

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

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In the Matter of Application 10304 of Harry A. Hopkins
to Appropriate Water from McFarland Creek, in Kern
County for Domestic Purposes

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Decision A. 10304 D- 495

Decided *December 9, 1942*

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SOURCE OF THE PROPOSED
APPROPRIATION ON SEPTEMBER 2, 1942.

For Applicant

Harry A. Hopkins

In propria persona

For Protestants

Edna Elden Williams and Will Williams

No appearance

Perry W. Hickerson

In propria persona

C. J. Frazier

In propria persona

Rita Jones

In propria persona

R. R. Martin

In propria persona

U. S. Forest Service

Thomas L. Wilkinson

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer for Harold Conkling,
Deputy State Engineer in Charge of Water Rights, Division of Water
Resources, Department of Public Works, State of California.

O P I N I O N

General Description of Project

Under Application 10304, filed by Harry A. Hopkins on October 20, 1941, it is proposed to appropriate 0.00333 cubic foot per second, or approximately 2,150 gallons per day, from McFarland Creek tributary to Fulton Creek, thence Cedar Creek and thence Poso Creek in Kern County for domestic purposes within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T. 25 S., R. 31 E., M.D.B. & M., which property was formerly known as Lot 3 Block 8 and Lot 16 Block 9 of "Greenhorn Mountain Cabin Sites" before the property was excluded as a subdivision under the terms of the Subdivision Land Exclusion Law of May 7, 1919.

Protests

Edna Elden Williams and Will Williams divert water from Cedar Creek at a point approximately 4 $\frac{1}{2}$ miles below the applicant's proposed point of diversion under claim of riparian ownership. They claim that since 1923 they have been watering about 60 head of cattle and allege in effect that should Application 10304 be approved for the amount applied for it would result in depriving them of their means of livelihood. They agreed to withdraw their protest if the amount applied for was reduced to 215 gallons per day.

Perry W. Hickerson uses water from Fulton Creek at a point approximately 2 $\frac{1}{2}$ miles below applicant's proposed point of diversion under a claim of riparian ownership. At the present time about 35 head of cattle are watered at the stream but he claims that as many as 100 head have been so watered at times. Protestant also has a well at the upper end of his property which he claims is fed by the waters of Fulton Creek. Water from this well is used for the irrigation of approximately one acre of orchard and garden. He alleges

in effect that should Application 10304 be approved it would result in depriving him of water for stock and domestic purposes and for wild game and bird life and would depreciate land values in that locality.

C. J. Frazier, under a claim of riparian ownership waters approximately 90 head of cattle on his property which is located about 3 miles below applicant's proposed point of diversion. He alleges in effect that should Application 10304 be approved it would not only deprive him of sufficient water for stock watering purposes but would deprive the wild game and bird life in the vicinity of his property from water and would cause land values to depreciate.

Rita Jones, under claim of riparian ownership states that she has been diverting and using approximately 2150 gallons per day for the irrigation of a vegetable and berry garden. Her diversion for garden use is made at a point near the junction of Peyton and McFarland Creeks about one mile below applicant's proposed point of diversion. She also states that some 200 or more head of cattle and horses are watered from the creek, each head requiring about 15 gallons per day during the summer months. She states that in dry years there is no water available for garden irrigation during the months of August, September, and October and that during this period the number of cattle watered at the stream has to be reduced and alleges in effect that should Application 10304 be approved it would result in depriving her of water to which she is entitled, would deprive local wild game and bird life of water and would depreciate land values in that locality.

R. R. Martin claims a right to the use of water based upon use commenced prior to December 19, 1914, the effective date of the Water Commission Act.

He states that from 25 to 50 head of livestock are watered from the creek at a point about 1 mile below the applicant's proposed point of diversion and alleges in effect that should Application 10304 be approved it would result in depriving him of sufficient water for stock watering purposes.

The United States Forest Service claims a right to use approximately 8,000 gallons per day for domestic, stock watering, garden and lawn irrigation and for fire protection purposes at the Fulton Ranger Station, which right is based upon use commenced prior to the effective date of the Water Commission Act. Water is obtained from a well located within the stream bed near applicant's proposed point of diversion. Protestant alleges in effect that the proposed appropriation of the applicant would if granted, adversely affect the water level in this well. Protestant states that in the past, applications to appropriate from this source have been protested and have been withdrawn as a result of an agreement between the present users that the water would be used without a permit from the Division and that if Application 10304 were approved it would result in the setting of a precedent which would adversely affect the water rights below.

The Forest Service is of the opinion that action in connection with Application 10304 should be withheld until an agreement could be reached between the interested parties and suggests that the Division might be instrumental in persuading all the present users on the stream to file, thereby creating a better understanding and allocation of the use of the water from Fulton Creek.

Investigation

On September 2, 1942, an investigation of the proposed appropriation was made in the field by an engineer of the Division. Of this investigation applicant and protestants were duly notified and urged to be present or represented.

Stipulated Hearing

Stipulations under Regulation 12B of the Rules and Regulations with Respect to Protests and Hearings were signed by the applicant and protestants and have been approved by this office.

Application 10304 Withdrawn

On December 7, 1942, the Division received a letter from the applicant stating that he had decided to withdraw Application 10304 and based upon this fact, rather than upon the result of the informal hearing, Application 10304 should be cancelled upon the records of this office.

O R D E R

Application 10304 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a field investigation by the Division having been made, a stipulated hearing having been held in accordance with Regulation 12B of the Rules and Regulations of the Division of Water Resources with respect to Protests and Hearings and the Division having been notified by the applicant that he had decided to withdraw the said application:

IT IS HEREBY ORDERED that the said Application 10304 be rejected and cancelled upon the records of this office.

WITNESS my hand and the seal of the Department of Public Works of the
State of California this 9 day of December 1942.

EDWARD HYATT, State Engineer

By Harold Conkling
Deputy State Engineer

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