

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

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In the Matter of Application 11092 of Edson L. Foulke, Jr. to Appropriate Water from Willow Creek and Kiernan Slough, Tributaries of Shasta River in Siskiyou County for Irrigation Purposes.

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Decision A. 11092 D. 596

Decided February 17, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES NEAR THE SITE OF THE PROPOSED APPROPRIATION ON SEPTEMBER 30, 1947:

✓ Edson L. Foulke, Jr.
Floyd Merrill
✓ Dana H. McCargar
Fred W. Burton
P. E. Stephenson

Applicant
Attorney for Protestant Richman
Protestant
Attorney for Protestant McCargar
Associate Hydraulic Engineer,
Division of Water Resources,
Department of Public Works,
for the State Engineer

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OPINION

General Description of the Project

The application, filed June 29, 1945, contemplates a diversion of 308 acre-feet per annum from either Willow Creek or Kiernan Slough, or from both of those streams, which are tributaries of Shasta River. The proposed points of diversion lie within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35 respectively of T 43 N, R 6 W, MDB & M; and water is to be collected between November 1 and May 1, stored in Edson-Foulke reservoir which lies within Sections 35 and 36 of the township named and used to irrigate 85 acres of general crops and 370.5

acres of pasture, the place of use lying within Sections 24, 25, 26, 35 and 36 of the same T 43 N, R 6 W, and the irrigation season extending from about March 1 to about September 15.

Protests

Dana H. and Ida A. McCargar protested on April 30, 1946, contending that the proposed appropriation would deprive them of water necessary for the irrigation of their lands. They claim rights originating in 1889 or earlier under which they have irrigated 991.1 acres from Willow Creek and 341.2 acres from McCloud Slough, a tributary thereto. This protest was withdrawn subsequent to the field investigation of September 30, 1947, by letter dated March 15, 1948, from Mr. Fred W. Burton, Protestant McCargar's attorney.

C. S. Timmons protested on May 2, 1946, asserting both riparian rights and old appropriative rights to use late fall, winter and early spring water, which rights, he contends would be interfered with and disrupted by the proposed appropriation. This protest was withdrawn by letter from Protestant Timmons, dated May 30, 1946.

R. E. Richman and his partners, Fred Rehling and O. L. Brown, protested on May 2, 1946, asserting both appropriative and riparian rights, and rights defined in the Shasta River adjudication proceedings, which rights, they contend, would be interfered with by the proposed appropriation. Subsequent to the field investigation of September 30, 1947, Protestant Richman, by letter dated October 1, 1948 stated that the partnership with Messrs. Rehling and Brown has been dissolved, that he is now the sole owner of the property on which the protest was based, that he no longer objects to the approval of Application 11092 and that he wishes to withdraw his protest. In accordance with Mr. Richman's letter, the protest signed by him and his ex-partners, is considered withdrawn.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing under the provisions of Section 733(b) of the California Administrative Code, a field investigation was conducted on the applicant's property, near the site of the proposed appropriation, on September 30, 1947, by an engineer of the Division. The applicant and the protestants were present or represented during the investigation except that C. S. Timmons, whose protest had been withdrawn, did not appear.

Records Relied Upon

Application 11092 and all data and information on file therewith.

Discussion

From the investigation on September 30, 1947 it developed that numerous diversion structures, canals and laterals have been constructed recently on the protestants' lands for the utilization of Willow Creek waters during the winter months; and that the effect of such development on the surplus flow normally available during storm periods is unknown inasmuch as precipitation and resultant runoff of recent years have been subnormal. To enable the parties to collect and present additional data of the nature mentioned the investigation was discontinued with a view to its resumption at a later time. Complete data on the flows of and the use of water from the sources named in the application are on file in the office of the Division in connection with the Shasta River Adjudication proceeding. The decree in that proceeding, In Re Shasta River, Superior Court, Siskiyou County, No. 7035, sets forth the appropriative rights in and to the use of the waters from the sources involved. Subsequent to the initial investigation the Richman et al. protest and the McCargar protest were both withdrawn and, the Timmons protest having been withdrawn previously thereto, it was considered unnecessary to carry the field investigation further.

Inasmuch as all protests against Application 11092 have been withdrawn

and the data indicate that there is unappropriated water in the sources named therein, Application 11092 should be approved and permit issued subject to the usual terms and conditions.

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ORDER

Application 11092 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 11092 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 17th day of February, 1949.


Edward Hyatt, State Engineer

