

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 12773 by A. D. Schader to Appropriate Water from an Unnamed Stream Tributary to Porter Creek in Sonoma County for Recreational and Stockwatering Purposes.

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Decision A. 12773 D. 631

Decided November 9, 1949

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APPEARANCES AT HEARING HELD AT SANTA ROSA, SEPTEMBER 28, 1949:

For the Applicant

A. D. Schader

Edward T. Koford,
Attorney at Law

For the Protestant

Joseph T. Grace

George R. Cadan,
Secretary, Grace Bros., Inc.

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for EDWARD HYATT, State Engineer.

Also Present: K. L. Woodward, Assistant Civil Engineer, Division of Water Resources, Department of Public Works.

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OPINION

General Description of the Proposed Development

Application 12773 proposes a direct diversion of 1200 gallons per day, year round, and a diversion to storage of 5 acre feet per annum, both diversions to be made from an unnamed tributary

of Porter Creek in Sonoma County. The project involves constructing an earth dam 18 feet high and 170 feet long across the stream channel, thereby creating a reservoir of a surface area of 0.6 acre and a capacity of 5 acre feet. The dam is to be located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T 8 N, R 7 W, M.D.B. & M. and is to be utilized for recreation purposes and for watering some 4 head of live stock. The purpose of the 1200 gallon element of the appropriation is to freshen the stored water and to offset evaporation losses.

Protest

The application was protested by Joseph T. Grace who asserts that he holds a license under Application 1205 to divert water from Mark West Creek, at a point about 1 mile north of Fulton for the irrigation of some 54 acres of prunes. He states that it has been his custom for many years to irrigate these 54 acres during June, July and August, that in recent years the water supply has not been fully sufficient, that Porter Creek is tributary to Mark West Creek and that the proposed diversion therefore threatens to reduce his supply still further.

In answer to the protest the applicant asserts that it is not his intention to divert from either Mark West Creek or Porter Creek. He explains that the diversion proposed in his application is to be from a small stream tributary to Porter Creek, and that usually said small stream is dry during the summer months and therefore incapable of furnishing any of the water upon which the protestant depends. For these reasons, he argues, the development which he proposes could not injure the protestant.

Hearing Held in Accordance with the Water Code

Application 12773 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 a public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Wednesday, September 28, 1949 at 10:00 o'clock A.M. in the Hearing Office of the County Superintendent of Schools, County Court House, Santa Rosa, California. Of the hearing the applicant and the protestant were duly notified.

General Discussion

Under Application 1205 (Permit 563, License 86) Joseph T. Grace is authorized to divert 1-1/8 cubic feet per second from Mark West Creek at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T 8 N, R 8 W, M.D.B. & M., from about May 1 to about October 1 of each season.

According to the record, the unnamed stream which is the applicant's proposed source enters Porter Creek some 500 feet below the proposed dam; from that junction along Porter Creek to the junction of the latter with Mark West Creek scales about 4 miles; and the distance from the latter junction to the protestant's point of diversion, scaled down stream along Mark West Creek is about 10.5 miles; making a total of roughly 14.5 miles separating the points of diversion of the opposing parties. The area of watershed tributary to the proposed point of diversion is infinitesimally small as compared to that above the protestant's intake, a circumstance suggesting unlikelihood of the diversion from the source filed upon

having any measurable effect upon the protestant's water supply.

No records of the flow of Mark West Creek are available other than isolated estimates made in the course of field visits by engineers of the Division. On one such visit (June 11, 1920) the flow at the protestant's point of diversion was estimated at less than 1 miner's inch, the bulk of the natural flow being in use at the time by neighbors. During another visit (September 23, 1925) the flow was estimated at 1 cubic foot per second. Again on May 20, 1947, it was estimated at 2.5 cubic feet per second, but at that time irrigation had not yet begun.

Significant testimony was developed at the hearing of September 28, 1949, to the effect that the flow of Porter Creek as observed on August 27, 1949, dwindled to nothing in the reach between its junction with Mark West Creek and its junction with the unnamed stream that is the applicant's proposed source (page 9 of transcript); and that the same reach of Porter Creek is generally dry from some time in June until the Fall rains (pages 24 and 27 of transcript). Testimony is also to the effect that springs in the bed of the unnamed stream designated in the application as the source give rise to a small flow in that channel, but that that flow extends only to a location about 1/2 or 5/8 mile below the junction of the unnamed stream and Porter Creek (page 27 of transcript.) It is apparent from the testimony referred to that Porter Creek does not usually contribute to the flow of Mark West Creek during the months when Protestant Grace's irrigation needs are acute and that appropriation of such small flows as may occur above the dry reach of Porter Creek cannot adversely affect him.

Summary and Conclusions

Unappropriated water usually exists in the source from which appropriation is sought under Application 12773. Such water may be taken and used as proposed in that application without injury to the protestant. The application should be approved, subject to the usual terms and conditions.

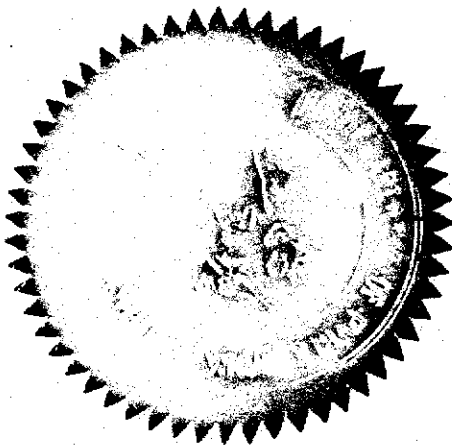
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ORDER

Application 12773 having been filed with the Division of Water Resources as above stated, a protest 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 12773 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, 1949.




Edward Hyatt, State Engineer