

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

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In the Matter of Application 11607 of J. W. Wolfenden
to Appropriate Water from an Unnamed Stream
Tributary to Tulocay Creek in Napa
County for Domestic and
Irrigation Purposes.

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Decision A. 11607 D. 565
Decided *December 15, 1947*

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APPEARANCES AT INVESTIGATION CONDUCTED ON

MAY 13, 1947, UNDER THE PROVISIONS OF

ARTICLE 13, SECTION 733(b) OF

THE CALIFORNIA ADMINISTRATIVE CODE

(See next page)

For Applicant

J. W. Wolfenden

In propria persona

For Protestants

James F. Fitch, Jr.	In propria persona
M. Brazil	" " "
Olin D. Roats	" " "
T. C. Smith	" " "
Henry J. Schultheiss	James F. Fitch, Jr.
Peter V. Traves	" " "
Delbert Castle	" " "
Harry K. Lowery	" " "
W. B. Rowan	" " "
Emil Grassmann	" " "
Marguerite Golds	" " "
H. J. Schmahl	" " "
Trygve Lundberg	" " "
Leland S. Curtis	" " "
Paul Lewis	" " "
H. C. Blessing	" " "
Bert L. Garrison	" " "
George Ambruster	" " "
Robert P. Kroman	" " "
Mrs. Sam Reis	" " "
Mrs. Harvey A. Trissel	" " "
R. P. Frisby	" " "
Edgar R. Landen	" " "
N. L. Frisby	" " "
N. W. Warren	" " "
Mildred S. Denny	" " "

For Division of Water Resources

S. C. Whipple, Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works, State of California, for Edward Hyatt, State Engineer.

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OPINION

General Description of Project

The application was filed with the Division of Water Resources by Mr. J. W. Wolfenden on November 6, 1946, It involves an appropriation of

0.2 cubic feet per second from January 1 to December 31 of each year, from an unnamed tributary to Tulocay Creek, for domestic and irrigation purposes. The application contemplated a domestic supply for his household and livestock and an irrigation supply for 10.9 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and 18.5 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T. 5 N., R. 3 W., M.D.B. and M. The project is already in operation but irrigation has not yet expanded to the extent proposed.

Protests

Twenty-six individuals united in filing a single protest. Their objections are based primarily on an alleged insufficiency of summer flow. They believe that any increase in quantities diverted above them will cause their stream to go dry sooner and remain dry longer; and also cause recession of the water table upon which they depend when the surface flow fails. Their lands are in general riparian and their use domestic, stock watering and small-scale gardening. They regard as "extraordinary" the applicant's proposal to divert to allegedly non-riparian land for relatively extensive irrigation. Several of the signers of the protest are primarily home owners. These consider their brook a major asset from the standpoint of home ownership and object to its exploitation for profit, although they recognize and concede the applicant's privilege of drawing water for domestic purposes on that portion of his land which is riparian.

Field Investigation

Stipulations to an informal hearing under the provisions of Article 13, Section 733(b) of the California Administrative Code having been entered into by both the applicant and the protestants and the stipulation 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 May 13, 1947.

Records Relied Upon

Application 11607 and all data and information on file therewith.

Discussion

According to the report of the investigation made on May 13, 1947, estimates of flow on that date were as follows:

At proposed point of diversion	200	g.p.m.
Opposite proposed place of use	85	"
On protestant Fitch's property	100	"
Below lowest protestant	150	"

As to the probable flow during the summer months in the reach from which the protestants derive this supply, residents stated that the flow diminishes considerably during June, becomes almost nothing in July and improves but slightly during August. The applicant does not deny that this statement applies to the valley floor, but asserts that the flow in the canyon where his conduit heads is abundant and well sustained. It is his view that shortage on the valley floor results from percolation and from evapotranspiration; and will occur whether he diverts the quantity he applies for or not.

Whereas the application provided for the diversion of 0.2 cubic foot per second (90 gallons per minute) to irrigate 29.4 acres, the applicant stated during the investigation that he now intends to irrigate 10.5 acres only and considers that 66 gallons per minute for 12 hours per day, which is equivalent to a continuous flow of 33 gallons per minute, will suffice. This statement, some what modified as to amount, was confirmed by letter dated September 2, 1947, requesting amendment of the application by reduction of the amount applied for to 0.13 cubic foot per second (equivalent to 58 gallons per minute) and by reduction of the area to be irrigated from 29.4 to 10.5 acres; and the application was so amended.

The 10.5 acres now proposed to be irrigated seems once to have been

riparian but to have lost its riparian status, by severance. This tract is reported to be quite sharply sloping; the soil of good quality, but shallow; and planted to selected grasses, except 2.5 acres which are in alfalfa, trees and vegetables and already under irrigation. The applicant's building group, for which a domestic supply is sought, lies within the 18.5 acre tract which he has given up the idea of irrigating. This tract, superficially, appears to be riparian but a part of it may lie outside of the watershed. The livestock which it is intended to water include 1000 chickens, 4 to 10 horses and 35 dogs, the quadrupeds being for the most part veterinary patients.

The report also indicates that the protestants' lands are in general riparian and disposed along a $1\frac{1}{2}$ mile reach extending downstream from the applicant's property; that total present use by all signers of the protest has approximated 44 gallons per minute; and that diversions are generally effected by pumping from sumps and shallow wells either in the stream channel or close thereto.

Of the 26 signers of the protest 4 allege only the intention to use in future, 3 appear to object on behalf of other signers, not being themselves affected and 6 are not entirely dependent on "Unnamed Stream", being located below its mouth, on Tulocay Creek. These last 6 users are estimated to consume in all 13 gallons per minute or about 30% of the total diverted from the reach under consideration. Tulocay Creek is said to hold up well during June, to drop sharply during hot spells and, frequently to fail completely in July.

From the information above adduced it is concluded that of the 9 months during which the applicant proposes to irrigate (March 15 to December 15) a surplus, surface flow usually exists except from mid-June until Mid-September; and that during the excepted summer period the surface flow diminishes or fails completely, necessitating dependence upon underflow, which supply thus far has been available.

Admittedly, additional upstream diversions will tend to increase pumping costs which lower users have to meet during the low water months. The

amount of such increase attributable to the diversion proposed by this applicant is not closely predictable but information at hand does not indicate that it will be excessive. In this connection it has become the well established policy of the Division that protestants have no right to insist upon maintenance of water level for the sole purpose of facilitating pumping but must yield to the public policy and welfare declared in Section 100 of the State Water Code.

The uses to which this applicant proposes to put the waters sought are beneficial ones. No bar is apparent to the approval of the application, which, in our opinion should be approved, subject to the usual terms and conditions.

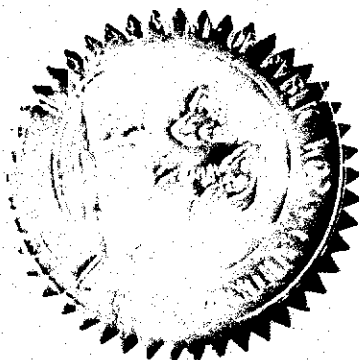
ORDER

Application 11607 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 having been made, a stipulated hearing having been held in accordance with Article 13, Section 733b of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11607 be approved and that a permit be issued to the applicant 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 15 day of Dec., 1947.


State Engineer



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