited effort has been made to develop the resort to the extent proposed. Four cabins have been constructed and two trailer houses were parked in the area. The present water requirements for these parties are obtained from a second spring near the parking area. The obvious attraction to the resort is a small swimming pool of hot mineral water originating from several springs immediately to the south. The mineral water flows by gravity into and out of the pool and dissipates into the ground a short distance away. Water is needed under the application to supply showers and a drinking fountain at the pool as well as for domestic uses at the cabins and trailer houses."

Information from Other Sources

Water Supply Papers, United States Geological Survey, contain records of the discharge of Markleeville Creek (also called Hot Springs Creek), from October, 1946 to September, 1951, at a station designated

"Markleeville Creek above Grover Hot Springs". That station appears (from the Ebbet Pass Quadrangle) to be about 0.3 mile upstream from the point where water emanating from the spring filed upon by the applicant might enter Markleeville Creek. Flow at that station during the 5 years of published record is reported as having ranged from 0.2 to 1740 cubic feet per second and to have averaged 25.2 cubic feet per second. The least flows recorded occurred on certain days of August, September and October, 1949. Mean flows during each of those 3 months within the 5-year period of published record, in cubic feet per second, have been as follows:

Year	August	September	October
1947	.43	.38	2.55
1948	.86	.57	.75
1949	.81	.53	.63
1950	1.00	.66	3.26
1951	.96	.80	—

"Markleeville Creek above Grover Hot Springs" drains an area of approximately 14 square miles. The Water Supply Papers also contain records of flow at the station termed "Carson River near Fort Churchill, Nev.", a station located some 56 miles down-river from the applicant's proposed point of diversion but above Lahontan Reservoir. The record indicates discharge at that station (to which some 1450 square miles

of watershed are tributary) to have averaged 362 cubic feet per second over a 40-year period. As to the distribution of flow of Carson River at Fort Churchill the record contains a remark, "Several diversions above station for irrigation Practically entire flow is diverted during late irrigation season."

Another application to appropriate from a spring in the same general locality is Application 12415 by the United States - Toiyabe National Forest. Under that application an appropriation of 0.011 cubic foot per second was sought from a spring tributary via Shay and Markleeville Creeks to East Fork Carson River, the proposed point of diversion being located roughly one-half mile southeast of the point of diversion described in Application 14924 but on a different sub-watershed. Application 12415 was the subject of a public hearing and was denied, the evidence indicating that the spring designated as the source in that application was but 40 feet distant from Shay Creek, discharged directly into that stream and in fact partially supplied a diverter whose conduit headed on Shay Creek immediately below the spring.

Discussion

If the 0.011 cubic foot per second that the applicant hopes to appropriate presently contributes to the protestant's supply the effect upon the protestant of the diversion of that amount would be immeasurably small -- a matter of 0.011 cubic

feet per second contrasted with 362 cubic feet per second, the average flow of Carson River at the gaging station "Carson River at Fort Churchill". If the water that the applicant seeks to appropriate does not reach Markleeville Creek the protestant cannot be injured by its diversion at all.

The protestant did not participate in the field investigation of September 2, 1954 and the available information is limited to the investigator's observations during that investigation and to information contained in the files of the Division.

The available information indicates that probably little if any water from the source (spring) filed upon actually reaches Markleeville Creek. The investigator states that the water emanating from the source at the time of the investigation -- 1 quart in $1\frac{1}{2}$ minutes (240 gallons per day) in amount -- was disappearing underground about 150 feet down slope, that to reach Markleeville Creek surface flow would have to traverse 800 feet of moderately wooded slope and then another 800 feet of relatively flat meadow, that surface flow in order to reach the creek would have to be considerable, that such flow from the source does not appear to have ever extended beyond the edge of the meadow. The 0.011 cubic foot per second specified in the application is equivalent to about 7110 gallons per day. Since that amount in ordinary practice is scarcely enough to irrigate one acre it is a reasonable surmise that the yield that the spring might produce is, pending its development, largely if not entirely arrested as it percolates toward the creek and is dissipated in supporting

wild growth in the wooded area or in the meadow. The protestant's contention in its protest that the proposed appropriation would deprive it of water that is being used on the Newlands project is unsupported either by a showing by the protestant or by any information^{or}/data at hand.

