

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

*File*

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In the matter of Application 2842 of William P. St. John  
(Later assigned to Walter T. Lalitz) to appropriate  
for Agricultural Purposes from Owl Creek, tribu-  
tary of Middle Lake in Modoc County.

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DECISION A. 2842, D 228.

Decided *May 28, 1929.*

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APPEARANCES AT HEARING HELD May 7, 1924

For Applicant

William P. St. John

In propria persona

For Protestants

Mrs. Jessie H. Stiner

In propria persona

Mary E. Wade

Baldwin & Robinson

Frank J. Mc Clintock

A. K. Wylie

C. El Cummins and Lily V. Cummins

A. K. Wylie

C. E. Cummins, T. D. Cummins, May C. Worley)

Lou West, Leonora Caldwell and Ada

A. K. Wylie

McCullough )

Fannie P. Ennis and John C. Ennis

A. K. Wylie

J. W. Heryford and Sarah Heryford

A. K. Wylie

Wiley Allen and Mamie Allen; Sylvester Allen)

and Grace Allen, Joel C. Allen, Jr., and )

Annie Allen; Mildred M. Larimore and Rollen )

E. Allen, minor, by his guardian Mildred M. )

Larimore, Jennie Arreche and Peter Laxague, )

Baldwin & Robinson

George Laxague and John B. Laxague, minors, )

by their guardian Jennie Arreche, and the )

Estate of J. C. Allen, deceased, by Wiley )

Allen, executor. )

J. M. Reeder and wife

Baldwin & Robinson

H. D. Cook as guardian for the Cook minors

A. K. Wylie

Mrs. Rehart

Baldwin & Robinson

EXAMINER: Edward Hyatt, Jr., Chief of the Division of Water Rights,  
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 2842 was filed by William P. St. John on May 6, 1922, and assigned to Walter T. Malitz on April 18, 1929. It proposes an appropriation of 0.54 cubic foot per second from Owl Creek in Modoc County, tributary to Middle Lake, for agricultural purposes on 18 acres of land located within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  and 25 acres within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 34, T 41 N, R 16 E, M.D.B. & M. The point of diversion lies within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 33, T 41 N, R 16 E, M.D.B. & M. The season of proposed diversion is from about March 20th to about June 20th of each season.

PROTESTS

Application 2842 was protested prior to the hearing by the following:

- (1) Mrs. Jessie H. Stiner
- (2) Mary E. Wade
- (3) Frank J. McClintock
- (4) C. E. Cummins and Lily V. Cummins
- (5) C. E. Cummins, T. D. Cummins, Mary C. Worley, Lou West, Leonora Caldwell and Ada McCullough
- (6) Fannie P. Ennis and John C. Ennis
- (7) J. W. Heryford and Sarah Heryford
- (8) Wiley Allen and Mamie Allen; Sylvester Allen and Grace Allen; Joel C. Allen, Jr., and Annie Allen; Mildred M. Larimore and Rollen E. Allen, minor by his guardian Mildred M. Larimore, Jennie Arreche and Peter Laxague; George Laxague and John E. Laxague, minors, by their guardian Jennie Arreche, and the estate of J. C. Allen, deceased, by Wiley Allen, executor.

At the hearing the following appeared as protestants:

J. M. Reeder and wife;  
H. D. Cook as guardian for the Cook minors;  
Mrs. Rehart

All of the protestants claim prior vested rights to the use of water from Owl Creek and allege in effect that the approval of the application would seriously interfere with their rights.

HEARING SET IN ACCORDANCE WITH SECTION 1a  
OF THE WATER COMMISSION ACT

Application 2842 was completed as required by the Water Commission Act and the rules and regulations of the Division of Water Rights and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on May 7, 1924, at 9:00 A.M. in the Court House, Alturas, California. Of this hearing applicant and record protestants were duly notified.

GENERAL DISCUSSION

At the time of the hearing there was pending in the Superior Court of the State of California, in and for the County of Modoc, a suit entitled "C. E. Cummins et al vs. Wiley Allen et al" to determine the rights in and to the waters of Owl Creek. All of the protestants were involved in this suit with the exception of Mrs. Wade.

It was agreed at the hearing that when the final judgment in the suit had been rendered measuring devices might be placed in the channel of Owl Creek by means of which the flow of water distributed by the judgment might be measured plus the amount to which Mrs. Wade was entitled plus a proper allowance for seepage and that any surplus over and above the amount required to satisfy the prior claims might be appropriated by the applicant.

It was stipulated at the time of the hearing that the amount of water to which Mrs. Wade was entitled be recognized as 2.0 cubic feet per second but by a subsequent agreement between Mrs. Wade and certain of the interested parties this amount was reduced to 1.81 cubic feet per second. (See Agreement re water right of Mary Wade on Owl Creek dated April 1, 1927, and filed with the Owl Creek Reference proceedings.)

Action in the matter was held in abeyance by this office pending the decision of the court in the suit above mentioned which was finally settled by court decree dated April 29, 1929. By this decree the rights of the several parties to the suit were adjudicated and the Division of Water Rights ordered to administer the diversions of water from Owl Creek whenever, and at all times when in the judgment of the Division, such administration might be necessary in order to insure strict adherence to the provisions of the decree, and that in exercising such administration the Division might appoint and employ a water master to control and regulate the diversions among the various conduits in accordance with the provisions of the decree.

On May 25, 1922, a gaging station was installed on Owl Creek and this office has since collected data which would indicate that there was surplus water in Owl Creek, over and above all allotments provided for in the decree, for about five weeks in 1922, about seven weeks in 1925, less than one week in 1926, about seven weeks in 1927 and about four weeks in 1928. The year 1926 was an exceptionally dry year and taking this fact into consideration it may reasonably be assumed that there will be surplus water in Owl Creek for a period of at least six weeks during the months of May and June in normal years.

#### CONCLUSION

As there appears to be a certain amount of unappropriated water in Owl Creek during a year of normal runoff, Application 2842 should be approved and a permit issued which will contain a special clause to the effect that the use of water thereunder is expressly subject to all rights established by the decree entered on April 29, 1929 in the case of C. E. Cummins et al vs. Wiley Allen et al.

Under the decree the Court has ordered the Division of Water Rights to administer the diversions from Owl Creek whenever necessity of such administration is apparent. It would therefore appear that a clause should also be inserted in the permit to the effect that use thereunder may be regulated by the Division of Water Rights to the end that such use will not interfere with prior vested rights.

O R D E R

Application 2842 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, protests having been received, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 2842 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and subject also to the following special terms and conditions to-wit:

"All rights herein granted are subject to those rights established by the decree entered by the Superior Court of the State of California, in and for the County of Modoc on the 29th day of April, 1929, in the case of C. E. Cummins, et al vs. Wiley Allen, et al", and

"This permit is issued subject to the express condition that the use hereunder may be regulated by the Division of Water Rights during periods of water scarcity to the end that such use will not interfere with prior vested rights."

Dated at Sacramento, California, this 28 day of May, 1929.

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

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