

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of Application 12613 by Charles Marogna to Appropriate Water from an Unnamed Stream Tributary via Shingle Creek and Big Canyon Creek to Cosumnes River, in El Dorado County, for Irrigation and Stock-watering Purposes.

oOo

Decision A. 12613 D. 672

Decided August 31, 1950

oOo

IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON OCTOBER 24, 1949:

Charles Marogna	Applicant
D. R. Barnett	Protestant
Don M. Hoffman	Protestant's Engineer
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources Department of Public Works Representing the State Engineer

oOo

OPINION

General Description of the Project

It is proposed under the application to appropriate 0.07 cubic foot per second year round and 35 acre feet per annum, the latter amount to be collected between October 1 and May 30 of each season and held in temporary storage. The source is described as an unnamed stream tributary to Shingle Creek and thence in turn to Big Canyon Creek and Cosumnes River. The uses to which the water is to be applied are irrigation and stock-

watering. Diversion is to be effected by a combination diversion and storage dam, an earth structure, described in the application as 12 feet high and 487 feet long, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T 9 N, R 9 E, N.D.B. & M. The resultant reservoir is to have, according to the application, a surface area of 12 acres and a capacity of 30 acre feet. From the reservoir water is to flow through 800 lineal feet of earth ditch to the place of use which consists of 2 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and 5 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of the same Section 12, 40 head of cattle and 100 goats are to be watered and 7 acres of general crops are to be irrigated, irrigation extending from about May 30 to about October 30. Besides the appropriative right sought, the applicant claims a riparian right.

Protest

The application is protested by one D. R. Barnett who represents in his protest that the proposed appropriation will prevent the accumulation of the 70 acre feet which he has been authorized under Application 12253 to divert to his reservoir, the latter being located about one half mile downstream from the applicant's dam.

The applicant answers the protest by stating in effect that both his dam and the protestant's dam have already been built, that both dams are overflowing as the answer is written (April 4, 1949), and that his (Marogna's) dam is of great benefit to the protestant because of the leakage therefrom and the return flow from lands which he irrigates. He argues that the fact that both dams have filled and are overflowing proves that there is plenty of water for both parties.

Field Investigation

The applicant and the protestant 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 24, 1949 by an engineer of the Division. The applicant and the protestant were both in attendance at the investigation.

Records Relied Upon

Applications 12253 and 12613 and all data and information on file therewith.

Discussion

Application 12253, referred to in the protest against Application 12613, was approved and Permit 7327 issued to D. R. Barnett in the amount of 70 acre feet per annum to be collected from October 1 to about May 30 of each season. Application 12253 was not protested. It specified as a source the same unnamed stream as filed upon by Applicant Marogna. It described the point of diversion thereon as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T 9 N, R 9 E, H.D.B. & M.

At the investigation of October 24, 1949, it developed that whereas both applicant Marogna's reservoir and Protestant Barnett's reservoir had filled in 1949, the former reservoir had been built only to a capacity of 7 or 8 acre feet. It was agreed by the protestant and his engineer that normally there is enough runoff to fill to capacity the reservoirs of both parties provided the applicant does not store more than 35 acre feet. The protestant then and there signed a withdrawal of protest (Form 23C), subject to a certain condition, viz. that a survey of the reservoir be made and data furnished to show that the Marogna reservoir will not store in excess of 35 acre feet.

By letter dated January 19, 1950, Mr. Don M. Hoffman (the protestant's engineer) advised that Applicant Marogna had requested him to

prepare the survey mentioned in the preceding paragraph. By letter dated March 30, 1950, Engineer Hoffman submitted in duplicate a blue-line print of a drawing, scale 1 inch to 100 feet, entitled, "Marogna Reservoir (Appl. 12613)". The drawing complies with the protestant's condition (in his withdrawal) that a survey of the reservoir be made, but it is not clearly apparent that it meets the other requirement, i.e. that data be furnished to show that the reservoir will not store in excess of 35 acre feet. This uncertainty was brought to the parties' attention by office letter of April 6, 1950, wherein the protestant was informed that unless he raised an objection within 15 days the drawing would be considered a fulfillment of the terms of the withdrawal. No reply to that letter has been received and the protest is therefore considered as having been withdrawn.

Inasmuch as the only protest filed against Application 12613 has been withdrawn conditionally and the condition appears to have been met, no bar remains to the approval of that application which therefore should be approved and permit issued, subject to the usual terms and conditions.

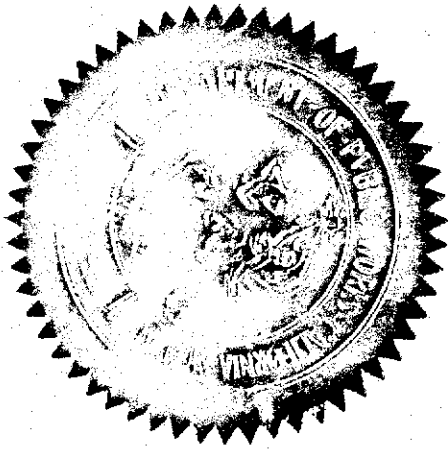
oOo

ORDER

Application 12613 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 12613 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 31st day of August , 1950.



A. D. Edmonston

A. D. Edmonston
State Engineer