

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

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In the Matter of Application 5804 of A. R. Conklin
to appropriate from East (South) fork of Dry
Creek in Modoc County, California, for
Domestic and Irrigation purposes.

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DECISION A 5804 D-218

Decided: *March 11, 1929.*

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APPEARANCES AT HEARING HELD October 1, 1929

For Applicant:

None

For Protestant:

Oscar Gibbons, Atty.,

EXAMINER: T. R. Simpson, Assistant Hydraulic Engineer of the
Division of Water Rights for Harold Conkling,
Chief of Division.

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O P I N I O N

This application is for an appropriation of water from East, some-
times known as South, fork of Dry Creek to be used from March 15th to
July 1st of each season for irrigation and domestic purposes on 72 acres of
land owned by the applicant.

The application was filed primarily for the purpose of diverting water
for irrigation purposes during a period of the year not covered by applicants
earlier filing on which a permit has been issued for diversion from about
May 1st to about July 1st of each season. It was further for the purpose of
replacing the earlier filing which applicant requested be cancelled if and

when a permit was issued on the new filing.

The new application proposes to divert the same amount as the earlier application, viz 0.63 cubic foot per second, but covers a proposed diversion season extending from about March 15th to about July 1st.

The application was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights, and being protested was set for a public hearing at the Supervisors Room of the Court House at Alturas, California, at 10:00 o'clock A.M. on October 1, 1928. Of this hearing applicant and protestant were duly notified. No appearance was made on behalf of the applicant but protestants were represented and introduced testimony.

The protest of John L. Porter was filed on June 7, 1928. It is based on a claimed right initiated in 1871 on Parker Creek, to which Dry Creek is tributary and continuous use thereof and the claim that any diversion by the applicant after June 1st would interfere with protestants rights.

The protest of J. L. Porter, Cahn Fogerty, E. D. Payne, Mrs. L. H. Porter James C. Porter and Phear E. Porter was filed at the hearing on October 1, 1928. It is based on claimed prior rights and use and the contention that no unappropriated water exists after June 1st of each season. These protestants also obtain their water from Parker Creek. The protest further states that the protestants have no objection to diversion by applicant of the waters of North Fork of Dry Creek.

It appears from the testimony of protestant's witnesses at the hearing that there is the possibility of no unappropriated water existing in Dry Creek after June 1st and no evidence was submitted at the hearing to the contrary.

However, from reports by engineers of this office covering investigations made by themselves in the field it appears that applicant, under his earlier filing, has diverted and used the waters of Dry Creek since 1923 as late as July 1st without notable interference with the protestants claimed rights, there having been no claim that their rights were in any way interfered with.

It therefore appears that at times between June 1st and July 1st unappropriated water exists which could be diverted by the applicant and it further appears that during such times as may occur when no unappropriated water exists the protestant's objections are sufficiently satisfied by the fact that all permits issued by the Division of Water Rights are issued expressly subject to existing rights.

The protestants make no objection to diversion by the applicant during the balance of his proposed season, namely, March 15th to June 1st.

With respect to diversions by the applicant from North Fork of Dry Creek to which the protestants do not object it should be noted that no right to the diversion and use of such waters has been initiated by the applicant under any of his filings before the Division of Water Rights and he should be definitely advised as to his status in this respect.

ORDER

Application 5804 for a permit 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 Application 5804 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California this 11 day of March 1929.

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

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