

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

\* \* \*

In the Matter of Application 18342 )  
of Mary E. Chamberlain and Appli- )  
cation 18343 of Dorothy D. and )  
Raymond R. Fifield to Appropriate )  
from an Unnamed Spring in Shasta )  
County )

Decision No. D 946

ADOPTED DEC 17 '59

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Substance of the Application

Application 18342, filed on September 29, 1958, is for a permit to appropriate 550 gallons per day (gpd) by direct diversion throughout the year from an unnamed spring\* tributary to Shasta Lake for domestic purposes. The point of diversion is described as being within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 26, T35N, R5W, MDB&M\*\* and the place of use is within the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Section 26.

Application 18343, filed on September 29, 1958, is for a permit to appropriate 1500 gallons per day by direct diversion throughout the year from the same source for domestic purposes. The water will be used within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of said Section 26.

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\*Subsequent field investigation revealed that the proposed point of diversion is located about 1500 feet downstream from a spring area and in accordance with Section 670(a) of the Board's rules and regulations the source is more properly defined as an unnamed stream.

\*\*Hereinafter all township references are given from Mount Diablo Base and Meridian (MDB&M).

### Protests

Protests against Applications 18342 and 18343 have been received from Rennie Renfro. Mr. Renfro, holder of Permit 8566 (Application 13737) on the same source at the same point of diversion claims that the applicants are beneficiaries under his appropriation, that the applications seem to duplicate his own filing and that approval of the application will interfere with his prior right.

### Answers

In substance, the answers to the protests are the same, stating that the applications will not interfere with the protestant's prior rights, and that they are not duplicates but "subfilings".

### Proceedings in Lieu of Hearing

The applicants and protestant stipulated to the proceedings in lieu of hearing as provided for by Section 737 of the Board's rules; and a field investigation was conducted on June 26, 1959, by J. J. Heacock, an engineer of the Board. The applicants and protestant were present or represented at the investigation.

### Records Relied Upon

The records relied upon in support of this decision are Applications 18342 and 18343 and all relevant information

on file therewith, with particular reference to "Report of Field Investigation on Applications 18342 and 18343", dated July 6, 1959; the file of Application 13737 (Permit 8566); United States Geological Survey "LaMoine, California" Quadrangle, 15-minute series, dated 1946; Bulletin No. 1, State Water Resources Board, "Water Resources of California", 1951; and Bulletin No. 5, Department of Public Works, "Flow in California Streams", dated 1923.

#### Source and Watershed

According to the LaMoine Quadrangle, the spring area which is the origin of the water in question is located on the easterly slopes of a steep ridge within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 26, T35N, R5W, at an elevation of about 2000 feet. The top of the ridge about 500 feet westerly of the spring area attains an elevation of approximately 2250 feet.

The actual point of diversion under protestant's Permit 8566 and the intended point under Applications 18342 and 18343, as indicated by the applicants and their representatives, lies approximately 1500 feet easterly down the ravine from the point as described in the applications, within the NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of said Section 26, at an elevation of about 1300 feet.

According to the afore-mentioned report of field investigation, the watershed above the actual point of diversion contains about 50 acres of steep, rough mountain side having a heavy to dense covering of brush and timber and an easterly exposure. The upper portion of the basin is somewhat circular in

shape and drains to a narrow, steep defile about 1000 feet above the actual point of diversion. Below the defile the canyon is narrow and steep and there are numerous small springs and seeps in the side walls.

### Water Supply

There are no hydrological data for the watershed area above the point of diversion. Plate III of Bulletin No. 1, "Water Resources of California", indicates that average annual precipitation over the watershed is about 70 inches. Table 34, on page 179, of Bulletin No. 5, "Flow in California Streams", shows distribution of seasonal runoff by months for upper Sacramento River in percentage of annual runoff, as follows:

<u>Month</u>	<u>Per Cent</u>
January	17.4
February	19.3
March	20.3
April	11.1
May	8.2
June	4.5
July	2.1
August	1.5
September	1.4
October	2.0
November	4.9
December	7.3

At the time of the investigation on June 26, 1959, flow immediately above the diversion works was measured at 29 gpm, with an estimated 10 per cent seeping through gravel that could not be captured and measured. Parties present at the investigation who are familiar with the stream stated that the flow was about normal for the time of year and that it remained about the same during the summer months.

