

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

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IN THE MATTER OF APPLICATIONS NOS. 4769 AND 4770
OF D. FRIGOT TO APPROPRIATE WATER FROM SAN ANTONIO CREEK
IN CALAVERAS COUNTY FOR AGRICULTURAL AND POWER PURPOSES

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Decision No. 4769-4770 D 149

Decided April 8, 1927

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APPEARANCES AT HEARING HELD OCTOBER 11, 1926, AT SAN ANDREAS

For Applicant:

Joe Huberty, Attorney
San Andreas, Calif.

For all Protestants:

Virgil M. Airela, Atty.
San Andreas, Calif.

Examiner:

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

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OPINION

These applications propose in each case the diversion to storage of 70 acre feet from San Antonio Creek in a reservoir, draft from which would supplement the flow of the stream during the period of low flow. Applicant now claims and relies on a right to use 180 miners' inches from the source through the same conduit as that specified in the application. None of the water used for either agriculture or power under the applications would be directly returned to the stream. The place of agricultural use is specified as a total of 480 acres in two separate parcels, the power plant being on the ditch line in the upper of the two parcels.

Protests have been filed against the appropriations by six separate parties each of whom claim a right, based on long continued use on riparian land, to varying amounts from the source at points downstream from the point of diversion specified in the applications. Since all protestants state a common cause of action and are represented by the same attorney, their interests will be jointly considered in this opinion. Applicant in effect admits the rights claimed by protestants but contends that the proposed appropriation cannot injure them as the appropriation is sought of only a small portion of water which now flows past protestants' respective diversions and is wasted.

These applications were filed Sept. 11, 1925, completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for public hearing in the Court House at San Andreas at 1:30 o'clock P.M. on October 11, 1926. Of this hearing, applicant and protestants were duly notified and appearances thereat were made on behalf of all parties.

At the hearing, it developed that protestants object to applicant's agricultural use of stored water on the lower of the two parcels specified because said parcel is not controlled by him and he can secure no direct benefit from use of water thereon. Protestants' exhibit "A" is an agreement between applicant and the owners of this land providing for beneficial use of water thereon. This agreement has been operative since March 23, 1925, and is renewable by common consent of the interested parties. While applicant is in a way acting as agent for the owners of this land rather than on behalf of himself insofar as the land in question is concerned, the legal relation of the parties is clearly defined. The owners of the land in question will enjoy the use of the surplus water when there is a surplus and the applicant can at any time use the full amount. The agreement appears a logical and workable one and we cannot see that the objections of protestants to this phase of the project are

well taken.

It was further developed that applicant proposes to construct gates at the bottom of the storage dam and leave same open a great deal of the time when the dam is full, thereby allowing silt impounded to escape. Certainly the protestants would not be affected if the dam is operated in this way as water passing through the gates when the reservoir is full would otherwise spill over the dam. Furthermore, all parties agreed that only in an exceedingly dry year could diversion to storage injure the protestants. Due, however, to varying conditions existing in wet and dry years, there was a divergence of opinion as to the date at which diversions to storage should cease in the future. It appearing that there may be unappropriated water flowing in the source at certain times throughout the period of diversion specified in the applications, approval will be given the applications in their present form.

O R D E R

Applications Nos. 4769 and 4770 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 said applications Nos. 4769 and 4770 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 8th day of April, 1927.

[Edward Hyatt, Jr.]
CHIEF OF DIVISION OF WATER RIGHTS