

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 12695 by Aubrey R. Lyon to Appropriate Water from an Unnamed Spring Tributary via Rock Creek to Owens River, in Mono County, for Domestic Purposes.

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Decision A. 12695 D. 662

Decided April 24, 1950

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OPINION

General Description of the Project

The application contemplates an appropriation of 500 gallons per day from April 15 to November 1 of each season, for domestic purposes. The point of diversion is described as lying within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of projected Section 36, T 5 S, R 29 E, M.D.B.&M. Diversion is to be effected by means of a masonry day 1 foot high by 4 feet long. The conduit is to be a pipe line 1222 feet long, falling a total of 243 feet. The proposed place of use is described as Lot 40 of Rock Creek Lake Tract, Inyo National Forest. It is further described as lying within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of the above mentioned Section 36. The water is to be used for domestic purpose at Rock Creek Lakes Store and at the living quarters, cafe, service station, bakery and public showers appurtenant thereto.

Protest

Jess Chance states that he owns a ranch in Round Valley which he irrigates by waters from Rock Creek, that during the 8 years

that he has owned that ranch there has been spring runoff but no surplus water in summer, that he has been without sufficient water to irrigate his land nearly every summer after August 1 except for a small amount that he bypasses to sustain fish life. ProtestantChance asserts that water from Rock Creek has been used on the ranch mentioned since 1870 or earlier, that water is used thereon for irrigation, stock watering and power generation, and that the ranch is riparian to the creek. He states that he diverts water just above the NE corner of Section 5, T 6 S, R 31 E, and also at or near the corner common to Sections 29, 30, 31 and 32 of T 5 N, R 31 E, M.D.B.&M. In view of the facts stated he protests the application, contending that any upstream diversion from Rock Creek would result in serious damage to his property. He also requests reference to his letter of November 24, 1948, that letter (filed with Application 12491) setting forth in more detail his objections to upstream diversions, stressing the cumulative effect of successive small appropriations and remarking that such appropriations are sometimes speculative.

In reply to the protest the applicant argues that the application is a mere formality, the store at which the water is wanted having been in existence since 1923 and the water in continuous use since that time. He states that because of subnormal precipitation during the past 3 years and consequent water scarcity he has connected a spring with his water system to insure adequacy of supply. He states further that the water from the spring mentioned disappeared into the ground before reaching Rock Creek Lake and that he therefore installed 1000 lineal feet of pipe, so as to intercept the water at its source and thereby eliminate losses. He asserts that all the water that he uses returns to the ground, that no water is wasted and that the overflow from his supply tank runs

into a channel flowing into Rock Creek Lake. In view of these asserted facts he contends that his diversion cannot measurably affect the protestant's supply.

#### Records Relied Upon

Applications 12491 and 12695 and all data and information on file therewith.

#### Discussion

The applicant and the protestant stipulated respectively that the application and the protest be submitted upon the official records of the Department in accordance with the provisions of Section 733(b) of the California Administrative Code. Inasmuch as Application 12491 which presented substantially the same issues and was protested by the same protestant has been investigated recently in the field and the Department thereby is sufficiently informed in the premises, a field investigation in connection with Application 12695 was adjudged unnecessary and was dispensed with.

According to the report of the field investigation in connection with Application 12491 on August 16, 1949, Protestant Chance is in the cattle raising business and his use of water is mainly for stock-watering purposes and for the irrigation of 240 acres of pasture. According to the same report Rock Creek flows through Protestant Chance's ranch, said to be one of the oldest in the valley. The investigating engineer determined by measurement at a Parshall flume some 2 miles above the Chance intake that the flow of Rock Creek at the time of the investigation was 10.6 cubic feet per second. By a subsequent examination of the records of the Sherwin Hill Gaging Station (maintained by the City of Los Angeles) it was ascertained that the mean monthly flow

at the Parshall flume above mentioned exceeded 5 cubic feet per second in every month of the 3 year period ending October 1, 1949, except the month of September, 1949. Inasmuch as 5 cubic feet per second is considerably more than sufficient for the irrigation of 240 acres of pasture it was concluded from that investigation that the overappropriation of water apprehended by Protestant Chance has not yet occurred.

Whereas in the case of Application 12491 the applicant sought to divert 200 gallons per day at a point some 18 miles above Protestant Chance (scaled along the course followed by drainage), in the case of Application 12695 the applicant seeks 500 gallons per day (0.000774 cubic foot per second), at a point some 16 miles upstream from Protestant Chance. While in both instances diversion of the amounts sought would tend to diminish the amounts reaching the protestant's intake that diminution is so extremely small that it would not alter the protestant's situation in any measurable degree. Under all but very exceptional conditions the investigation in connection with Application 12491 developed that flows reaching Protestant Chance's intake are well in excess of his requirements. Mr. Chance states in his protest that he diverted all the water from Rock Creek except "a little trickle to keep the fish alive". The amount of water that should be bypassed for fish preservation is not known definitely but whatever it is it cannot be affected appreciably by the appropriations proposed under Applications 12491 and/or 12695.

From the circumstances above set forth it is concluded that surpluses usually exist in Rock Creek and that such surpluses may be taken and used in the manner and to the extent proposed in Application 12695 without injury to the protestant. Application 12695 therefore should be approved and permit issued, subject to the usual terms and conditions.

ORDER

Application 12695 for a permit to appropriate water having been filed and a stipulated hearing having been held in accordance with Article 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12695 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 24th day of April, 1950.

*A. D. Edmonston*

A. D. Edmonston  
State Engineer.

