

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

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In the Matter of Application 11155 of M. S. Preston to
Appropriate Water from De Long Creek, Tributary
to East Fork Chowchilla River in Mariposa
County for Irrigation Purposes.

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Decision A. 11155 D. 539

Decided October 18, 1946

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APPEARANCES AT INVESTIGATION CONDUCTED BY THE DIVISION OF
WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION
ON AUGUST 6, 1946.

For Applicant

M. S. Preston

In propria persona

For Protestant

C. E. Mauk

No appearance.

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer for Gordon Zander,
Principal Hydraulic Engineer, Division of Water Resources, Department of
Public Works, State of California.

O P I N I O N

General Description of Project

Application 11155 was filed with the Division of Water Resources by
M. S. Preston on September 17, 1945. It proposes an appropriation from De Long
Creek of 0.5 cubic foot per second to be directly diverted from the stream from
May 1 to November 1 of each season and 40 acre feet per annum to be diverted
from De Long Creek from November 1 to April 1 to storage in the Lush Meadows

Ranch Storage Reservoir located on De Long Creek and having a capacity of 40 acre feet. It is proposed to use the water for the irrigation of 20 acres within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and 40 acres in SW $\frac{1}{4}$ of Sec. 18 and 40 acres within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 19, T. 5 S., R. 20 E., M.D.B. & M.

As the storage feature of the application was not protested and applicant wished to construct the reservoir and put it into operation this fall, Permit 6502 was issued in approval of that portion of Application 11155 relating to storage only. The direct diversion feature of Application 11155 having been protested, action thereon was withheld pending further order of the State Engineer.

Protest

C. E. Mauk bases his claim of right to appropriate water from a Branch of De Long Creek, on Application 10688 which stands upon the records of this office in the names of C. E. Mauk and J. B. Nelson. Application 10688 was filed on July 29, 1943 and was approved on September 27, 1943 for an amount of water not to exceed 0.15 cubic foot per second to be diverted from a Branch of De Long Creek from about April 1 to about November 1 of each season for the irrigation of 10 acres within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 19, T. 5 S., R. 20 E., M.D.B. & M. The point of diversion is described as being within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 19, T. 5 S., R. 20 E., M.D.B. & M.

Mr. Mauk directs attention to the fact that his source of appropriation is De Long Creek and not a "Branch of De Long Creek" as indicated in Application 10688; and alleges in effect that should Application 11155 be approved, it would deprive him of water to which he is entitled during the period from May 1 to November 1. He states that if the proposed diversion were limited to the period from November 1 to April 1 when there was ample water in the creek his protest might be disregarded and dismissed. As the season of diversion to storage extended from November 1 to April 1, it was considered that his protest applied to the direct diversion feature of the application only and as stated

above the storage feature has been approved.

Field Investigation

Stipulations to an informal hearing under Regulation 12B (now Section 733(b)) of the Rules and Regulations of the Division of Water Resources having been signed by applicant and the protestant, and having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on August 6, 1946. Accompanying our engineer were the applicant and his foreman. Although Mr. Mauk was notified of the proposed investigation, he was neither present nor represented.

Record Relied Upon in Arriving at Decision

In arriving at a decision in the matter, reliance is placed upon the entire files on Applications 10688 and 11155, but particularly upon the report of Mr. Kibbey who conducted the field investigation.

General Discussion

The applicant's proposed point of diversion is approximately three-fourths of a mile upstream from protestant's point of diversion, which is also on the main channel of De Long Creek, instead of on a branch of De Long Creek as indicated in Application 10688. This error in the source of appropriation is quite understandable, however, as the U.S.G.S. Mariposa Quadrangle which was apparently used as the basis of the map filed in support of Application 10688 shows a branch of De Long Creek in the locality of the proposed diversion. At the investigation, Mr. Preston's foreman stated that he had been over the area involved and that undoubtedly Mr. Mauk's property lies along the main stream as there is no tributary in the vicinity from which he could have intended to divert. The erroneous description of his source of appropriation does not disqualify either the application or the protest of Mr. Mauk. The source of proposed diversion in Application 10688 may be corrected by an order issued by this office.

The place of use described in Application 10688 is 10 acres within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 19, T. 5 S., R. 20 E., M.D.B. & M. Just prior to the approval of the application this 40 acre subdivision of the U.S. Government Survey was owned jointly by C. E. Mauk and J. B. Nelson, each having an undivided half interest. According to a letter addressed to this office by Mr. Mauk under date of August 25, 1943, it was understood between Mr. Nelson and himself that in the event that they decided to divide the property into two 20 acre tracts, each would have the privilege of irrigating 5 acres.

