

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 12215 of W. H. and Belle Boyd to
Appropriate from an Unnamed Slough tributary to Sacramento River in
Sacramento County for Irrigation and Stockwatering Purposes.

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Decision A. 12215 D. 604

Decided April 14th, 1949

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In Attendance at Investigation Conducted at the Site of the Proposed Appropriation
on October 26, 1948:

W. H. Boyd

For Applicants W. H. Boyd and
Belle Boyd

Carroll A. Cook

Protestant

A. S. Wheeler
Assistant Hydraulic Engineer

For the State Engineer

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O P I N I O N

General Description of Project

Application 12215 was filed with the Division of Water Resources on
December 26, 1947, for a permit to appropriate 0.63 cubic foot per second from
an unnamed slough tributary to Sacramento River within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15,
T 7 N, R 5 E, MDB&M, to be diverted from January 1 to December 31 of each year
for stockwatering and irrigation purposes. The applicants propose to divert from
the slough by means of a 700 gallon per minute pump.

Protest

Application 12215 was protested by Carroll A. Cook. The protestant uses the unnamed slough as a conduit to transport the water from his upper ranch to his lower ranch. Protestant states there is no flow in the unnamed slough after rainfall and upstream irrigation have ceased except that water which he transports for use on his lower property. He further alleges that he is merely seeking to prevent the diversion of waters, belonging to him, by the applicants.

In answering the protest against the approval of their application, W. H. and Belle Boyd assert that protestant is not using or has not used water from the source in question. Applicants further assert they are attempting to pump water from the slough for irrigation on higher land in order to keep the slough from flooding good land. They also allege that the slough in question is not a natural drain. Subsequent to the filing of the answer to the protest, use of water was made by the protestant upon his lower tract and this use was acknowledged by the applicants.

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 the applicant and protestant and the stipulations 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 October 26, 1948.

Records Relied Upon

Application 12215 and all data and information on file therewith.

General Discussion

The source of proposed appropriation is an unnamed intermittent

stream heading in the area between Florin and Elk Grove and flowing westerly to the Sacramento River via Beach Lake. The stream is confined in a well defined channel through most of the protestant's upper holdings and then changes to a broad shallow swale through applicants' property and protestant's lower holdings.

The contributory watershed above the applicants' proposed diversion point is slightly rolling, bare, has an area of about 4 square miles and an average annual rainfall of about 19 inches. There was no flow in the stream at the time of the field investigation but water was present at many points in the channel. All information obtainable indicates there is no natural flow in the stream except during times of rainfall and for a short period thereafter and that all summer flow is derived from waste waters from irrigated areas within the watershed which areas are irrigated with water pumped from deep wells some distance from the slough.

The protestant's project consists of two units, one of approximately 420 acres, located upstream about one-fourth of a mile from applicants' land and the other of approximately 160 acres located about one-fourth mile downstream from applicants' property. Protestant irrigates his upper lands with water pumped from four wells and his lower lands with water diverted from the slough both by gravity and by pumping. At times protestant pumps water from wells on his upper tract for use on his lower property utilizing the channel of the slough to convey the water.

Section 7075 of the State Water Code provides as follows:

"Water which has been appropriated may be turned into the channel of another stream, mingled with the water, and then reclaimed; but in reclaiming it the water already appropriated shall not be diminished."

The provisions of this section would appear to entitle the protestant to transport water which he has pumped from wells on his upper property for use on his lower property and to use the natural channel of the slough as a means of conveying the water even though it passes through the lands of the applicants enroute to the lower place of use provided, however, that there will be no injury to applicants or others.

There are a number of other land owners on the upper reaches of the slough who also obtain their water supply from deep wells located some distance from the channel of the slough. After use of this water for irrigation purposes the drainage therefrom is abandoned into the slough. The water thus abandoned is foreign to the source and as such constitutes unappropriated water as defined in Section 1202(d) of the Water Code. It is subject to use only by appropriation under the provisions of said Code.

The applicants have taken the necessary legal steps to initiate a right to take and use these waters abandoned after irrigation use by the upper land owners. The protestant asserts no claim to the waters foreign to the slough other than the right to transport through and redivert from the slough the water which he introduces therein at his upper property for use on his lower tract. However, protestant apparently is entitled to his share of the natural waters of the slough as a riparian owner.

According to the report of the engineer of this office who conducted the investigation there is usually sufficient unappropriated water in the slough during the irrigation season to justify the approval of the application. Furthermore, the report indicates that additional lands upstream from the applicant are being placed under irrigation from wells and that increased summer flow in the slough may be expected in the future.

Summary and Conclusions

The results of the field investigation clearly indicate that there is unappropriated water available in the source of the proposed appropriation in sufficient quantities to justify the approval of Application 12215.

While it appears that the applicants may be in a position to intercept and use the waters which the protestant at times transports, by means of the channel of the slough, from his upper to his lower lands, he should be informed upon the approval of his application that the issuance of the permit confers no right to interfere in any way with the transportation of protestant's water from his upper lands for beneficial use upon his lower lands.

It is the opinion of the State Engineer that a permit should be issued to the applicants subject to such of the usual terms and conditions as may be appropriate.

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ORDER

Application 12215 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest 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 State Engineer being fully informed in the premises.

IT IS HEREBY ORDERED that Application 12215 be approved and that a permit 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 14th day of April, 1949.



Edward Hyatt, State Engineer

