

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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IN THE MATTER OF APPLICATION NUMBER 3303 OF MARTIN ESPIL
AND APPLICATION NUMBER 3497 OF ARTHUR W. STINER FOR PER-
MITS TO APPROPRIATE WATER FROM SOUTH FORK OF DEEP CREEK
IN MODOC COUNTY FOR AGRICULTURAL PURPOSES

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DECISION NO. A. 3303 and 3497 - D 14 a
Decided July 21, 1924

3303

APPEARANCES AT HEARING May 6, 1924:

G. S. Baldwin for both Applicants
D. B. Robnett for Mrs. E. M. Street, W. H. Hussa,
F. E. Bush, Street Bros., D. J. Benner, W. B. and
L. M. Bordwell, E. R. Tyeryar, B. H. Simson and
Mrs. Mary E. Wickliffe, Protestants

NO APPEARANCE D. L. Shirk, Protestant

Edward Hyatt, Jr., Acting Chief of Division of Water Rights

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O P I N I O N

On March 16, 1923, Martin Espil filed his Application
Number 3303 for a permit to appropriate 1.6 cubic feet per second of ✓
unappropriated water from the South Fork of Deep Creek in Modoc County
for agricultural purposes. On July 2, 1923, Arthur W. Stiner filed
his Application Number 3497 for a permit to appropriate 1.12 cubic
feet per second from the same source and for a similar purpose. There-
after protests were separately filed against each application by Mrs.
L. M. Street, Walter H. Hussa, F. E. Bush, Street Bros., D. J. Benner,
W. B. and L. M. Bordwell, E. R. Tyeryar, B. H. Simson and Mrs. Mary E.
Wickliffe. In addition D. L. Shirk filed a protest against Application

Number 3503, but not against Application Number 3497. In due course the matter of these applications came on for a joint hearing before the Division of Water Rights.

Protestant Shirk did not appear at the hearing and has not indicated any further objection since acknowledgment of the protest calling attention to the point that his claims involved only the waters of the North Fork of Deep Creek and not the South Fork. It appears that said protestant has abandoned his protest and it is so found.

The allegations of all remaining protestants are similar. They claim the right to the use of all of the water of the South Fork of Deep Creek and that they have used all of the flow of said fork during the irrigating season for many years prior to 1914 and that during the past twelve years there has been insufficient water to properly irrigate their lands.

The water of the North fork of Deep Creek is involved in this matter as well as the water of the South Fork inasmuch as a total area of approximately 1038 acres is irrigated by the protestants solely from Deep Creek below the confluence of the two forks. The total area irrigated solely from the South Fork by the protestants appears to be about 382 acres. In addition, an area of approximately 73 acres is irrigated by the protestants partly from the South Fork and partly from the creek below the confluence of the forks. No refutation was made as to these acreages set forth at the hearing and it is the finding of this Division that these are the areas irrigated by the protestants.

It was agreed by counsel for the parties hereto (See Pages 27 and 28 of the transcript) that the record in the matter of Application Number 1262 should be considered by the Division in the matter of this application insofar as same might be found pertinent, and it appears therefrom that the judgment and decree dated September 29, 1923, in the case of Luman Faskett, et al., vs. G. J. Wentzell, in the Superior Court of the State of California, in and for the County of Modoc adjudicates to the parties therein the waters of the North Fork of Deep Creek to the extent of 8.8 cubic feet per second during the irrigating season plus 0.16 cubic foot per second during April and 0.12 cubic foot per second during May. It, therefore, is apparent that the total combined flow of the North and South Forks of Deep Creek is not available for use by the parties in interest.

It appears from the transcript of the hearing that the flow of the South Fork of Deep Creek is between $1/10$ and $1/3$ greater than the flow of the North Fork. From the stream flow records of the North Fork collected under the supervision of this Division, taking into consideration the water adjudicated under the above mentioned judgment and the rising water on the F. E. Bush property, it is found that the amount of water available for the parties in interest, from March 1st to May 31st for the period 1920 to 1922 inclusive in cubic feet per second, was, as follows:

	MARCH			APRIL			MAY		
Year	Maximum	Minimum	Mean	Maximum	Minimum	Mean	Maximum	Minimum	Mean
1920	7.0	1.1	2.6	12.1	2.7	6.2	8.5	2.0	6.1
1921	40.1	7.0	17.1	12.9	6.6	8.3	18.3	7.8	10.1
1922	8.5	2.0	4.5	39.8	4.2	17.6	49.4	18.3	31.5

