

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 12512 by R. E. Oehlmann to Appropriate Water from Green Valley and Atascadero Creeks in Sonoma County for Irrigation Purposes.

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Decision A. 12512 D. 663

Decided April 24, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON NOVEMBER 4, 1949:

W. P. Tischer	Applicant's representative
R. J. Smith	Protestant
D. Martinelli	Protestant
L. Martinelli	Protestant
R. A. Young	Protestant
A. Martinelli	Protestant
A. W. Nolan	Protestant
L. B. Dimmick	Protestant
R. Frigerio	Interested party
E. R. Glover	Interested party
B. Rush	Interested party
J. Kellogg	Interested party
A. Nott	Interested party

A. S. Wheeler

Senior Hydraulic Engineer,  
Division of Water Resources,  
Department of Public Works,  
Representing the State Engineer.

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OPINION

General Description of the Project

Application 12512 contemplates appropriations aggregating one half cubic foot per second from three points of diversion, as follows: 1/4 cubic foot per second from Green Valley Creek, tributary to Russian River at a point within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T 7 N, R 9 W, M.D.B.M.; 1/8 cubic foot per second at another point of diversion from the same stream in the same quarter quarter section; and 1/8 cubic foot per second from Atascadero Creek, tributary to Green Valley Creek at a point within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17 of the same township. Diversion is to be effected by pumping and is to extend from May 15 to September 15 of each season. The water is to be used to irrigate 45 acres of hops located in the S $\frac{1}{2}$  SW $\frac{1}{4}$  of the above mentioned Section 17 and in the adjoining NE $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 20. According to the application the land to be irrigated has no other water right or source of water supply.

Protests

Ralph J. and/or G. M. Smith protest that the proposed appropriation will injure them in that it will deny them the use of water for irrigation with resulting loss of their pasture on Green Valley Creek. They claim riparian rights and an appropriative right under Application 11409. They claim that for 17 years Green Valley Creek has been the only source of livestock water on 35 acres of bottom land pasture. They assert diversion points located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of

Section 7, T 7 N, R 9 W, M.D.B.&M. They assert that the additional diversion will completely dry Green Valley Creek during the summer months. They explain that their wells go dry in May and that they obtain household water from neighbors and stock water from Green Valley Creek.

Domingo Martinelli states that he depends upon Green Valley Creek, and that if the application is approved no water will be available, in summer, for his cattle. He asserts a riparian right and use since 1902 and states that he is located 4 or 5 miles below Applicant Oehlmann.

Leno Martinelli protests that the proposed diversion will stop the creek from flowing after June 1 and will make it a breeding place for mosquitos. He states that the water under those conditions will be stagnant and foul and will make his livestock sick. He states that his diversion heads within the NW $\frac{1}{4}$  of Section 1, T 7 N, R 10 W, M.D.B.&M.

Robert A. Young states that his place lies from 5 to 6 miles downstream from Applicant Oehlmann's, that for 50 years the livestock on his (Young's) property have depended upon Green Valley Creek for drinking water, and that if Application 12512 is granted that source will fail. He adds that he raises corn and other vegetables on several acres which he would like to irrigate but cannot because the water supply is already insufficient.

Alfred Martinelli describes his diversion point as being located 4 to 5 miles below the Oehlmann place and states that since 1902 his livestock (and his predecessors') have watered from Green Valley Creek which in summer is their only source of supply. He states that if the application is allowed his cattle will<sup>be</sup>/without water. He asserts

that during the last two summers the supply for stockwatering has been scant.

Albert W. Nolan and Edith R. Nolan state that they have owned their 50 acre place for nearly 50 years during which time their dairy cattle have watered at Green Valley Creek, but that during recent summers upstream diversions have reduced the supply to small amounts of water which stands in polluted water holes.

L. B. Dimmick represents that Applicant Oehlmann's proposed diversion will stop the flow of Green Valley Creek and deprive him (Dimmick) of water needed for irrigation and for stock watering. He states that he would irrigate a larger acreage if water were available but that the supply during the last 2 years has been insufficient to irrigate properly the land already irrigated which includes 3 acres of alfalfa, some corn and a garden. He states that Green Valley Creek passes through his farm and that the latter is 50 acres in extent. He states that it is his practice to pump dry the deepest hole in the creek bed and then after waiting a day and a night to resume pumping. He contends that if the creek is dammed upstream no water will reach him at all.

Applicant Oehlmann answers each of the several protests by a statement to the effect that he will agree (presumably in the event of the approval of Application 12512) to bypass 150 gallons per minute or the natural flow of Green Valley Creek, and 50 gallons per minute or the natural flow of Atascadero Creek, such terms, he explains, being in conformity with California Fish and Game requirements.

#### 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 November 4, 1949 by an engineer of the Division. The applicant and the protestants were present or represented during that investigation.

