

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

oOo

In the Matter of Application 7051 of John R. Connelly, E. P. Smith and Stephen J. York to appropriate from an unnamed stream in Lake County for Domestic Purposes, and Application 2108 of Elizabeth M. Robinson to appropriate from an unnamed Spring in Lake County for Domestic Purposes.

oOo

DECISION A. 7051, 7108 D-339

Decided *February 21, 1933*

oOo

APPEARANCES AT HEARING HELD AT SACRAMENTO, NOVEMBER 29, 1932.

For Applicants and Protestants

John R. Connelly, E. P. Smith and Stephen J. York

John R. Connelly

For Applicant and Protestant

Elizabeth M. Robinson

Charles L. Gilmore

For Protestant

Clear Lake Water Company

No appearance

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

oOo

O P I N I O N

GENERAL FEATURES OF APPLICATIONS

Application 7051 was filed by John R. Connelly, E. P. Smith and Stephen J. York on August 18, 1931. It proposes an appropriation of 0.10 of a cubic foot per second to be diverted throughout the entire year by direct diversion and 5 acre feet per annum to be diverted to storage from about January 1st to about May 1st of each season from an unnamed stream supplied by a spring, tributary to Clear Lake in Lake County for domestic purposes

within a subdivision on the SE $\frac{1}{4}$  of NW $\frac{1}{4}$ , SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , NW $\frac{1}{4}$  of SE $\frac{1}{4}$  and NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 31, T 15 N, R 8 W, M.D.B.&M. The point of diversion is within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 32, T 15 N, R 8 W, M.D.B.&M. The application was protested by Elizabeth M. Robinson and Clear Lake Water Company.

Application 7108 was filed by Elizabeth M. Robinson on October 30, 1931. It proposes an appropriation of 0.01 of a cubic foot per second by direct diversion throughout the entire year from an unnamed spring tributary to Clear Lake in Lake County for domestic purposes within Lot 1 Section 6, T 14 N, R 8 W, M.D.B.&M. The spring or point of diversion is within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 32, T 15 N, R 8 W, M.D.B.&M. The application was protested by John R. Connelly, E. P. Smith and Stephen J. York and by Clear Lake Water Company.

#### PROTESTS

The points of diversion are identical in each of the two applications.

Miss Elizabeth M. Robinson objects to the approval of Application 7051 of John R. Connelly, et al., on the grounds that it would deprive her of water to which she is entitled by virtue of riparian ownership and use.

Application 7108 of Elizabeth M. Robinson was protested by John R. Connelly, et al., on the grounds of interference with their prior filing. They allege in effect that the amount sought to be appropriated is in excess of her needs.

The Clear Lake Water Company claims the exclusive right to the use of the waters of Cache Creek which is the sole outlet of Clear Lake and the right to store water in Clear Lake up to a certain level, such rights being based upon appropriation initiated prior to the effective date of the Water Commission Act and by virtue of a final decree entered October 7, 1920, as a

result of a compromise agreement entered into between Gopcevic, et al. v. Yolo Water and Power Company, et al. and alleges in effect that any appropriation of waters tributary to Clear Lake will diminish the supply to which it is entitled.

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

Applications 7051 and 7108 were 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 were set for public hearing in accordance with Section 1a of the Water Commission Act on November 29, 1932, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicants and protestants were duly notified.

GENERAL DISCUSSION

The source of appropriation proposed under Application 7051 by John R. Connelly, et al. is "an unnamed stream supplied by spring". The source of appropriation proposed under Application 7108 of Elizabeth M. Robinson is an "Unnamed Spring". The testimony introduced at the hearing together with the fact that the ties to the points of diversion as set forth in each of the applications is identical, clearly indicates that the "unnamed spring" referred to in Application 7108 is the same spring which supplies the unnamed stream described as the source of diversion in Application 7051. Testimony presented at the hearing indicated that under Application 7051 it is proposed to divert all water in the unnamed stream which may be available at the dam to be constructed across the stream at the proposed point of diversion, up to the amount of water applied for, whether this water be from the spring or the runoff from the drainage area above, whereas under Application 7108 it is proposed to divert the waters of the spring only.

