

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

oOo

In the Matter of Application 10875 of C. F. Seabury to Appropriate Water from an Unnamed Stream, tributary to North Fork of Mokelumne River in Calaveras County for Domestic, Mining, Power and Irrigation Purposes.

oOo

Decision A. 10875 D. 590

Decided December 10, 1948

oOo

APPEARANCES AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION, ON AUGUST 19, 1947.

For the Applicant

C. F. Seabury

In person

For the Protestant

Martin J. Fischer

In person

For the State Engineer

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

Also in attendance were the protestant's son and Mr. Ernest Bernasconi, an interested party.

oOo

OPINION

GENERAL DESCRIPTION OF THE PROJECT

The application was filed with the Division of Water Resources by C. F. Seabury on September 6, 1944. It contemplates a diversion of 1 cubic foot

per second, by gravity, year-round from an unnamed stream tributary to the North Fork of Mokelumne River, for domestic, mining, power and irrigation purposes. The point of diversion is described as lying within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T 7 N, R 13 E, M.D.B. & M. The water is to be conveyed through a small earth ditch 1000 feet long to the place of use which is a mining claim located within the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 25, T 7 N, R 13 E. Both the land to be irrigated - 5 acres in extent - and the power house are to be located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of the Section named. The capacity of the proposed plant is given as 11.36 theoretical horse power. The mining use for which water is wanted is given as the milling of quartz. According to the application the water used for mining as well as that used for power generation will be returned, unpolluted, to the same unnamed stream, at a point in the same quarter quarter section.

PROTESTS

Martin J. Fischer protests that the proposed diversion which will be upstream from his own, will deprive him of the use of water to which he is entitled. He asserts ownership of certain lands lying within Sections 26 and 35 of T 7 N, R 13 E, M.D.B. & M. and of ^awater right appurtenant thereto. This right, he claims, entitles him to divert up to 1 cubic foot per second from Skull Flat Gulch. Under this right he states that he and his predecessors in interest have diverted waters of the stream named and applied them beneficially, for domestic purposes and irrigation, for upward of 60 years.

Ernest Bernasconi submitted no formal protest but appeared at the field investigation as an informal protestant. It appears that he has recently purchased property locally called "the Barnhart Place" which lies along Skull Flat Gulch between the properties owned by Applicant Seabury and Protestant Fischer. Mr. Bernasconi is building a dwelling thereon and contemplates domestic use of water including lawn and garden irrigation. He was of the opinion that the property had lost all

rights to the use of water from the stream, other than riparian, due to extended non-use. He was undecided as to whether to supply his needs by pumping from the stream or by sinking and pumping from a well.

Field Investigation

The applicant and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, a field investigation was conducted at the site of the proposed appropriation on August 19, 1947 by an engineer of the Division. Both the applicant and the protestant were present during the investigation.

Records Relied Upon

Application 10875 and all data and information on file therewith.

DISCUSSION

From the investigation it developed that the source named in the application and the Skull Flat Gulch mentioned in the protest are one and the same stream, which is also sometimes known as Spruce Creek.

The investigation discloses that on the date thereof, which was in the dry season of a dry year, a small flow existed which the applicant might have used without detriment to the protestant, since it never reached the latter, on account of dissipation en route. The amount, however, which was 0.05 cubic foot per second (perhaps one-half of normal, in the opinion of the parties), was insufficient for the purposes stated in the application, except domestic purposes. During times of somewhat greater flow, sufficiently great to offset channel losses and thus reach the protestant, the latter may justifiably claim a portion thereof as a riparian owner, as also may Mr. Bernasconi and/or other riparian owners; and he may exercise the appropriative right alleged in his protest up to an amount commensurate with the acreage irrigated in recent years; but surpluses beyond the aggregate of presently vested rights may also at times exist.

As to the flow which may occur at the applicant's point of diversion, a rough indication is afforded by the 18 year record of flow of Mokelumne River below Salt Springs Dam, mentioned in U.S.G.S. Water Supply Paper 1041. The drainage area tributary to this gaging station is 160 square miles in extent and includes the one square mile of watershed tributary to the proposed point of diversion. Recorded discharges at the Salt Springs Dam station have varied from little more than zero to a maximum of 8740 second feet, or 54.6 second feet per square mile of tributary watershed. Average discharge for the same period has been 439 second feet or 2.74 second feet per square mile. Distribution of natural runoff is not apparent from the published record because of the regulating effect of the dam, but it is a matter of general knowledge that streams such as that under consideration are low in summer and fall, and it was agreed in a discussion of the matter during the investigation of August 19, 1947 that the period of critically low flow on the stream in question extends from June to September, inclusive.

From the limited information available it is concluded that surpluses occur at times in the stream under consideration, that when such surpluses occur beneficial usage of water can be made by Applicant Seabury, that of the uses proposed in the application those for mining and power purposes, being non-consumptive, will not injure any lower user, and that insofar as domestic and irrigation and domestic uses are proposed the protestant is sufficiently protected by the normal wording of a permit in which approval is invariably contingent upon the observance of existing rights. The protest is accordingly dismissed and in view of the probable occurrence of surpluses which may be used advantageously by the applicant without injury to other water users, the application should be approved and permit issued subject to the usual terms and conditions.

ORDER

Application 10875 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10875 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 9th day of November, 1948.


Edward Hyatt, State Engineer

