

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 13449 by J. W. Stinson to Appropriate Water from Squirrel Creek Tributary via Deer Creek to Yuba River in Nevada County for Irrigation Purposes.

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Decision A. 13449 D. 688

Decided January 17, 1951.

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON SEPTEMBER 11, 1950:

J. W. Stinson	Applicant
Mrs. J. W. Stinson	Applicant's wife
Percy J. Bosanko	Protestant's Watermaster
Rudy Smith	Protestant's District Superintendent
F. M. Kuchta	Assistant 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 contemplates the appropriation of 0.125 cubic foot per second from April 1 to November 15 of each season from Squirrel Creek, tributary via Deer Creek to Yuba River, for irrigation purposes. It is proposed to divert by means of a 120 gallons-per-minute pump at

a point within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T 16 N, R 7 E, M.D.B. & M. and to deliver and distribute by means of a sprinkler system. The water is to be applied to 10 1/3 acres of alfalfa located within the SW $\frac{1}{4}$ of the same Section 34.

Protest and Answer

The Nevada Irrigation District protests, contending that the proposed appropriation is in conflict with an appropriation based upon its own earlier application. As to the extent of present and past use the protestant refers to a map already on file with the Division of Water Resources. It asserts that its diversion heads within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T 16 N, R 7 E, M.D.B. & M. It claims also to be entitled to divert and/or to redivert at any point within its district boundaries.

In answer the applicant contends that the protestant is not using all the water and that it has not complied with the provisions of the Water Code. More specifically he challenges the protestant's asserted right to divert water at the point specified in its protest, charges that the protestant has made no effort to divert at the point specified in its application although nearly sixteen years have passed since that application was filed, and charges further that the protestant is openly flouting certain provisions of the Water Code.

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 September 11, 1950. The applicant

and the protestant were present or represented at the investigation.

Records Relied Upon

Applications 8176, 11237 and 13449 and all data and information on file therewith.

Discussion

Under Application 8176, Permit 5811, the Nevada Irrigation District is authorized to divert 100 cubic feet per second year-round and 20,000 acre feet collected between November to June, both inclusive, of each season, from Squirrel Creek, at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T 16 N, R 7 E, M.D.B. & M. for mining and domestic purposes. The time within which to complete construction and to apply the water in question to beneficial use has been extended by order dated April 15, 1948, on showing of good cause, to December 1, 1952. The place of use under Application 8176 is described as "within the boundaries of the Nevada Irrigation District.....as shown on Map 1020 filed 12/24/40" and the application contains the following statement:

"It is the intention to use natural streams and water courses within the place of use as conduits and distributaries and therefore any and all points on such streams and water courses are potential points of rediversion."

According to the report of the investigation of Application 13449 on September 11, 1950 the flow of Squirrel Creek measured 2.65 cubic feet per second on that date, at Applicant Stinson's proposed point of diversion. During an earlier investigation (in connection with Application 11237) the flow of Squirrel Creek, on September 20, 1946, approximately 1.1 miles downstream from Applicant Stinson's proposed point of diversion was reported as being 2.5 cubic feet per second.

These isolated observations suggest that the flow of Squirrel Creek, within the reach under consideration, is somewhat scant in late summer. The flow of Deer Creek, into which Squirrel Creek discharges is also scant, but is better known as to amount, having been recorded by the U. S. Geological Survey below its junction with Squirrel Creek, since June, 1935. Maximum, minimum and mean discharges of Deer Creek at the U. S. G. S. station (Deer Creek near Smartsville) during the summer months of 1947, the latest season for which the published record is available, in cubic feet per second, are as follows:

<u>Month</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Mean</u>
June	65.	5.0	17.8
July	9.8	3.0	5.5
August	8.0	1.4	4.54
September	3.0	1.4	2.00

According to Water Supply Paper 1091 in which the above figures are reported the drainage area tributary to the gage comprises 83.5 square miles, the flow at the gage is regulated by Deer Creek Reservoir (1400 acre feet in capacity), there are power and irrigation diversions above the station and the flow of Deer Creek is augmented at times by diversions of water from South Fork of Yuba River.

Of the 83.5 square miles tributary to the Deer Creek gage, some 8 square miles appear to be tributary to Applicant Stinson's proposed point of diversion, according to the U. S. G. S. Smartsville quadrangle. Scaled distances indicate that the U. S. G. S. gage is located about 1.5 miles below the junction of Deer and Squirrel Creeks, that the protestant's Union Ditch heads on Squirrel Creek approximately 1.25 miles

above that junction and that the points of diversion described in Applications 11237 (Dee), 8176 (Nevada Irrigation District) and 13449 (Stinson) are located roughly 1.7, 2.6 and 2.8 miles, respectively, above the head of the Union Ditch.

When Application 11237 (Dee) was investigated (on September 20, 1946) it was observed that the entire flow of Squirrel Creek (except a leakage of about 0.1 cubic foot per second through the dam) was being diverted into the Union Ditch. That ditch appeared capable of carrying some 20 cubic feet per second. By letter dated June 5, 1946 from Nevada Irrigation District in amplification of its protest against Application 11237, that protestant asserted as follows:

"Regardless of whether or not there is any natural water in Squirrel Creek as it goes through your property there unquestionably is no unappropriated natural water during the dry portion of the season. As stated in our Protest.....we have a ditch in which we divert water from this creek about one mile down stream from where you propose to divert water and this diversion has been continuous for more than 20 years past and the water rights which the District acquired with it's purchase from the Excelsior Water and Power Company date back to about 1851 when the water was first diverted from Squirrel Creek into the Union Ditch. All the water in Squirrel Creek is diverted into this ditch during the dry season of the year. It is our belief and we so claim that practically all of this water is returned seepage or runoff derived from water served by the District and is foreign to the watershed of Squirrel Creek. However, whether such water is foreign or natural, the District claims the right to divert it all and not to have it diminished by any diversion such as you propose."

In view of the protestant district's assertion, quoted in the preceding paragraph, the observed existence, capacity and utilization of the Union Ditch and the flow characteristics of Squirrel Creek as reflected by the U. S. G. S. records of flow of Deer Creek it was concluded in Decision 543 that there was insufficient water in Squirrel

Creek to justify the approval of Application 11237 .

The investigation of Application 13449 on September 11, 1950 disclosed a situation closely parallel to that obtaining when Application 11237 was investigated. As in the earlier investigation it was observed that the entire flow of Squirrel Creek, except leakage through the dam, was being diverted into Union Ditch, the flow of the creek at the currently proposed point of diversion was less than three cubic feet per second and the protestant contended that that flow was neither natural flow nor unappropriated water.

Applicant Stinson's contention that the protestant is not using all the water and that it has not complied with the provisions of the Water Code (contained in his answer to the protest) is not borne out by the records. The investigations indicate that the low water flow of Squirrel Creek is being diverted into Union Ditch under an asserted ancient right and that the protestant's approved Application 8176 is in good standing.

In view of the information above outlined it is concluded that during the summer months unappropriated water in the reach of Squirrel Creek from which diversion is proposed under Application 13449 is ordinarily non-existent and that the appropriation of such surpluses as temporarily occur in late spring or early fall was initiated by the filing of approved Application 8176. In consequence of these conclusions it is the opinion of this office that application 13449 should be denied.

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ORDER

Application 13449 having been filed with the Division of

Water Resources as above stated, a protest having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11782 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 17th day of January, 1951.



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