If all of the above water supply had been used to irrigate all of the above acreage of protestants, it is found that the number of acres that would have been irrigated, per cubic foot per second continuous flow in monthly periods, would have been as follows:

YEAR	MARCH	APRIL	MAY
1920	575	241	245
1921	87	180	148
1922	332	85	47

The above tabulation shows the number of acres that it would have been necessary to irrigate with each cubic foot per second of water available in monthly periods, in order to irrigate the entire acreage of the protestants. It is obvious from the table that the water supply was entirely inadequate except during May 1922. Due to the flashy character of the runoff of Deep Creek, the protestants set up the point that a large amount of water must be used whenever available in order that the continuous flow diversion will result in a depth of water applied to the land which is customary for the successful growth of crops. It is found that there was no unappropriated water from March first to May thirty-first during the three years of record, 1920 to 1922 inclusive, except during May 1922.

	MARCH			APRIL			MAY		
Year	Minimum	Maximum	Mean	Minimum	Maximum	Mean	Minimum	Maximum	Mean
1920	0.7	7.1	3.3	2.4	12.	6.2	1.7	8.7	6.1
1921	7.1	42.	17.	6.6	13.	8.5	7.9	19.	10.4
1922	1.7	8.7	4.3	4.1	42.	18.	17.	51.	33.

If all of the above water supply had been used to irrigate all of the above acreage of protestants, it is found that the number of acres that would have been irrigated, per cubic foot per second continuous flow in monthly periods, would have been as follows:

YEAR	MARCH	APRIL	MAY
1920	650	241	245
1921	88	176	144
1922	348	83	45

The above tabulation shows the number of acres that it would have been necessary to irrigate with each cubic foot per second of water available in monthly periods, in order to irrigate the entire acreage of the protestants. It is obvious from the table that the water supply was entirely inadequate except during May 1922. Due to the flashy character of the runoff of Deep Creek, the protestants set up the point that a large amount of water must be used whenever available in order that the continuous flow diversion will result in a depth of water applied to the land which is customary for the successful growth of crops. It is found that there was no unappropriated water from March first to May thirty-first during the three years of record, 1920 to 1922 inclusive, except during May 1922.

It appears from the transcript of hearing that there was a serious shortage of water in Deep Creek during 1923 and 1924. During the past twelve years it is found that water has reached Middle Lake through the channel of Deep Creek during two irrigating seasons. The periods when the waters of Deep Creek in the past twelve years reached Middle Lake were infrequent and were of short duration due to alternate freezes and thaws which caused a flashy runoff. Under these conditions the applicants would be inviting litigation if an attempt were made to skim off the surplus at the peak of the occasional large freshets on account of the difficulties that would be encountered in observing the vested rights.

The applicants brought forth a claim that their alfalfa lands of a gravelly texture thawed earlier in the Spring than the meadow lands of a clay texture of the protestants and consequently the applicants' lands were usually ready to receive irrigation while a large portion of the protestants' lands were still frozen. It appears from the transcript of hearing that there is usually no material difference between the date of thawing of the gravelly alfalfa lands and that of the clay meadow lands in the vicinity of Deep Creek and it is so found.

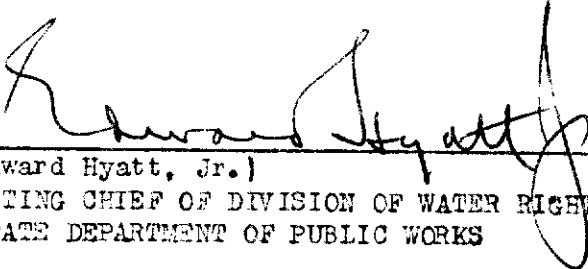
It is therefore concluded that there is an inadequate water supply available to justify the issuance of permits to the applicants; and that it would be unreasonable and unwarranted to issue applicants permits upon the ground that there might be some water available during infrequent periods of short duration.

O R D E R

Applications Numbers 3303 and 3497 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED, that permits be and the same are hereby refused on Applications Numbers 3303 and 3497 and that said applications be and the same are hereby rejected.

Dated at Sacramento, California, this 21st day of July, 1924.



(Edward Hyatt, Jr.)
ACTING CHIEF OF DIVISION OF WATER RIGHTS
STATE DEPARTMENT OF PUBLIC WORKS