Information Obtained from Field Investigation

Applicant Raymond R. Fifield and E. R. Wolf, representing Applicant Mary E. Chamberlain, contended that the two applications were "subfilings" under Protestant Renfro's prior Application 13737 (now Permit 8566) and were filed with the intent of establishing a firm right to the amount of water which the applicants receive from Mr. Renfro's diversion system under Permit 8566.

Protestant Renfro owns about 156 acres within the E $\frac{1}{2}$  of Section 26, T35N, R5W, bordering on Shasta Lake. Three units have been subdivided into 64 lots and other units are in the process of being subdivided; 46 lots in the three units have been sold. There are 25 places being served with water through Protestant Renfro's system. Some of the establishments are occupied throughout the year but most of them are used primarily during the summer vacation period. Protestant Renfro filed Application 13737 on May 15, 1950, to appropriate one cubic foot per second throughout the year for domestic irrigation, and fire

protection purposes on the 156 acres. Permit 8566 was issued on May 28, 1951, approving the application for the full amount and an extension of time to December 1, 1961, to complete construction and use was granted on March 25, 1959.

Protestant Renfro has constructed a concrete diversion dam about 6 feet high by 15 feet long, founded on solid rock. From the dam about 370 feet of 4-inch steel pipe leads to an uncovered wood stave tank, thence an 8-inch steel pipe leads to the subdivisions and smaller diameter steel pipes lead through the subdivisions for the distribution of the water.

Inspection of the stream channel upstream from the dam showed the water was developing from numerous small springs and seeps along the banks through a distance of 700 or 800 feet.

Mrs. Chamberlain owns and occupies Lot 6 of Shasta Lake Subdivision, Unit No. 2, and the Fifields own and occupy Lots 17, 18, and 19 of Unit No. 1. Both receive their water supply through the Renfro system. Information in the files, and obtained at the investigation, indicates that Renfro considers himself a trustee holder of Permit 8566 and intends to eventually relinquish the water rights and water system to the owners in the subdivision.

It appears that Applicants Chamberlain and Fifield expect, and intend, to use the Renfro dam and pipeline to convey the waters under the subject applications to their places of use, and they view their applications as confirmation of their rights under Permit 8566 rather than as independent applications standing on their own merits.

## Discussion and Conclusion

Requisite for a permit pursuant to an application is the existence of unappropriated water in the source (Water Code Section 1375(d) ). Measurement of flow indicated there were about 29 gallons per minute (or 0.064 cfs) available on June 26, 1959. Parties at the investigation stated that flow at the time of investigation was about normal for the time of year (June 26), and that flow is fairly stable during the summer months. Bulletin No. 5 indicates that low flow in the source is probably from May through October or November of each year, and information given by the parties indicated that major use is through the summer vacation period extending probably from June through September.

Although inspection of the spring area indicated that some additional water could undoubtedly be salvaged, Protestant Renfro has Permit 8566 which allows him to develop up to one cubic foot per second which obviously is in excess of the available supply during the principal period of use.

Furthermore, applicants have made it clear that they do not intend to construct their own diversion system or to appropriate water in addition to that appropriated by protestant. Their desire is to secure a permit to appropriate a portion of the water covered by protestant's permit. They characterize their applications as "subfilings", a coined term which has no authority in California statutory law. Since the water which applicants intend to use is being appropriated pursuant to a prior valid permit, there is no unappropriated water available

for appropriation by applicants and accordingly the applications must be denied (See Eaton v. State Water Rights Board, 340 P. 2d. 722).

ORDER

Applications 18342 and 18343 for permits to appropriate unappropriated water having been filed, protests having been filed, stipulations to proceedings in lieu of hearing having been submitted, and an investigation having been held by the Board and the Board having considered all of the available information and now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 18342 and 18343 be and the same are denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at \_\_\_\_\_, California, the \_\_\_\_\_ day of \_\_\_\_\_, 1959.

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Kent Silverthorne, Chairman

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W. P. Rowe, Member

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Ralph J. McGill, Member