

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 12415 by the United States - Toiyabe National Forest to Appropriate Water from an Unnamed Spring Tributary via Shay Creek to the East Fork of Carson River in Alpin County for Domestic Purposes.

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Decision A. 12415 D. 609

Decided August 4, 1949

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APPEARANCES AT HEARING HELD AT MARKLEEVILLE, MAY 24, 1949

For the Applicant

United States - Toiyabe (Don H. Banks, Attorney in Charge,  
National Forest (Office of the Solicitor,  
(United States Department of Agriculture,  
(Ogden, Utah

For the Protestant

Charles Scossa et al. (Theodore G. Elges  
(Attorney at Law, Reno, Nevada

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division of Water Resources, Department of Public Works, for EDWARD HYATT, State Engineer

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OPINION

General Description of the Project

The application which was filed on Marych 17, 1948 by C. E. Favre, Forest Supervisor, on behalf of the United States - Toiyabe National Forest contemplates a diversion of 0.011 cubic foot per second, year round, for domestic purposes. The point of diversion is described as lying within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T 10 N, R 19 E, M.D.B.&M., in the County of Alpine.

The source is a spring, tributary via Shay Creek and Markleville Creek to the East Fork of Carson River. The proposed intake is described as a concrete spring box and water is to be conducted therefrom by means of a 2-inch galvanized iron gravity pipe line 6000 feet long. The proposed place of use is a new Forest Service summer home tract comprising 37 lots, the tract extending over portions of the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T 10 N, R 19 E, and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 19, T 10 N, R 20 E, M.D.B.&M. It is anticipated that one residence will be built on each lot and that use of water will average 200 gallons per day per residence.

#### Protest

Charles Scossa protested on behalf of himself, Anna Darby and Joise Cremetti, contending that the proposed appropriation will result in deprivation to those protestants of water rights and appurtenances to their lands, owned in fee and situated within Section 24, T 10 N, R 19 E, M.D.B.&M.. These protestants claim a right to the use of water from the source from which the applicant proposes to divert, their claim being based upon use prior to December 19, 1914 and upon riparian ownership. They claim to have used, beneficially, the entire flow of the spring designated as the source under Application 12415, from April 15 to November 1 of each year, since about 1878. They state that they irrigate approximately 50 acres and that their points of diversion are located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T 10 N, R 19 E, M.D.B.&M.

In answer to the protest the applicant stated that measurements of flow on August 18, 1948 were as follows:

Yield of spring filed upon: 2.5 gallons per minute.

Flow from spring reaching Shay Creek: 1 gallon per minute.

Flow of Shay Creek immediately below point of entrance of  
water from spring: 82 gallons per minute.

Flow of Shay Creek at Protestants' diversion: 60 gallons  
per minute.

Flow of Shay Creek below protestants' diversion:  $1/3$  gallons  
per minute.

The applicant argued that the proposed appropriation will not materially affect the protestants' irrigation program and also claims itself to possess a riparian right by virtue of which it is entitled to use a reasonable share of the water yielded by the source filed upon.

Hearing Held in Accordance with the Water Code

Application 12415 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Tuesday, May 24, 1949 at 10:00 o'clock A.M. in the Superior Court room, Alpine County Courthouse, Markleville, California. Of this hearing the applicant and the protestants were duly notified.

DISCUSSION

The unnamed spring, the source of water applied for, is a small spring rising some 40 feet distant from the channel on Shay Creek. The flow of the spring as established by independent measurements made on August 16 and 18, 1948 by an engineer of the Division of Water Resources and by a representative of applicant, respectively, is approximately  $2\frac{1}{2}$  gallons per minute. Further measurement and observation of this flow indicates that the  $2\frac{1}{2}$  gallons per minute about  $1/2$  reaches Shay Creek as surface flow.

Protestant is the owner of a water right from Shay Creek initiated by the taking and use of water from that stream in about 1870. This right was apparently initiated on the Public Domain prior to the withdrawal of the present Forest Service lands from entry.

Approximately 50 acres of protestant's lands are served by water from Shay Creek through the Scossa Upper and Lower Ditches. During the low period of each year the flow of Shay Creek is insufficient to supply water for irrigation

purposes on this acreage, the entire available supply sometimes receding, as indicated by the measurement made on August 18, 1948, to a flow of approximately 82 gallons per minute. This low water flow is usually diverted through the Scossa Upper Ditch and is used principally to supply some 15 camp sites located on the Scossa property. Due to ditch losses this supply is little more than adequate to furnish sufficient water for domestic use at the camp sites.

The spring from which applicant proposes to divert is tributary to Shay Creek at a point immediately above the Scossa Upper Ditch and as such is a part of protestant's water supply. The taking of any water from that source would infringe the vested rights of protestant.

In view of these facts, it is apparent that there is no unappropriated water in the source applied for and therefore the application should be denied.

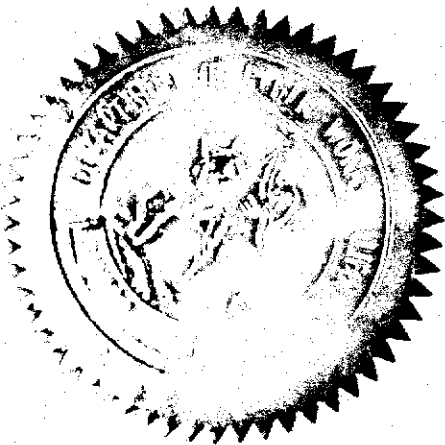
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ORDER

Application 12415 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12415 be rejected and cancelled upon the records of this office.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 4th day of August , 1949.



  
Edward Hyatt, State Engineer

Form 223  
7-13-48

Water Rights Documents for Signature of State Engineer

Application 12115 Permit \_\_\_\_\_ License \_\_\_\_\_

Permit

License

Decision

Order

Approved for signature of State Engineer

By Gordon Zander

Date July 27, 1949