

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

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In the Matter of Application 7174 of Russell M. Bushey to Appropriate Water from an Unnamed Stream Tributary to the Pit River in Modoc County for Domestic Purposes.

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DECISION A. 7174 D-328

Decided *September 14, 1932*

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APPEARANCES AT HEARING HELD AT ALTURAS, MAY 18, 1932

For Applicant  
Russell M. Bushey

In propria persona

For Protestant  
A. H. Hess

A. K. Wylie

EXAMINER: Gordon Zander, Supervising Hydraulic Engineer, for Harold Conkling, Deputy in Charge of Water Rights, Division of Water Resources, Department of Public Works, State of California.

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OPINION

ESSENTIAL FEATURES OF APPLICATION 7174

As presented at the hearing Application 7174 proposed an appropriation of 0.25 of a cubic foot per second from an unnamed spring in the Pit River watershed; the water to be diverted throughout the year for irrigation and domestic purposes on 20 acres of land within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 8, T 41 N, R 9 E, M.D.B.M. The point of diversion was described as being within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of said Section 8. The application was protested by A. H. Hess.

### PROTEST

A. H. Hess claims the right to divert the entire flow of the spring from a natural channel which passes through his property, the claim of right being based upon riparian ownership, appropriation and use for the past thirty years. He alleges in effect that there is no unappropriated water in the source.

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

Application 7174 was completed in accordance with the Water Commission Act and the requirements of the rules and regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on May 18, 1932, at 9:30 o'clock A.M. in Supervisors Room of the Courthouse, Alturas, California. Of this hearing applicant and protestant were duly notified.

### PHYSIOGRAPHY AND HYDROGRAPHY

The source of the proposed appropriation is a series of springs located in the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 8, T 41 N, R 9 E, M.D.B.&M. The water from these springs flows through a natural channel which passes through Forest Service lands and through the lands of the protestant. The flow of water from the springs varies considerably from year to year. On the day of the hearing the flow was approximately 20 gallons per minute but may increase to twice this amount during wet seasons.

At a point about 200 yards below the spring the protestant has constructed a dam and water is diverted from the natural channel through a ditch to his lands.

USE OF WATER BY PROTESTANT

At times when the flow of the spring and the runoff from the drainage area tributary to the natural channel is sufficient, water is used by the protestant to irrigate a garden spot and calf pasture comprising about 2 acres within the SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 8, T 41 N, R 9 E, M.D.B.&M. and also for the irrigation of about 6 acres of pasture land within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 7, T 41 N, R 9 E, M.D.B.&M. At times when the flow has not been sufficient to reach the garden and calf pasture protestant's use is confined to the upper tract only. The ditch is in good condition and has no appearance of abandonment.

APPLICATION 7174 AMENDED

As a result of the hearing and an inspection of the project made on the same day by an engineer of this office in company with both applicant and protestant, applicant admitted the validity of protestant's rights and requested that his application be amended to specify an amount of 200 gallons per day only and that his point of diversion be moved to a point just below protestant's dam.

The protestant objected to the change on the grounds that from about July 15th until the fall months there would be insufficient water passing the dam to supply applicant's proposed use and that in order to install his pipe line, the applicant would have to cross his property.

The applicant has satisfied this office that the necessary right of way for his pipe line has been obtained from the Forest Service and that it is not necessary for him to cross protestant's lands and he desires the approval of the application for whatever water may be available up to the

amended amount. In view of the above the application has been amended in accordance with applicant's request.

CONCLUSION

The use to which applicant proposes to divert the water is a useful and beneficial one and the application has been amended in such a way that it is not seen wherein protestant's alleged right will be injured. Whether or not there is sufficient unappropriated water to justify applicant's expenditure is one which applicant can best answer for himself. He is now thoroughly informed as to the existing conditions and should be entitled to appropriate whatever water may be available to him, not to exceed 200 gallons per day. It is therefore our opinion that Application 7174 should be approved.

ORDER

Application 7174 for a permit to appropriate water having been filed with the Division of Water Resources, as above stated, a protest having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 7174 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 14<sup>th</sup> day of September, 1932.

EDWARD HYATT, State Engineer

BY Harold Conkling  
Deputy

WES:MP

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