Summary and Conclusion

The applicant seeks to appropriate 0.011 cubic foot per second from May 1 to December 1 of each year from an unnamed spring in Alpine County for domestic and recreational purposes. The spring is tributary via Hot Springs Creek, also called Markleeville Creek, to East Fork Carson River.

The application is protested by Truckee-Carson Irrigation District, the protestant alleging that the proposed appropriation of waters tributary to Lahontan Reservoir on Carson River will deprive it of water that it is entitled to use and is using, for irrigation and other purposes on the Newlands Project, in Nevada. In answer to the protest the applicant asserts in effect that surface flow from the source filed upon does not reach any branch of Carson River and that the use to which the water is to be applied is non-consumptive.

The parties stipulated to proceedings in lieu of hearing and a field investigation was conducted on September 2, 1954. The protestant did not participate in the field investigation.

According to the report covering the field investigation the source filed upon is an undeveloped cienega about 50 feet in

diameter on the south slope of Markleeville Canyon, water was issuing at the rate of 1 quart in $1\frac{1}{2}$ minutes, flow from the cienega extended about 150 feet down the slope, to reach the canyon water would have to travel about 800 feet down a moderately wooded slope and thence for about the same distance through a relatively flat meadow, the soil is such that surface flow would have to be considerable in order to reach the creek. There was no evidence that surface flow from the cienega had ever extended beyond the edge of the meadow. According to the same report only limited effort has as yet been made to develop the resort to the extent proposed, 4 cabins have been built, 2 house trailers were parked in the area, water is obtained from a second spring near the parking area, there is a small swimming pool of hot mineral water fed by several nearby springs, water sought under the application is wanted for the supply of showers and a drinking fountain at the pool, also for domestic use at the cabins and house trailers.

The flow of Markleeville Creek at a point nearly opposite the spring from which the applicant seeks to appropriate has been measured by the United States Geological Survey since 1946. Flow at that station -- "Markleeville Creek above Grover Hot Springs" -- is reported to have ranged from 0.2 to 1740 and to have averaged 25.2 cubic feet per second. Minimum flows appear to have occurred during the months of August, September and October. Some 14 square miles of watershed are tributary to that station.

The flow of Carson River has been gaged at a station designated "Carson River near Fort Churchill, Nev.", since 1911. That

station scales some 56 miles downstream from the applicant's proposed point of diversion but is located above Lahontan Reservoir. According to the published record flow has averaged 362 cubic feet per second but is practically non-existent in late summer and fall, due to upstream demands for irrigation. Approximately 1450 square miles of watershed are tributary to "Carson River near Fort Churchill, Nev."

The small amount that the applicant seeks to appropriate, in comparison with the average flows of Markleeville Creek and Carson River and the improbability that the present yield of the source or the yield that may be developed therefrom could find its way to Lahontan Reservoir point to the conclusion that unappropriated water exists in the source from which the applicant seeks to appropriate and that such water may be taken and used beneficially in the manner proposed without apparent injury to any downstream user. In view of that conclusion it is the opinion of this office that Application 14924 should be approved and permit issued, subject to the usual terms and conditions.

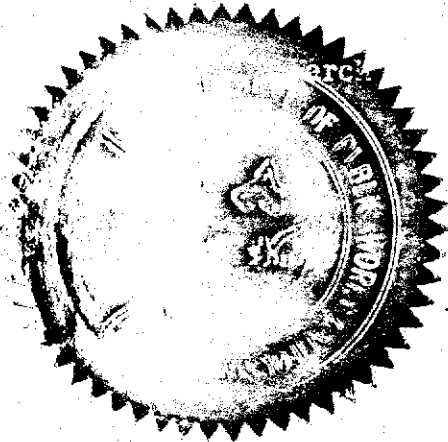
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ORDER

Application 14924 having been filed with the Division of Water Resources as above stated, a protest having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14924 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, 1955.



A. D. Edmonston

A. D. Edmonston
State Engineer