

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

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In the matter of Application 11568 of Mrs. H. M. Miller, Application 11711 of Ralph B. and May F. Smith and Application 11911 of Verda V. Neeld to appropriate from an unnamed spring tributary to the West Fork of Carson River in Alpine County for Domestic uses and in the case of Application 11711 also for Fire Protection purposes.

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Decision A. 11568 - 11711 - 11911, D. 579

Decided *March 11, 1948*

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Appearances at Field Investigation conducted on August 16, 1947, under the provisions of Article 13, Section 733b of the California Administrative Code.

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For the Applicants

Mrs. H. M. Miller

In propria persona

G. F. Grifford

Ralph B. and Mary F. Smith

Roy P. Neeld

Verda V. Neeld

In propria persona

For the Protestants

H. F. Dangberg Land & Livestock Co.

No appearance

Fred H. Dressler, et al.

No appearance

For the State Engineer

A. S. Wheeler, Assistant Hydraulic Engineer, Division of Water Resources, Department of Public Works, State of California

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OPINION

Applications 11568, 11711 and 11911 having been filed and protests against approval thereof having been received and applicants and protestants having agreed, by signed stipulations, to submit the

matter for decision as provided by Article 13, Section 733b of the California Administrative Code it was regularly set for a field investigation of which applicants and protestants were duly notified.

#### APPLICANTS' PROPOSED PROJECT

The three applications involved each propose diversion of 200 gallons per day, total 600 gallons per day, at a common point to be conveyed to the respective places of use through the same pipe line.

The places of use are lots purchased by applicants within a private subdivision upon which cabins have already been built and the proposed use is for domestic purposes and the irrigation of small lawns and/or gardens and in the case of Application 11711 fire protection is also proposed.

#### PROTESTS

All three of these applications were protested by H. F. Dangberg Land and Livestock Company, a corporation, and Application 11568 was also protested by Fred H. Dressler, et al. Protestants claim riparian and appropriative rights as set forth in the decree entered in the West Fork of Carson River Adjudication Proceedings and further claim that the waters covered by such rights are used for extensive stockwatering purposes and the irrigation of several thousand acres of land located in both California and Nevada.

Protestants contend that there is insufficient water available in the West Fork of Carson River to irrigate the lands which are entitled to be irrigated by them and to provide stock water, that during each year there is a shortage of water during the months of July to October, inclusive, and that there never is sufficient water to supply the vested rights on the river.

Protestants also contend that, although the amounts sought by the applicants are small, approval of the applications will set a precedent for such diversions which, when accumulated, would seriously effect the water supply in the river and result in injury to protestants.

Protestants also contend that applicants do not own the lands named as the places of use and have no permission to use water thereon.

#### FIELD INVESTIGATION

In accordance with the report of the investigation the source under Applications 11568, 11711 and 11911 is one of the outcroppings of water within a rather extensive cienaga on the hillside above the West Fork of Carson River and bordering on the river and that the normal maximum yield of the cienaga is about 20,000 gallons per day and the minimum normal yield about 15,000 gallons per day.

It also appears from the report that development work done by the applicants at the outcropping filed on has resulted in a measured yield of over 10,000 gallons per day during the low flow period and that it is claimed by applicants that such development has increased the flow to the river from the cienaga.

It further appears from the report that protestants' California lands and diversions are upstream from the source filed on by the applicants and that the protestants' Nevada lands are some 20 miles down stream from the cienaga.

The report also states that some return flow may probably be expected from the use proposed to be made by the applicants, that the total of all filings on the cienaga is but 840 gallons per day and that the ultimate requirements for the sub-division are estimated to be 2,000 gallons per day.

### RECORDS RELIED UPON

All data and information filed in connection with Applications 10480, 10644, 11168, 11568, 11711 and 11911.

The decree entered in the West Fork of Carson River Adjudication.

### DISCUSSION

The information submitted clearly shows that protestants' California lands are upstream from the point at which the waters of the cienaga reach the West Fork of Carson River and that such lands are in no wise dependent upon the waters of the cienaga for a water supply and accordingly the protests need no longer be considered insofar as such lands are concerned.

The protestants mainly object to any use by applicants during the low flow period in the West Fork of Carson River which, it is claimed by them, is from July to October, inclusive, during which period it appears, from the information available, the normal flow from the cienaga to the river is about 15,000 gallons per day.

Protestants' Nevada lands are located within Carson Valley some twenty miles downstream from the points at which water from the cienaga enters the river.

Assuming that the entire flow from the cienaga, approximately 15,000 gallons per day, enters the river during such low flow period, it is highly probable that little, if any, of it would ever reach the lands of protestants due to natural, unavoidable transporation losses through twenty miles of stream channel. It accordingly appears that if applicants used the entire flow it would have little or no effect upon the supply of water available to protestants and if so, it would not be

appreciable or measurable and accordingly the use of the 600 gallons per day sought by applicants, which is but a small fraction of the total flow, would have little or no effect upon protestant's supply. Furthermore, between July 1 and October 1, which is the period of deficiency alleged by protestants, on alternate weeks the entire flow of the river, originating in California, is allotted to and used by California water right owners in accordance with the decree entered in the West Fork of Carson River Adjudication proceedings. In those weeks, therefore, if all the flow was used by applicants it would have no effect on protestants since protestants, under the decree, would not receive any water originating in California during such weeks. In the alternate Nevada weeks the flow of the river is usually supplemented by large quantities of water released from the storage reservoirs owned and operated by the Nevada water right owners for irrigation of their Nevada lands, including those of the protestants. Therefore, during the remaining one-half of the deficiency period injury, if any, to protestants would be highly theoretical, entirely indeterminate and negligible even though the entire flow of the cienaga was diverted and protestants would suffer no measurable injury during the entire deficiency period by the diversion of such a small quantity as 600 gallons per day by the applicants.

The protestants contend that approval of these applications will "open the door" to other and similar applications on the cienaga and that the cumulative total of such applications would have a serious effect on the supply of water available in the river. The total of all applications, both approved and pending, on the cienaga at the time of the investigation was but 840 gallons per day and the report of the

investigation states the estimated ultimate total to be 2,000 gallons per day. Since it appears that if present and future applicants used all of the low flow from the cienaga it would have no appreciable or measurable effect upon protestant's supply, the contention appears to be without foundation.

Contrary to protestants' other contention, the applicants are the owners of the lands described in the applications as the place of use.

#### SUMMARY AND CONCLUSION

Although it appears highly improbable, though not without the realms of possibility that a portion of the small amount sought to be appropriated by the applicants, if not diverted, might at times eventually reach the Nevada lands of protestants in spite of transportation losses in twenty miles of stream channel, yet the beneficial use on these lands, if any, will be so small and inconsequential as compared with the much greater benefit which will be derived from the local use of the water that to deny approval of these applications based upon speculative injury which might possibly result therefrom would not best conserve the public interest. In view of the lack of positive evidence that injury will result to protestants and that they would be deprived of sufficient water for irrigation and stockwatering purposes on their Nevada lands, it is the opinion of the State Engineer that Applications 11568, 11711 and 11911 should be approved subject to the usual terms and conditions.

#### ORDER

Applications 11568, 11711 and 11911 for permits 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 California Administrative Code and the

State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 11568, 11711 and 11911 be approved for the amounts and seasons of use applied for and that permits be issued 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 *11th* day of *March* 1948.

  
Edward Hyatt, State Engineer

