

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 12364 by William F. Miller to appropriate Water in El Dorado County from an Unnamed Stream Tributary via Granite Canyon to South Fork of American River for Irrigation, Domestic and Stockwatering Purposes and in the Matter of Application 12383 by L. W. Veerkamp to Appropriate Water in El Dorado County from an Unnamed Spring Tributary via an Unnamed Stream and Granite Canyon to South Fork of American River, for Irrigation and Stockwatering Purposes.

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Decision A. 12364 and A. 12383 D. 678

Decided September 18, 1950

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IN ATTENDANCE AT INVESTIGATIONS CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITES OF THE PROPOSED APPROPRIATIONS ON AUGUST 16, 1949:

Application 12364

William F. Miller	Applicant
Milton W. Daniels	Applicant's son-in-law
D. K. Longhurst	Protestant

Application 12383

L. W. Veerkamp	Applicant
Wm. F. Miller	Protestant
Milton W. Daniels	Protestant

A. S. Wheeler, Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, representing The State Engineer, conducted both investigations.

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## OPINION

### General Description of the Projects

Application 12364 contemplates the diversion of 0.20 cubic foot per second for direct utilization, year round, and the diversion of 4 acre feet per annum to temporary storage, the latter amount to be collected during periods extending from November 1 to April 1. Diversion is to be effected by means of an earth dam 19 feet high by 150 feet long, located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 32, T 11 N, R 10 E, M.D.B.&M. The water is to be used for domestic purposes, stockwatering and irrigation. It is to be conveyed by means of a 3 inch pipe 1000 feet long rising a total of 70 feet. The place of use consisting of a 5 acre orchard and 25 acres of pasture, includes portions of the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$  and NW $\frac{1}{4}$  SE $\frac{1}{4}$  of the same Section 32. Irrigation is to extend from April to October, both months inclusive. The applicant states that he has another water right or source of supply, i.e. 4 miner's inches from El Dorado Irrigation District.

Application 12383 contemplates the diversion of 25 gallons per minute, year round, from an unnamed spring in El Dorado County for irrigation and stockwatering purposes. The spring lies within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, T 11 N, R 10 E, M.D.B.&M. as does also the place of use, a 5 acre orchard. According to the application the land to be irrigated has another source of water supply, i.e. a supply from El Dorado Irrigation District.

### Protests

Application 12364 was protested by D. K. Longhurst who alleged that the proposed appropriation would cause his spring to dry up and thereby deprive him of necessary water for domestic purposes, irrigation

and stockwatering. He states that he diverts water at a point within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 32, T 11 N, R 10 E, M.D.B.&M. by virtue of a riparian right, that he irrigates pasturage and orchard and that during the summer he uses practically all of the water that flows by his premises. In answer to the protest Applicant Miller asserts that the protestant's spring has no connection with the water applied for, that to the best of his knowledge the water applied for has never been used for irrigation, and that a riparian right does not extend to return flow.

Application 12383 was protested by Wm. F. Miller and Milton W. Daniels, jointly. These protestants contend that the proposed appropriation will cause their meadow and pasture to dry up, shorten the supply of water for the watering of live stock and handicap them in keeping their dairy plant up to sanitary standards. They claim a right to use water from the source described in the application, asserting that such right is based upon prior application and use before December 1914, extending back in fact for 50 years. Under these alleged rights they claim to be entitled to divert 5 inches for dairy use, irrigation, domestic purposes and stockwatering, from January 1 to December 31 of each year. Their diversion they state heads within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 32, T 11 N, R 10 E, M.D.B.&M.

Applicant Veerkamp answers the Miller-Daniels protest by expressing doubt that diversion from the spring named as the source in his application would affect the protestants' land, that spring being located on the other side of the draw and by stating that the yield from the spring is insufficient to affect the protestants' stock watering supply, that the proposed diversion cannot handicap dairy sanitation because water from the spring has never been used at the protestants'

dairy, and that the prior application referred to in the protest is in fact junior to the applicant's appropriative right established by usage since prior to 1914.

#### Field Investigation

The applicants and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, field investigations were conducted at the sites of the proposed appropriations on August 16, 1949 by an engineer of the Division. Each applicant and protestant was present during the investigation in which concerned.

#### Discussion

The Longhurst protest (against Application 12364) appears to have been based upon a misunderstanding as to where the applicant proposes to divert. At the time of the field investigation Protestant Longhurst when shown the proposed point of diversion on the ground is reported to have said that if that is where the water is to be diverted it will not affect his supply and he has no reason to maintain his objection. The applicant assured him that such was indeed the proposed point of diversion, an assurance supported by the presence of the proposed dam itself, almost completed. The protestant thereupon signed a Division Form 23C withdrawing his protest against approval of the application, explaining that the water supply upon which he depends comes from a different ravine.

