

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 12301 by Margaret F. Spencer to Appropriate Water from an Unnamed Stream Tributary to San Jose Creek in Santa Barbara County for Domestic Purposes.

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Decision A. 12301 D. 643

Decided December 29, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON OCTOBER 28, 1949:

Margaret F. Spencer	Applicant
Percy Clendenny	Protestant
M. H. Fultz	Protestant
Attorney Gray	Representing Protestants Fultz
Angelo Bosio	Protestant
Frances Bosio	Protestant
J. J. Heacock	Associate Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

Also present during the investigation were Mrs. Margaret Fine, appearing for Applicant Spencer, Michael Bosio, appearing for the protestants Bosio, Edward B. Olsen, an interested licensee, and E. M. Lyda, District Ranger, Los Padres National Forest.

General Description of the Project

The application proposes an appropriation of 3000 gallons per day from an unnamed stream tributary to San Jose Creek in Santa Barbara County, from November 1 to April 30 of each season, for domestic purposes. Diversion is proposed at either or both of two points of diversion within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T 5 N, R 28 W, S.B.B.&M. Diversion is to be by gravity, concrete diversion dams being contemplated for that purpose. Of these dams the uppermost is to be 4 feet high by 8 feet long and the lowermost 8 feet high by 60 feet long. Water is to be piped to the place of use which is described as including Lot 11, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T 5 N, R 28 W, S.B.B.&M. The water is wanted for domestic purposes at 3 existing houses, 3 proposed future homesites and guest ranch use to include the requirements of 50 people and the irrigation of 1.5 acres of grounds and trees.

Protests

Laura and Percy Clendenny claim a prior appropriative right to divert from the same source at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T 5 N, R 28 W, S.B.B.&M. They contend that the applicant is asking for more water than can be taken from the stream without depriving downstream users of water to which they are entitled. They state that their use has been at the rate of 500 gallons per day, for domestic purposes including limited irrigation. They state further that their protest may be disregarded if diversion is not made between June 1 and December 31 or before commencement of winter rains, or if the applicant will accept the same allowance as others receive, i.e: 500 gallons per day. They suggest

that other sources are available to the applicant, profess willingness to cooperate but assert that the approval of the application in the amount asked for would involve the community in continuing trouble.

Francis and M. H. Fultz protest that when the applicant commenced using water from the source described in the application, which was on July 8, 1948, her diversion drained the source completely, leaving no water at all for licensed users downstream. These protestants claim to be authorized to divert under licensed Application 10055 and state that they use 500 gallons per day throughout the year for domestic purposes and for the irrigation of 1/2 acre. They state that their protest may be disregarded if water is not diverted between June 1 and December 31 or the commencement of winter rains or if the applicant will accept the same allowance as other users, i.e. 500 gallons per day.

Angelo Bosio and Frances Bosio claim a riparian right to divert from the source in question, and state that they divert water for domestic purposes, for the watering of 12 to 14 head of cattle and for the irrigation of 20 acres of lemons. They state further that their diversion heads at a point downstream from the applicant's points of diversion and that the supply in the source during low stages is insufficient for their needs. Their diversion point is said to lie within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T 5 N, R 28 W, S.B.B.&M.

The applicant made no formal answer to any of the protests.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code a field investigation was conducted at the site of the proposed appropriation on October 28, 1949 by an engineer of the Division.

The applicant and the protestants were all present or represented at the investigation.

Discussion

Protestant Percy Clendenny holds Application 10058, Permit 5709 authorizing the diversion of 500 gallons per day, year round, at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22, T 5 N, R 28 W, S.B.B.&M. Protestants Francis and Mildred H. Fultz hold Application 10055, Permit 5706, License 2743, authorizing the diversion of 500 gallons per day year round at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22 also. The files of the Division do not disclose any application as standing in the name of either of the Protestants Bosio who however assert a riparian right and from the wording of their protest may also be entitled to an ancient appropriative right. The files reveal two filings on the same reach of the same stream which have not been made the basis of protests. These are Application 10056, Permit 5707, License 2519 in the name of Glenn E. Pierce, authorizing the diversion of 500 gallons per day, year round, at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27 and Application 10057, Permit 5708, License 2744 held by Edward B. and Norma R. Olsen, for 500 gallons per day, year round, at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 22.

