

State of California
Department of Public Works
DIVISION OF WATER RESOURCES

In the Matter of Application 7204 of Regents of the University of California To appropriate From Eshom Creek and Tributaries For Domestic and Recreational Purposes.

Decision No. A 7204 D - 344

Hearing held June 26, 1933.

Decided July 24, 1933

Appearances at Hearing:

For Applicants	-	John U. Calkins Jr.
For Protestants C. W. and W. R. Hunt	-	H. D. McClure
For Protestant John Brennecke	-	None

Examiner: Everett M. Bryan, Supervising Hydraulic Engineer for Harold Conkling, Deputy in Charge of Water Rights.

O P I N I O N

Description of Project

This is an application to appropriate 5,000 gallons per day from East Fork of Eshom Creek, 10,000 gallons per day from Camp Creek, and 50,000 gallons per day from West Fork of Eshom Creek, tributaries of Eshom Creek and Kaweah River in Tulare County for domestic and recreational purposes. The points of diversion and the place of use are within Sections 15 and 16 of Township 14 South, Range 28 East, M.D.B. & M. It is intended that the 15,000 gallons per day to be diverted from Camp Creek and East Fork of Eshom Creek shall be used for domestic purposes at a public camp ground and at the permanent camp of applicant and the 50,000 gallons to be diverted from West Fork of Eshom Creek shall be used for swimming pool purposes and be returned to the stream. All uses are within the

watershed naturally tributary to Eshom Creek.

Description Of Protests

Protests were originally filed by John Brennecke, C. W. and W. R. Hunt, and J. M. Lacy, but Mr. Lacy withdrew his protest prior to the hearing and C. W. and W. R. Hunt appeared by attorney at the hearing and withdrew their protest, indicating that an informal arrangement had been consummated by them with applicant whereby they no longer objected to the appropriation.

No appearance was made at the hearing on behalf of John Brennecke and no showing of cause has since been made for his failure to appear. His protest filed May 9, 1952, is to the effect that use of water has been made by him and his predecessors in interest from Eshom Creek at a point some 7 or 8 miles downstream from applicants proposed points of diversion, the diversion being for domestic and agricultural purposes on lands of protestant through which Eshom Creek flows, and the claim is made that the appropriation proposed will deprive protestant of water to which he is rightfully entitled because even without any diversion by applicant "Eshom Creek goes entirely dry for the greater part of the summer months and beginning about June 1st of each year and extending to about November of each year, making it necessary for protestant to store water during the winter months for the summer use." The further objection is made that the use proposed by applicant will defile the waters so that they will be unfit for drinking purposes and family use of protestant.

Application Made In Due Form

Application 7204 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources, and having been completed was duly advertised. Protests having been filed against approval thereof the matter was set for hearing of which hearing applicant and protestants were duly notified.

No Substantial Interference With Rights of Protestant Anticipated

As stated above 50,000 gallons per day of the 65,000 gallons per day total sought to be appropriated will be used for swimming pool purposes and will be returned immediately to Eshom Creek so that there will be no diminution resulting therefrom in the waters available to protestants. The 15,000 gallons per day domestic use proposed from Camp Creek and East Fork of Eshom Creek under Application 7204 is ostensibly consumptive, but the evidence introduced by applicant's engineer, Mr. H. L. Foster, indicates that little or no diminution in the supply available to protestants may be expected as a result of the appropriation, because in the first place the use is entirely within the watershed with ultimate return of all waste to groundwaters of the canyon, and because in the second place the waters sought to be appropriated disappear underground within a very short distance below the proposed points of diversion and have no surface connection during the summer months with the flow at protestant's point of diversion. The movement underground from the point where this flow disappears to the point where such water again reappears upon the surface at or above protestant's point of diversion is so slow that any reduction in subsurface flow resulting from applicants proposed diversion would be compensated for by the passage of floods of a succeeding winter before the diversion could be felt by protestant. This statement of fact appears reasonable and protestant has presented no evidence to the contrary.

The Division has heretofore on various occasions found it necessary to rule in connection with protests against appropriations based upon anticipated pollution resulting therefrom to water supplies of protestants downstream. We are of the opinion that this is a matter in which this office lacks

jurisdiction. The Division of Water Resources is not charged by law with any responsibility to protect the purity of state water supplies. This matter is a matter for the State Department of Health and the courts to regulate.

ORDER

Application 7204 having been duly filed with the Division of Water Resources seeking to appropriate the waters of Camp Creek, East Fork of Eshom Creek and West Fork of Eshom Creek, and having been completed, advertised and protested, a hearing upon the protests having been held and the Division now being fully informed in the premises.

IT IS HEREBY ORDERED that said Application 7204 be approved and that a permit be issued thereon subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 24th day of *July* 1933.

EDWARD HYATT, State Engineer

By *Harold Conkling*
Deputy

