

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 12626 by Elmer Norgard to Appropriate Water from Gawne Slough in San Joaquin County for Irrigation and Domestic Purposes.

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Decision A. 12626 D. 666

Decided April 25, 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 15, 1949:

Artie Norgard Gordon)	Applicant's representative
C. E. Crane)	Protestants' representatives
J. E. Crane)	
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

The application contemplated the diversion of 3.0 cubic feet per second, year round, from Gawne Slough, tributary via Lone Tree Creek to San Joaquin River, for irrigation and domestic purposes. The proposed point of diversion is located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T 1 S, R 8 E, M.D.B.&M. Diversion is to be effected by means of a pump,

1400 gallons per minute in capacity. The place of use specified was a tract of 340.5 acres located within the same Section 3, planted to general crops. The irrigation season is to begin about April 1 and end about November 30. Besides the use of water for irrigation one house is to be furnished a domestic supply and 400 head of cattle are to be watered. According to the application the place of use has no other water right or source of water supply.

Protest

C. E. Crane and M. P. Baliel protest the application, representing that there is not enough water in Gawne Slough to supply the present applicant in addition to supplying the users who already hold permits. They state that during the two seasons prior to 1949, for long periods the slough carried less water than the 7.89 cubic feet per second which they are authorized to divert under Permits 6343 and 6545, and the issuance of additional permits will lead to litigation. They state that Gawne Slough is the major source of water for irrigation and stockwatering, that their diversion heads in Section 9 of T 1 S, R 8 E, M.D.B.&M., and that their protest may be disregarded and dismissed if the applicant will agree in writing to allow 7.89 cubic feet per second to pass his point of diversion.

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 November 15, 1949 by an engineer of the Division. The applicant and the protestants were present or represented at the investigation.

Records Relied Upon

Application 12626 and all data and information on file therewith.

Discussion

According to the report of investigation there was ample water at the time thereof. The investigating engineer gathered that normally the supply is sufficient until about June 15, and that thereafter through the summer and fall months it consists mainly of return flow and waste waters from upstream irrigated areas which in turn are supplied from wells and from the system of the South San Joaquin Irrigation District. Mrs. Gordon (representing the applicant) asserted during the investigation that the applicant (and/or his successors - the applicant is deceased) have been using water from Gawne Slough for three years without interfering with the protestants. According to Mrs. Gordon the water mentioned has been used to irrigate 72 acres within the applicant's project which acreage she stated is all that is proposed to be irrigated from the source filed upon. Mrs. Gordon thereupon as executrix of the Elmer Norgard estate tendered a written request that Application 12626 be amended by reducing the acreage therein specified to 72 acres and the amount of water applied for to 0.9 cubic foot per second. In due course the application was so amended but despite the amendment the protestants have not seen fit to withdraw their protest.

Gawne Slough joins Lone Tree Creek at a point near the west quarter corner of Section 13, T 1 S, R 7 E, M.D.E.&M. Numerous applications over the years have been filed upon waters of Lone Tree Creek both below and above the point of entrance of Gawne Slough thereto and several

applications have been filed upon waters of Gawne Slough. Incidental to investigations made in connection with protests against one or another of these applications certain information has been collected. According to that information (in large part corroborated by the investigation of November 15, 1949) both of the streams mentioned usually furnish a rather abundant and fairly sustained supply until the end of June, after which time both streams continue to carry considerable amounts which however consist mainly of return flow and wastage from the irrigation of tributary lands, a condition making the flow erratic, with periods of deficiency as well as periods of surplus. The trend, the information indicates, is toward increasing summer flows, as additional areas come under irrigation and return flow therefrom finds its way into the sloughs.

The fluctuations of flow in Gawne Slough are exemplified by the following data supplied by L. B. Raab, Registered Civil Engineer, as to amounts observed in that stream during a portion of 1943:

<u>Date</u>	<u>Cubic Feet per Second</u>
July 28	6.0
30	5.5
August 1	3.2
3	3.6
4	2.5
6	7.2
11	2.2
15	5.1
20	3.2
27	7.8
September 6	4.2
27	8.1
October 11	2.2

Scattering observations at the same point during the following spring (1944) were:

<u>Date</u>		<u>Cubic Feet per Second</u>
April	10	13.2
	15	15.7
	20	15.5
	23	18.0
May	2	18.0
	7	8.1
	10	9.1

Mr. Raab, in connection with the investigation of November 15, 1949, remarked that present day summer flows are about double those shown in the above, due to increased irrigation within the area.

Lone Tree Creek, into which Gawne Slough discharges, fluctuates likewise, being also supplied by wastage and return flow from tributary irrigated lands. The information indicates that surpluses in Lone Tree Creek occur frequently, although not continuously.

Applications initiating appropriations from Gawne Slough have been as follows:

<u>Application Permit and License</u>	<u>Amount (Cu.Ft./Sec.)</u>	<u>Miles above junction with Lone Tree Creek (approximate)</u>	<u>Present Owner</u>
A 10673, P 6343	3.0	4.3	Crane & Baliel
A 10811, P 6544	3.0	9.0	Shipley
A 11238, P 6545	4.89	4.3	Crane & Baliel
A 12346, P 7237	3.0	4.4	Brickey
A 12626	0.9	5.3	Norgard
Total	14.79		

Of the applications prior to Application 12626 (the one at issue) Application 10811 was protested by the initiator of Application 10673, Application 10673 was protested by the holders of applications on Lone Tree Creek, a protest against Application 11238 was dismissed

and Application 12346 was unopposed. All of these applications were approved (again excepting Application 12626) and all were in operation in 1949.

In a stream such as Gawne Slough in which the flow fluctuates widely it is to be expected that the supply at times will be insufficient to satisfy the several rights that have come into existence on that stream. That does not mean however that there are not other times at which surpluses occur which may be utilized advantageously by a junior appropriator without interference with existing rights. The beneficial utilization of a fluctuating supply is conceivably a difficult matter requiring close cooperation between users and a constant state of readiness on the part of each user to divert and apply water within his entitlement, whenever such water becomes available. It is to be noted from the files relating to the applications tabulated in an earlier paragraph that pumping from wells has been relied upon in each instance as a partial source of supply. Insofar as a standby supply from wells is available the advantage of using water from Gawne Slough when flow therein occurs is apparent for reasons of economy. It may be remarked that the holder of any valid water right, as Protestants Crane and Baliet in this instance, are protected, should Application 12626 be approved, by the standard wording of every permit, making that permit subject to the observance of vested rights.

In view of all of the circumstances above outlined it is concluded that surpluses at times occur in Gawne Slough and that such surpluses may be taken and used in the manner proposed under Application 12626/^{as amended} without injury to the protestants or to any other downstream user.

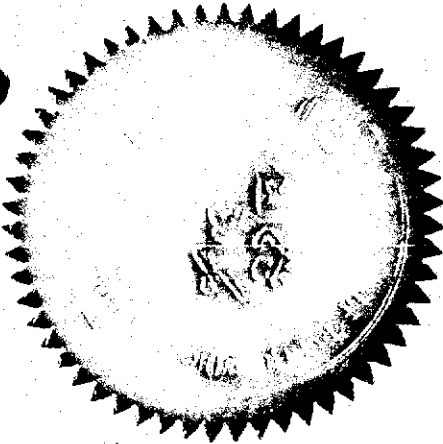
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ORDER

Application 12626 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 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12626 be approved and that a permit be issued to the applicant for the reduced amount of 0.9 cubic foot per second, 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 25th day of April 1950.



A. D. Edmonston

A. D. Edmonston
State Engineer.