The Longhurst protest having been withdrawn, Application 12364 stands unprotected and no bar appears to the approval of said application and issuance of permit thereon subject to the usual terms and conditions.

The spring from which diversion is proposed under Application 12383 appears from a sketch of the vicinity to lie some 60 feet to the right (northeast) of "Unnamed Stream" and roughly 1/4 mile upstream from Protestant Miller's Application 12364. According to the same sketch (with office report) the spring is situated on or near the property line between Applicant Veerkamp and Protestant Miller. "Unnamed Stream" traverses both the Veerkamp lands and the Miller lands, the former lying upstream from the latter.

During the investigation the spring was yielding at the rate of some 500 to 600 gallons per day and the investigating engineer judged that its maximum flow at any time would be but a small fraction of the amount applied for. To this Applicant Veerkamp agreed but explained that he had filed on the larger amount (25 gallons per minute) in order to cover waste waters resulting from irrigation of his land by water obtained from El Dorado Irrigation District; and that he considered such waste waters to be a part of the waters filed upon in Application 12383. It seems that early in 1949 Applicant Veerkamp excavated a pit at the spring for the purpose of collecting both the yield of the spring and return flow from the land which he irrigates and that he proposes to pump all of the collected water for re-use. The investigation developed that the material excavated from the pit was so placed as to change the channel of "Unnamed Stream" so that it would lead to the pit, thereby preventing any flow from continuing downstream except such as might overflow from the pit. It developed further that Applicant Veerkamp's practice has been to allow his waste waters to enter the stream channel and that not until 1949 did he make any attempt to recapture any of such waters.

Inasmuch as the source named in Application 12383 is a designated spring, approval of the application cannot extend the appropriation therein initiated to include waters from another source as for example return flow from irrigated lands. This limitation of the appropriation to waters originating at the spring does not appear to preclude recovery and reuse, by Applicant Veerkamp, of return flow from his own irrigated acreage, which is an irrigator's ordinary privilege and filing an application to appropriate his own water would be superfluous. This limitation does however preclude the interruption by Applicant Veerkamp of the flow of waters of unnamed stream to which he may have no right, including return flow from irrigated lands upstream from his own, and to such waters, in the light of available information, Applicant Miller under his Application 12364 would appear to have the earlier claim.

With further reference to the spring upon which Applicant Veerkamp has filed, the report of investigation states that both the applicant and the protestants are riparian thereto. If that is assumed to be the case, approval of Application 12383 would not materially benefit Applicant Veerkamp, since through riparian ownership he already is entitled to a share of the water therefrom issuing and since any appropriative right gained through the application would be subordinate to the holders of riparian rights, including Protestant Miller. Again, insofar as appropriative rights are concerned, Protestant Miller's Application 12364 (if approved), as well as the protestants' alleged appropriative rights (if substantiated) would take precedence over Applicant Veerkamp's application.

While it appears for reasons above stated that Applicant Veerkamp will benefit little if at all by the approval of Application

12383, no particular objection is seen to its approval subject to the usual terms and conditions and subject also to a reduction in amount to an amount not exceeding the yield of the spring. That yield is not known exactly and may fluctuate considerably. In view of the observed flow of 500 to 600 gallons per day on August 16, 1949 however it cannot be supposed to exceed, say, 1000 gallons per day. It is the opinion of this office therefore that Application 12383 should be approved, subject to the usual terms and conditions, in an amount not to exceed 1000 gallons per day.

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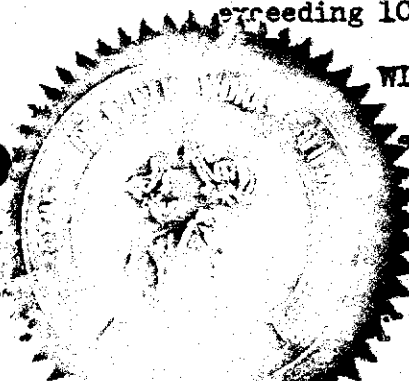
ORDER

Applications 12364 and 12383 for permits to appropriate water having been filed, field investigations 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 12364 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate; and

IT IS FURTHER ORDERED that Application 12383 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject also to a reduction of the amount of the appropriation thereunder to an amount not exceeding 1000 gallons per day.

WITNESS my hand and the seal of the Department of Public Works  
of California this 18th day of September, 1950.

  
A. D. Edmonston  
A. D. Edmonston, State Engineer.