

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 12192 by Clinton C. and Hal C. Dyer to Appropriate Water from an Unnamed Well which Taps an Underground Stream within the Buena Vista Lake Watershed in Kern County for Irrigation and Domestic Purposes.

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Decision A. 12192 D. 658

Decided April 17, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON SEPTEMBER 26, 1949:

Clinton C. Dyer	Applicant
Allen C. Dyer	Applicant
B. F. Keyes	Applicants' Representative
Paul Bailey	Protestant's Engineer
George B. Gleason	Supervising Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

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OPINION

General Description of the Project

The application contemplated the appropriation of 3 cubic feet per second, year-round, from an unnamed well in Kern County for domestic purposes and irrigation, the well being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 12, T 11 N, R 19 W, S.B.B.&M. It is proposed to install a pump, 2300 gallons per minute in capacity, and to distribute by means of some

2 miles of 16 and/or 18 inch concrete pipe. The place of use, the SE $\frac{1}{4}$  of the same Section 12, 160 acres in extent, is planted to general crops. Domestic service is to be furnished to 2 families and additional farm help and some 10 head of livestock are to be watered. Irrigation is to extend throughout the year.

#### Protest

A protest was filed by the Arvin-Edison Water Storage District on the contention that the application "by presuming unestablished facts concerning the existence of underground channels, creates an indefinite and indeterminate relation between the water sought to be appropriated and the water applied for by the District under its prior applications which relation threatens destruction either of the priority of the District's appropriation itself to the irreparable detriment of the District and the lands within the District including the lands on which the applicants propose to use water under Application 12192." As to the extent of the protestant's use of water the protest makes reference to Applications 11214 and 11215 now pending before the Division. The protest sets forth that it may be disregarded and dismissed if the applicants "totally abandon any right to appropriate underflow of or tributary to El Paso and/or Tunis Creeks and/or any channels connecting with said creeks or any underground channels incidental to said creeks or connected therewith."

In answer to the protest Applicant Clinton C. Dyer asserts that the water applied for is not the water cited in the protest which he contends may be dismissed for lack of valid grounds. He represents that the protest is based merely on future plans that may take many years to develop whereas the applicants are seeking rights on a well that is already in operation.

### Field Investigation

The parties 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 September 26, 1949 by an engineer of the Division. The applicant and the protestants were present or represented at the investigation.

### Records Relied Upon

Application 12192 and all data and information on file therewith.

### Discussion

Whether the source filed upon under Application 12192 is in fact an underground stream as alleged therein or is merely percolating ground water cannot be determined conclusively from the data at hand. The applicants claim it to be the former, their letter of December 8, 1947 reading in part:

"We feel that this application is completely justified .....inasmuch as the temperature of the water from our well is 60 degrees Fahrenheit and the temperature of the water from each of the surrounding wells, about 15 to date, has not been less than 75 degrees Fahrenheit. This fact would indicate that our well taps a definite channel or stream."

The protestant asserts in this connection by letter of August 16, 1948:

"The factual information concerning the underground water in the area .....indicates.....a large body of underground water in intimate contact there which is responsive in all parts to substantial changes in

levels in any other part. ....There is no indication whatsoever....that the underground water in any part is moving in an underground stream."

The field investigation of September 26, 1949 developed that the protestant's main object in protesting the application was to ensure that the applicant should not through Application 12192 establish a right to a portion of the surface flow of El Paso Creek paramount to its own, under Applications 11214 and 11215; and that the applicants' main object in filing the application was to secure protection of their water supply against interference by future well drilling by neighbors. The parties agreed that as to conservation of water their interests were common. The protestant objected particularly to the wording, "tributary to El Paso Creek and Buena Vista Lake" in Paragraph 1 of Application 12192 as it then stood, considering such wording to be inaccurate and a possible cloud to rights initiated by the filing of its earlier applications.

Subsequent to the field investigation the parties entered into a stipulated agreement, dated and signed on December 31, 1949. The stipulation sets forth that there is no relation or connection between the surface flow of El Paso and Tunis creeks and the flow in the underground <sup>and</sup> stream supplying the applicants' well/ provides for a change in the wording of Paragraph 1 of Application 12192 by adding to that paragraph after the words "in Kern County" the words "within the Buena Vista Lake Watershed and which taps an underground stream."

Application 12192 was amended in due course to conform to the above mentioned stipulation. Inasmuch as the acceptance by the applicants of the terms of the stipulation meets the terms under which the protestant stated the protest may be disregarded and dismissed, the protest was

so dismissed and the parties so informed, by letter dated January 12, 1950.

The report of field investigation added little toward a determination as to whether the source filed upon is a "subterranean stream." Included in the report of investigation is a tabulation showing chemical analyses of samples from the applicants' well and from each of two neighboring wells. The two neighboring wells apparently differ somewhat among themselves. The fact that the indicated difference between the applicants' well and either of the neighboring wells is somewhat greater than the difference between the neighboring wells themselves indicates a difference of sources but does not prove that the source feeding either of them is a "subterranean stream."

Such uncertainty as to the nature of the source is not a bar to the issuance of a permit, nor is such issuance inconsistent with existing policy. However, when a permit is issued under such circumstances and it later becomes apparent that the water in question is not flowing through a known and definite channel, the permit is subject to revocation.

In view of the dismissal of the protest, there would appear to be no bar to approval of Application 12192 and the application should be approved and permit issued subject to the usual terms and conditions.

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ORDER

Application 12192 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 12192 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 17th day of April, 1950.

*A. D. Edmonston*

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A. D. Edmonston  
State Engineer.