According to the 1944 progress report submitted by Mr. Mauk in connection with Application 10688, the 40 acre tract has been divided, the east half on which the point of diversion is located having been retained by Mr. Mauk and the west half having been assigned to Mr. Nelson with a right of way for a pipe line across the 20 acre tract of Mr. Mauk to the point of diversion.

All correspondence in connection with Application 10688 since the division of the property has been addressed to Mr. Mauk although a copy of the notice relative to Application 11155 was sent to C. E. Mauk and J. B. Nelson in care of C. E. Mauk. It appears that either Mr. Nelson has not been informed of the proposed appropriation under Application 11155 or having seen it was not interested enough to file a protest, as the protest submitted is in the name of C. E. Mauk only. According to Mr. Mauk, Mr. Nelson has no plans for the use of the water and has been endeavoring to dispose of the property.

It appears from the 1944 progress report referred to above that Mr. Mauk has been endeavoring to get someone to construct a storage reservoir on the hillside above his house, but due to the scarcity of labor the reservoir which he considers essential to his proposed development has not been constructed.

Furthermore, his attention was directed to the fact that Application 10688 was approved for direct diversion only and that if seasonal storage is necessary the only way in which an appropriative right for such storage could be initiated is by filing an application with this office. On February 21, 1946 application forms were forwarded to Mr. Mauk, but as yet no filing for storage has been made by him.

The progress report indicates that the concrete intake and pump house have been constructed and that a centrifugal pump and pipe line to the storage reservoir site has been installed on the property of Mr. Mauk. This was confirmed by our engineer at the time of the investigation. No beneficial use of water has been made under this filing.

At the time of the field investigation there was no surface flow in De Long Creek at applicant's proposed point of diversion, although there were several pools of water in the streambed. According to Mr. Preston's foreman, the surface flow had ceased sometime between June 1 and June 15 of this year but that normally there is a substantial flow of water up to about July 1.

There is a tributary about one-half mile in length entering De Long Creek from the west about 1/4 mile above the Mauk pump which tributary is fed by a spring and it appears likely that there is some late spring flow which reaches the Mauk pump which is not available at the proposed point of diversion of the applicant.

At the time of the investigation a Mrs. Wolfe, who has lived on a flat along the creek near Mr. Mauk's property for many years and irrigates about an acre of land from a well a short distance from the creek, informed our engineer that in normal years there is ample flow to supply a pump such as that installed by Mr. Mauk up to July 1 and at times up to August 1. Also in the progress report filed by Mr. Mauk in connection with Application 10688 the following statement appears:

"Stream went dry about Aug. 1st as usual this year. Cannot operate till Reservoir is built so that it can be filled during period December 1 to about August 1 which is the time there is water flowing in stream."

It would appear therefore that in normal years of precipitation and runoff there is sufficient water in De Long Creek to justify the approval of the direct diversion feature of Application 11155 during the period from about May 1 to about July 1 of each season. Mr. Preston agreed to respect the prior rights below should the season of diversion be granted.

It is the opinion of the Division that the direct diversion feature of Application 11155 should be approved for an amount of water not to exceed 0.5 cubic foot per second to be diverted from about May 1 to about July 1 of each season and that the proposed diversion from about July 1 to about November 1 of each season be denied.

ORDER

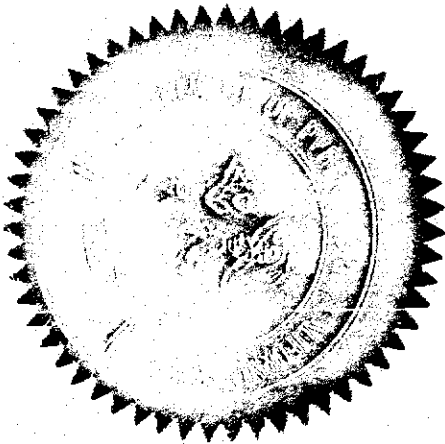
Application 11155 for a permit to appropriate water having been filed with the Division of Water Resources, as above stated, a protest having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Section 733(b) of the Rules and Regulations of the Division, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that the direct diversion feature of Application 11155 be approved for an amount of water not to exceed 0.5 cubic foot per second to be diverted from about May 1 to about July 1 of each season and that Permit 6502 heretofore issued in approval of the storage feature of Application 11155 be amended to include this direct diversion subject to the usual terms and conditions, and

IT IS FURTHER ORDERED that the direct 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 18th day of October, 1946.


Edward Hyatt, State Engineer



WES:JM