

Before the Division of Water Resources  
Department of Public Works  
State of California

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In the Matter of Application 10279 of Frank Machado to Appropriate  
from Los Osos Creek Tributary to Morro Bay in San Luis Obispo  
County for Domestic and Irrigation Purposes

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Decision A. 10279 D. 502

Decided April 7, 1943

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APPEARANCES AT INVESTIGATION CONDUCTED ON MAY 28 and 29, 1942

For Applicant

Frank Machado

Augustus Castro, Attorney

For Protestants

Louis J. Morganti et al

Andrew Renetzky, Attorney  
Louis J. Morganti  
Milo J. Morganti

For Division of Water Resources

T. R. Simpson, Senior 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 Proposed Development

Application 10279 was filed September 2, 1941 for an appropriation  
of 160 gallons per minute to be diverted from Los Osos Creek from April 1 to  
November 1 of each season for domestic and irrigation purposes at the place  
of use which consists of 40 acres of land within Tract 2 of Lot 32 of the Sub-  
division of Rancho Los Osos east of Los Osos Creek and the  $N\frac{1}{2}$  of the Slack  
Tract west of Los Osos Creek. The point of diversion is within the  $SW\frac{1}{4}$  of the  
 $NE\frac{1}{4}$  of Section 20, T 30 S, R 11 E, M.D.B. & M.

### Protest

Application 10279 was jointly protested by Louis J. Morganti, Milo J. Morganti, Neva E. Maddock and Mary E. Bachino. They base their claim of right to the waters of Los Osos Creek upon riparian ownership and use commenced prior to the effective date of the Water Commission Act. They claim that during the past three years, 80 acres of land were irrigated requiring 500 g.p.m. twelve hours a day continuously through the months of April and May and during the month of June when sufficient water was available. They allege in effect that the creek usually dries up during the month of June and does not flow again in sufficient quantities for irrigation use until the winter months and that if applicant is permitted to divert 160 g.p.m. during the months of May and June of each year it would deprive them of water for domestic and irrigation purposes. Protestants state that the proposed appropriation during the month of April in a year of normal run-off would not affect them but that in a year of less than normal runoff diversion by the applicant would interfere with their prior rights.

### Investigation

Stipulations under Regulation 12B of the "Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings" having been signed by the applicant and protestants and having been approved by this office, an investigation was conducted at the site of the proposed appropriation on May 29, 1942 by an engineer of this office, accompanied by Louis J. Morganti, one of the protestants. Of this investigation applicant and protestants were duly notified and urged to be present.

On May 28, 1942, prior to the investigation, an informal conference was held in the law offices of Nelson and Castro at San Luis Obispo. Those present at the conference were Louis Morganti and Andrew Renetzky, Attorney

at Law, representing the protestants and Augustus Castro, Attorney at Law, representing the applicant. The applicant himself was not present.

Records Relied Upon in Arriving at a Decision

Application 10279 - complete file.

General Discussion

At the time of the field investigation made on May 29, 1942, the only use of water from Los Osos Creek was being made by the protestants who were irrigating 80 acres of riparian land consisting of 40 acres of sugar beets, 20 acres of peas and 20 acres of tomatoes, requiring about 1 cubic foot per second which was approximately the amount of water flowing <sup>in</sup> the stream at that time.

A sand bag dam about 3 feet in height has been placed in the stream bed forming a sump from which protestants pump the water by a plant having a rated capacity of 500 gallons per minute. Water is delivered to the lands by means of 6 inch slip joint casing. The capacity of the pump appeared to be ample to supply the reasonable requirements of the 80 acres of land irrigated by the protestants.

It appeared to be the consensus of opinion that Los Osos Creek, under normal conditions, contained surface flow only during the winter and spring months and for about one month after the close of the rainy season which is about the middle of May and that there was usually a surplus of water in the creek over and above the needs of the protestants up to about the middle of May, and that ordinarily the flow recedes from a surplus in the middle of May to nothing by the middle of June.

Counsels for both applicant and the protestants offered to cooperate in the preparation of an agreement to the effect that the protest would be withdrawn as against pumping by the applicant when the flow of Los

Osos Creek at the proposed point of diversion was in excess of 660 gallons per minute; that when the flow was less than 660 gallons per minute, the water would then be prorated on the basis of the relative riparian requirements of one part to applicant and two parts to protestants by allowing applicant to pump 2 days and 8 hours per week and allowing protestants to pump the remainder of the week during the continuance of the shortage.

Although this proposed agreement was satisfactory to the protestants, applicant is of the opinion that he should be permitted to use the water 3 days and 12 hours out of each week instead of the suggested 2 days and 8 hours upon the basis that he has more irrigable land than protestants.

Apparently no agreement can be reached and therefore action upon Application 10279 should be taken based upon the fact that ordinarily there is little or no water subject to appropriation by the applicant subsequent to May 15 of each season.

It is therefore the opinion of this office that Application 10279 should be approved for an amount of water not to exceed 160 gallons per minute to be diverted from about April 1 to about May 15 of each season and that the privilege of diverting water from about May 15 to about November 1 of each season be denied. Should there be any surplus water during the period from about May 15 to about November 1 applicant would probably be in a position to claim at least a portion of the water by virtue of the fact that his lands are riparian to Los Osos Creek.

ORDER

Application 10279 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, 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 of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10279 be approved for an amount of water not to exceed 160 gallons per minute to be diverted from about April 1 to about May 15 of each season, and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate, and

IT IS FURTHER ORDERED that the diversion throughout the balance of the season applied for be denied.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 7th day of April 1943.

EDWARD HYATT, State Engineer

By Harold Conkling  
Deputy State Engineer

