

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

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In the Matter of Application 10708 of Mildred G. Butler and
Application 10737 of John Chester Spahn to Appropriate
from Linda Creek Tributary to Sacramento River Drainage
in Placer County for Irrigation and Domestic and
Irrigation and Stock Watering Purposes Respectively

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Decision A. 10708, 10737 D. 515

Decided October 4, 1944

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SITE OF THE PROPOSED
APPROPRIATIONS ON AUGUST 24, 1944

For Applicants

Mildred G. Butler (Appl. 10708)
John Chester Spahn (Appl. 10737)

No appearance
In propria persona

For Protestants

Jerry Shelley (Appl. 10708)
Hanisch Estate Co. (Appl. 10708)
Glenn M. Trimble (Appl. 10708)
Mildred Butler (Appl. 10737)

(In propria persona
L.C. Anderson
L.C. Anderson
No appearance
No appearance

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 Projects

Application 10708 was filed by Mildred G. Butler on September 7,
1943. It proposes an appropriation of 0.25 cubic foot per second from Linda

Creek to be diverted throughout the year at a point within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 7, T 10 N, R 7 E, M.D.B.M. for irrigation and domestic purposes on 6 acres of land within Section 7 and 6 acres within Section 18, T 10 N, R 7 E, M.D.B.M. The irrigation season was described as extending from about April 1 to about September 1 of each season.

Application 10737 was filed by John Chester Spahn on December 6, 1943. It proposes an appropriation of 22 acre feet per annum from Linda Creek to be collected to storage between March 1 and April 30 of each season and used for irrigation and stock watering purposes on 6 acres of land in the NW $\frac{1}{4}$ of NW $\frac{1}{2}$, 11 acres in the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and 5 acres in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 17, T 10 N, R 7 E, M.D.B.M. The storage dam is at the point of diversion and is described as being within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 17, T 10 N, R 7 E, M.D.B.M.

Protests

Application 10708 was protested by Jerry Shelley, Hanisch Estate Company and Glenn M. Trimble. These protestants all claim a right to the waters of Linda Creek by virtue of the ownership of lands riparian thereto. Their points of diversion are located from about one-half mile to about one and three quarters of a mile downstream from the applicants proposed point of diversion. They allege in effect that should Application 10708 be approved in the dry seasons the flow of water in Linda Creek would be decreased to such an extent that there would be insufficient water for the watering of their stock. Mr. Trimble also intends to use the water for irrigation purposes and believes that the approval of Application 10708 would result in decreasing the value of his property.

Application 10737 was protested by Mildred G. Butler who also claims riparian rights to the use of water from Linda Creek. She is of the opinion that should Application 10737 be approved it would deprive her of water necessary for the watering of her stock and the irrigation of her lands.

Field Investigation

Stipulations under Regulation 12B of the Rules and Regulations of the Division of Water Resources having been signed by both applicants and all of the protestants and these stipulations having been approved by the Division, an investigation was conducted at the sites of the proposed appropriations on August 25, 1944 by an engineer of this office. Although notices of the proposed investigation were sent to the interested parties, only applicant John Chester Spahn and protestants Jerry Shelley and Hanisch Estate Company, a corporation, were present or represented at the investigation.

In arriving at our decision in these matters reliance is placed upon the entire files in connection with Applications 10708 and 10737.

General Discussion

According to the report of the engineer of this office who investigated the proposed appropriations under Applications 10708 and 10737, all of the protestants are virtually in the same position; their lands are riparian to Linda Creek, their cattle drink from the stream when water is available and at other times from troughs supplied from fairly deep wells off the channel. Natural flow is said to be available as a rule into June. Thereafter until the rainy season sets in, all the flow in the stream is waste water from the system of the North Fork Ditch Company. Mr. Anderson, attorney for protestants Shelley and Hanisch Estate Company, agreed that no rights attached to this waste water by reason of riparian ownership.

At the time of the investigation the creek bed at the Mildred G.

Butler ranch was dry. One half mile above the ranch there was a flow of about 0.05 c.f.s. This flow of waste water during the late summer is apparently intermittent and highly variable in quantity, but at times it is sufficient to justify the approval of Application 10708 for diversion over the summer period. Lower appropriators on the stream rely on the discharge from the Roseville ice plant for their summer supply which no doubt accounts for their apparent lack of interest in the approval of Application 10708.

The natural flow of Linda Creek is apparently ample for all users from the commencement of the rainy season until about May 1. However in May the situation becomes somewhat critical. The natural flow is decreasing but is augmented to some extent by return water from irrigation above, and the burden will be upon the applicants to so regulate their diversions as not to deprive the lower riparian owners of the natural flow of the stream to which they are entitled.

The dam by means of which Mr. Spahn intends to impound water was constructed some years ago and is in operating condition.

It is evident from the appearance of the channel that Linda Creek carries winter and spring floods of considerable magnitude and Mr. Spahn stated that at nearly any time during the storage season the reservoir can be filled within a 24 hour period.

Miss Butler whose point of diversion is about one half mile below the Spahn dam, bases her protest on possible interference during the dry season. Inasmuch as water will be stored by Mr. Spahn during the months of March and April only it is apparent that Miss Butler has no logical ground of protest. In fact the retention of the spring flow for irrigation above will probably result in augmenting her supply because of leakage through the flash boards and return waters from irrigated lands above.

It is the opinion of the Division that there is sufficient unappropriated water in Linda Creek to justify the approval of Applications 10708 and 10737.

ORDER

Applications 10708 and 10737 for permits 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 and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 10708 and 10737 be approved and that permits be granted to the applicants 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 4th day of October 1944.

EDWARD HYATT, State Engineer

By Harold Conkling
Deputy State Engineer

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