In connection with an earlier application (Application 10734, since cancelled), the conclusion was reached that unappropriated water does not ordinarily exist in the unnamed stream under consideration from about June 1 to about November 1, but that water is available for appropriation during other months. This conclusion was based upon a consideration of recorded discharges of San Jose Creek near Goleta, California for the period from May, 1941 to May, 1946, both inclusive, as well as upon information gathered during the investigation of June 24, 1944.

Mean flow in cubic feet per second at the gaging station mentioned, according to the records (U.S. Geological Survey) now available, has been as follows:

Month	Season						
	1941-42	1942-43	1943-44	1944-45	1945-46	1946-47	1947-48
Oct.	0.38	.19	.21	0.18	0.04	0	0
Nov.	.45	.32	.21	3.73	.17	5.110	0
Dec.	3.72	.37	1.00	.48	3.51	3.600	0
Jan.	1.37	29.40	.41	.51	.19	.138	0
Feb.	.53	6.50	9.04	7.35	.47	.076	0.020
Mar.	.69	9.05	5.18	1.79	2.84	.370	.300
Apr.	4.14	1.64	.78	.70	.65	.170	.187
May.	.78	.74	.66	.41	.39	.13	0
June	.23	.25	.277	.08	0	.005	0
July	.15	.24	.118	.102	0	0	0
Aug.	.06	.096	.089	.006	0	0	0
Sept.	.16	.117	.083	.015	0	0	0
12 Mo. Mean	1.06	4.09	1.48	1.23	.70	.80	.042
6 Mo. Mean*	1.82	7.88	2.77	2.43	1.31	1.58	.084

* Months of November to April, both inclusive.

The gaging station to which the figures apply is on San Jose Creek below the mouth of "Unnamed Stream". The figures therefore indicate the flows occurring below the lowermost protestant. They indicate also that the average flows (at the gage) from November 1 to April 30 have been roughly twice the average twelve month flow.

The drainage area tributary to the gage above referred to is 5.54 square miles in extent whereas the drainage area tributary to the applicant's lowermost proposed point of diversion is approximately 230 acres or 0.36 square mile. If something of the order of $0.36/5.54$ or 6.5% of the flow passing the gage originated above the proposed point of diversion it is evident that surpluses would usually have been available to the applicant during the 7 years of record. The expressed disposition of the protestants Clendenny and Fultz to withdraw their objections if diversion is restricted to periods extending from January 1 to May 31 and the implication in the Bosio protest that shortages occur during low stages only, strengthen the supposition suggested by the San Jose Creek data, that surpluses at other than low stages in fact exist.

According to the report of investigation 7.5 gallons per minute were flowing at the proposed point of diversion on October 28, 1949, a year of subnormal rainfall in the locality. That report also states that late summer flow ordinarily ranges from 20 to 30 gallons per minute. The flow of 7.5 gallons per minute is more than sufficient to cover the reported uses of the protestants and other known users on "Unnamed Stream".

The protestants Bosio are supplied from San Jose Creek at points below the mouth of "Unnamed Stream" and roughly one mile above the U.S.G.S. gage. The record indicates that the discharge of San Jose Creek during most of the months when the applicant proposes to divert from "Unnamed Stream" has averaged in excess of the Bosios' probable requirements.

In the light of the above circumstances it is concluded that surpluses at times exist in the source in question and that such surpluses may be taken and used in the manner proposed in the application without injury to lower users. The application should be approved, subject to

the usual terms and conditions.

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ORDER

Application 12301 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 12301 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 29th day of December, 1949.

EDWARD HYATT, STATE ENGINEER

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

