

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 Applications 11575, 11576, 11609 and 11610 of J. R. Barron and Application 11646 of Carrie F. Stone, Alice B. Walker and John T. Bath to appropriate from Ash Creek and its headwaters tributary to Pit River in Lassen County for Irrigation, Domestic and Stockwatering purposes.

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Decision: A. 11575, 11576, 11609, 11610 and 11646 D. 598

Decided: March 10, 1949

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Appearances at the Conference Conducted by the Division of Water Resources at Bieber, Lassen County, California, on November 17, 1948:

J. R. Barron	Applicant (Appls. 11575, 11576, 11609 and 11610) Protestant (Appl. 11646)
Mr. Anderson	Attorney for J. R. Barron
Carrie F. Stone	Applicant (Appl. 11646)
Alice B. Walker	Applicant (Appl. 11646)
John T. Bath	Applicant (Appl. 11646)
Donald P. Cady	Attorney for Carrie F. Stone, Alice B. Walker, and John T. Bath
George N. Hunt	Representing W. H. Hunt Estate Company, protestant (Appls. 11609, 11610 and 11646)
Orr M. Chenoweth	Attorney for W. H. Hunt Estate Co.
J. P. Miller	Representing J. P. and Clara Miller protestants (Appls. 11609 and 11610)

Kaspar Weigand

Representing Kaspar and Etta Weigand
protestants (Appl. 11575)

Harrison Smitherum

Supervising Hydraulic Engineer, Division
of Water Resources, Dept. of Public Works,
State of California, representing the
State Engineer.

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O P I N I O N

General Description of Project

Under Application 11575 of J. R. Barron filed on October 3, 1946, it is proposed to appropriate 200 acre-feet per annum from Ash Creek to be diverted from November 1 of each year to April 1 of the succeeding year within SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T 37 N, R 11 E, MDB&M, for irrigation and domestic purposes.

Under Application 11576 of J. R. Barron filed on October 3, 1946, it is proposed to appropriate 200 acre-feet per annum from an unnamed stream tributary to Ash Creek to be diverted from November 1 of each year to April 1 of the succeeding year within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T 37 N, R 11 E, MDB&M, for irrigation and domestic purposes.

Under Application 11609 of J. R. Barron filed on November 7, 1946, it is proposed to appropriate 475 acre-feet per annum from an unnamed stream tributary to Ash Creek to be diverted from November 1 of each year to April 1 of the succeeding year within SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T 37 N, R 11 E, MDB&M for irrigation and stockwatering purposes.

Under Application 11610 of J. R. Barron filed on November 7, 1946, it is proposed to appropriate 1000 acre-feet per annum from Ash Creek to be diverted from November 1 of each year to April 1 of the succeeding year within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T 37 N, R 11 E, MDB&M for irrigation and stockwatering purposes.

Under Application 11646 of Carrie F. Stone, Alice B. Walker, and John T. Bath filed on December 4, 1946, it is proposed to appropriate 750 acre-feet per annum from Holbrook Canyon Stream to be diverted from November 1 of each year to April 1 of the succeeding year within SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T 38 N, R 12 E, MDB&M for irrigation and stockwatering purposes.

Protests

Application 11575 of J. R. Barron was protested by Kaspar and Etta Weigand who claim prior riparian rights to the waters of Ash Creek. Protestants further claim that there is hardly sufficient water available for present needs and state that their protest may be dismissed if applicant can show that his project will not damage them.

Application 11576 of J. R. Barron was not protested.

Applications 11609 and 11610 of J. R. Barron were protested by W. H. Hunt Estate Company and J. P. and Clara Miller. W. H. Hunt Estate Company claims a riparian right to the waters of Ash Creek and further claims that the waters sought are used for spring flooding and irrigation. This protestant states that its protest may be dismissed only if the season of diversion named is reduced so that all storage sought will cease after March 1 of each year.

J. P. and Clara Miller also claim a riparian right to the waters of Ash Creek, that there is insufficient water available in Ash Creek at the present time, and that if further diversion be allowed as proposed it will deprive them of water needed for their use.