The spring is in fact a wet area about 20 or 30 yards square on the side of a canyon from which water seeps and drips and is collected in the creek bed. There was no testimony presented by which the size of the stream could be determined with any degree of accuracy but it would appear that the amount of water from the spring itself would not exceed the amount of direct diversion applied for under Application 7051, namely 0.10 cubic foot per second. During the dry season of the year, from about July 1st to about December 1st, the small stream thus formed flows a distance not to exceed about 1500 feet and disappears into the gravels before reaching the property homesteaded by Elizabeth M. Robinson. During the winter and spring months when the flow from the spring is augmented by the storm waters, the water passes through the homestead and at times flows into Clear Lake.

The protest of Elizabeth M. Robinson against the approval of Application 7051 was based upon certain rights and privileges claimed by virtue of a homestead entry granted to her by the U. S. Government on May 28, 1930, which homestead included lands over which applicants John R. Connelly, et al. proposed to lay their pipe line.

On January 30, 1933, subsequent to the hearing held in connection with Applications 7051 and 7108, Elizabeth M. Robinson relinquished all her right, title and interest in and to the entire homestead entry, a certified copy of such relinquishment being filed with this office on February 3, 1933, and having no longer any grounds for protest, Miss Robinson's protest against the approval of Application 7051 may be dismissed.

Although representatives of the protestant Clear Lake Water Company were present at the hearing held on November 29, 1932, no appearance was entered on behalf of the Company and no testimony was introduced in support of its allegations. It appears from statements made at the hearing by John R.

Connolly that a private agreement or stipulation had been entered into between the Company and applicants John R. Connolly, et al. wherein the applicants agreed to recognize its right to the water. While there is nothing to indicate that any agreement had been entered into between applicant Elizabeth M. Robinson and the Clear Lake Water Company no testimony was introduced in support of the Company's protest against this application and in view of failure to support the burden of proof appropriate to a moving party the protest of the Clear Lake Water Company may be dismissed.

When Application 7051 was filed, John R. Connolly, et al. proposed to pipe the water from the proposed point of diversion across Forest Service lands and across the lands of Elizabeth M. Robinson. Miss Robinson, however, refused to permit the pipe to be so laid and the applicants then proposed to lay their pipe line around her property and through the subdivision of the Clear Lake Beach Company. The Clear Lake Beach Company has informed this office that John R. Connolly, et al. will not be allowed to use any of the subdivision roads for pipe line rights of way although the applicants declare that the right of way has already been obtained. Since Miss Robinson has relinquished her claim John R. Connolly, et al. intend if possible to lay their pipe lines as originally intended but in the event that this cannot be done they intend to run the pipe line along the north line of Section 31, T 15 N, R 8 W, M.D.B.&M. and thence along the center line of said Section 31 into their property.

Under date of January 27, 1933, the Clear Lake Beach Company and John R. Connolly, et al. were advised by this office that the controversy between them as to right of way was a matter which the Division had no authority to determine but that in the event that either of the parties wished

to institute a suit before any court of competent jurisdiction for determination of the matter, action would be suspended until February 15, 1933, at which time unless there was evidence that either suit had been instituted or that there was a prospect of adjustment between the parties themselves, the Division would proceed to action upon Application 7051 in all respects as if the question of right of way had not been raised.

The uses to which applicants John R. Connelly, et al. propose to put the water under Application 7051 are useful and beneficial and as no further evidence has been submitted relative to the right of way it is the opinion of this office that Application 7051 should be approved.

Relative to Application 7108 which proposes to appropriate water from the unnamed spring, it appears that in the event that applicants John R. Connelly, et al. proceed with their development under their prior Application 7051, there would not be unappropriated water in sufficient quantity from this source to justify the approval of Application 7108. However, if for any reason applicants John R. Connelly, et al. should not proceed with their development Elizabeth M. Robinson should be allowed to proceed with the use of water under Application 7108 provided that a place of use for the water applied for may be shown. For this reason it is our opinion that action should be withheld upon Application 7108 until further order is entered.

#### O R D E R

Applications 7051 and 7108 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests 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 7061 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

IT IS HEREBY FURTHER ORDERED that action upon Application 7103 be withheld until further order is entered.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 21st day of February, 1933.

EDWARD HYATT, State Engineer

BY Harold C. King  
Deputy

WES:MP