#### Records Relied Upon

Application 12512 and all data and information on file therewith.

#### Discussion

The parties attending the field investigation of November 4, 1949 agreed that below the Oehlmann property surface flow normally ceases about June 15 although flow continues at points upstream beyond that date. The investigating engineer observed that channel losses are probably heavy due to transpiration from the considerable growth of vegetation along the course of the stream. It appeared to him that the channel could and should be cleared and deepened, as a conservation measure. The investigating engineer reported also that some accretion from springs occurs below Applicant Oehlmann's property but not enough to keep the water in the stream channel fit for drinking by livestock during the low water months. It is the latter condition which is most objectionable to the protestants, and which they contend will become worse if upstream diversions are increased. It developed further during the investigation that Applicant Oehlmann is a riparian owner, that he has 2 pumps which have operated for 16 years and 5 years respectively and that he contemplates no increase in his use of water. The applicant's representative (Mr. Tischer) after some discussion of the matter stated that he would recommend that the applicant request cancellation of Application 12512 and continue to rely upon his riparian status alone. The applicant

however did not accept that recommendation and by letter dated January 23, 1950 stated that he desired his application to stand.

In addition to the protests listed in earlier paragraphs a protest was filed by the California State Fish and Game Commission on the apprehension that the proposed diversion would result in the destruction of fish. The protest was withdrawn upon agreement by the applicant to the inclusion of a clause in a permit if issued requiring the bypassing of specified amounts, or the natural flow of each source, depending on flow conditions, to maintain fish life.

For some 4.2 (scaled) miles above its junction with Russian River, Green Valley Creek is shown on the Sebastopol quadrangle (U.S.G.S.) as a perennial stream, being sustained, apparently, by a tributary which enters at about mile 4.2, from the east. From mile 4.2 to mile 5.5 the same map shows Green Valley Creek as an intermittent stream. At mile 5.5 Green Valley Creek is joined by Atascadero Creek and the vicinity of that junction is shown on the map as a swamp. Green Valley Creek above its junction with Atascadero Creek is shown, for most of its course, as perennial whereas Atascadero Creek and all of the latter's tributaries are represented as intermittent. The Applicant's proposed points of diversion are just above the junction of the two streams. Below that junction are Applications 11409 held by R. J. and G. M. Smith, protestants in the instant matter and 12877, a junior application. The projects under these two applications divert at short distances below the entry of the perennial tributary at mile 4.2. On Atascadero Creek the files reveal in order proceeding upstream, besides one of Applicant Oehlmann's proposed diversions, Applications 11082, 12977, 11471, and 10915.

On Green Valley Creek above its junction with Atascadero Creek no applications have been filed and there are no data at hand indicative of its probable flow, other than the expression of the parties at the investigation to the effect that the flow below the Oehlmann place already is insufficient. On Atascadero Creek, according to office records, the flow measured 1.2 cubic foot per second at the point of diversion under Application 11471 on May 15, 1947 and 0.8 cubic foot per second one mile downstream therefrom. Likewise on May 17, 1947 the flow of Atascadero Creek at the point of diversion under Application 10915 measured 0.67 cubic foot per second and the holder of that application stated that the flow was sufficiently sustained to satisfy his irrigation needs. The diversions under Applications 11471 and 10915 head 8.7 miles and 10.9 miles, respectively, upstream from the mouth of Green Valley Creek. The parties present at the investigation of Application 11471 on May 17, 1947 agreed that the flow then observed was considerably more than the flow usually occurring in mid summer.

From the information above summarized it is concluded that the flow of Green Valley Creek and Atascadero Creek at the points of diversion proposed under Application 12512 from May 15 to September 15 is seldom if ever more than sufficient to satisfy the requirements of prior appropriators and riparian users, that unappropriated water in those sources and during that period is non-existent except in comparatively small quantities for short periods at infrequent intervals and that for those reasons Application 12512 should be rejected and cancelled upon the records of this office.

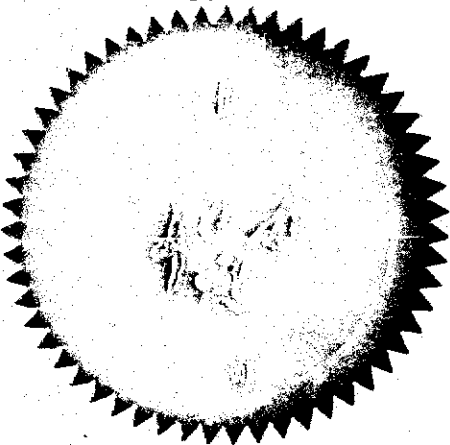
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ORDER

Application 12512 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 12512 be rejected and cancelled upon the records of the Division of Water Resources, without prejudice.

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.