J. R. Barron answers these protests by stating that the water he seeks to divert is unappropriated water and that diversion as proposed will not deprive lower users of water to which they are entitled. He also states that the season of diversion cannot be reduced since runoff does not occur until the month of March in any appreciable amount.

Application 11646 was protested by J. R. Barron and the W. H. Hunt Estate Company. J. R. Barron claims a right to use of water from the source named based upon riparian right and prior appropriation. He also claims there is insufficient water available for the applicants and his needs. He states, however, that his protest may be dismissed if he is allowed to divert water to the extent of his rights, before diversion is made by others.

W. H. Hunt Estate Company claims a riparian right to the waters of Ash Creek. It further claims that the waters sought are used for spring flooding and irrigation and asserts that its protest may be dismissed only if the season of storage is reduced so that all collection of water will cease after March 1 of each year.

Carrie F. Stone, et al. answer the protest of J. R. Barron by asserting that the waters of Holbrook Canyon have never been used for irrigation purposes on protestant's land. They further assert that there are other tributaries contributing to the flow of Holbrook Canyon Creek between their point of diversion and protestant's point of diversion which will in no way be affected by the proposed diversion.

Carrie F. Stone, et al. answer the protest of the W. H. Hunt Estate Company by stating that protestant is located 25 miles below the proposed point of diversion and therefore the effect of the proposed diversion will be negligible. They further state that their storage season can not be reduced to March 1 since very little runoff occurs prior to that time.

Conference

Stipulations to an informal hearing under provisions of Article 13, Section 733(b) of the California Administrative Code having been entered into by both the applicants and protestants, and the stipulations having been approved

by the State Engineer, a conference of the interested parties and an engineer of the Division was held at Bieber on November 19, 1948.

Records Relied Upon

Applications 11575, 11576, 11609, 11610 and 11646 and all data and information on file therewith, and all information on file in connection with the Ash Creek Reference (Gerig v. C. W. Clarke Co. et al., Superior Court, Modoc County, No. 3670).

Discussion

As a result of the conference it was agreed that the protests would be withdrawn against the approval of the applications provided that the applicants would agree to amend the storage feature of the applications by reducing the season of diversion to the period from about November 1 of each year to about March 15 of the succeeding year. The applicants authorized the reduced season of diversion to storage and all protests were unconditionally withdrawn except that of J. R. Barron against the approval of Application 11646. Mr. Barron qualified his withdrawal by stating that his protest could be considered withdrawn provided that he was allowed to store 675 acre-feet per annum in Barron Reservoir No. 2 before any water was stored under Application 11646. Inasmuch as the approval of his Applications 11576 and 11609 would confer the right to store water in the Barron Reservoir No. 2 before storage could be made under the later filing, his protest was dismissed.

Summary and Conclusions

The protests having been withdrawn or dismissed and it appearing that there is unappropriated water for the proposed season of storage, November 1 of each year to March 15 of the succeeding year, there remains no bar to the approval

of the applications subject to such of the usual terms and conditions as may be appropriate.

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ORDER

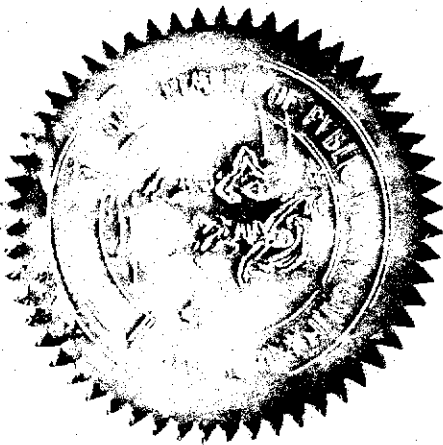
Applications 11575, 11576, 11609, 11610 and 11646 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been received, a stipulated hearing having been held in accordance with the provisions of Section 733(b) of the California Administrative Code and the protests having been withdrawn or dismissed:

IT IS HEREBY ORDERED that Applications 11575, 11576, 11609, 11610 and 11646 be approved and that permits be issued to the applicants 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 10th day of March, 1949.

EDWARD HYATT, STATE ENGINEER

By A. D. Edmonston
A. D. Edmonston
Assistant State Engineer



WRG:JM