

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 12923 by George J. Stempel to Appropriate Water from Sherwood Creek in Mendocino County for Irrigation Purposes, Application 13086 by Ivan L. Smith to Appropriate Water from Eel River in Humboldt County for Irrigation Purposes, and Application 13240 by John H. and Retha R. Neblett to Appropriate Water from an Unnamed Spring tributary to Mad Creek in Mendocino County for Domestic Purposes.

oOo

Decision A. 12923, 13086, 13240 D. 697

Decided February 23, 1951

oOo

IN ATTENDANCE AT CONFERENCE CONDUCTED BY THE DIVISION OF WATER RESOURCES  
AT EUREKA, CALIFORNIA ON AUGUST 8, 1950:

George J. Stempel	Applicant	
E. S. Mitchell, Attorney at Law)	(	Representing Applicant Smith
Mrs. Ivan Smith		
Mrs. J. H. Neblett	Representing the applicants Neblett	
Harold L. Hammond	District Attorney, Humboldt County	
W. M. Husband, M. D.	County Health Officer, Humboldt County, and Chairman, Regional Water Pollution Control Board No. 1	
Chester F. Peterson	Supervisor, Humboldt County	
Len Yocum	Supervisor, Humboldt County	
G. J. Cole	Supervisor, Humboldt County	
W. D. Pine	Farm Advisor, Humboldt County	
E. E. Safford	Supervisor, Mendocino County	
Lewis M. Foulke	Member, Regional Water Pollution Control Board No. 1	

Ralph E. Olliver

Member, Regional Water Pollution  
Control Board No. 1

William Shackleton

Executive Officer, Regional Water  
Pollution Control Board No. 1

Paul C. Ward

Sanitary Engineer, State Depart-  
ment of Public Health

Harrison Smitherum

Supervising Hydraulic Engineer  
Division of Water Resources  
Department of Public Works  
Representing the State Engineer

oOo

OPINION

General Description of the Projects

Application 12923 of George J. Stempel initiates an appropriation of 0.40 cubic foot per second (not to exceed 60 acre-feet per annum) from June 1 to October 1 of each season from Sherwood Creek, tributary to Outlet Creek, in Mendocino County. Diversion is to be effected by means of a 250 gallons-per-minute pump drawing from a pond which in turn is created by a concrete diversion dam, 8 feet high by 40 feet long. Conveyance and distribution are to be effected by means of a portable sprinkler system. The proposed point of diversion is located within the  $SE\frac{1}{4}$   $SE\frac{1}{4}$  of Section 8, T 19 N, R 14 W, M.D.B. & M. The proposed place of use is a 30 acre pasture located within the  $E\frac{1}{2}$  of the same Section 8. Riparian rights are claimed for the tract described.

Application 13086 contemplates an appropriation from Eel River in Humboldt County of 0.30 cubic foot per second from May 15 to October 1 of each season, for irrigation. The proposed diversion is to head in the County of Humboldt within Lot 8 (on Eel River)

of Section 24 of T 1 N, R 1 E, H.B. & M. Diversion is to be effected by means of a 250 gallons-per-minute pump delivering through 2000 lineal feet of 6 inch steel pipe. The proposed place of use includes 6 acres of alfalfa and 16 acres of pasture, located within Sections 24 and 25 of the same township. No other water right or source of water supply is claimed.

Application 13240 initiates an appropriation of 9000 gallons per day, year-round, from an unnamed spring, tributary to Mad Creek, in Mendocino County, for domestic purposes. Diversion is proposed at a point within the NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> of Section 27, T 23 N, R 16 W, M.D.B. & M. and the conduit is to be a 1 inch pipe line 400 feet long. The water is to be used at 2 home sites, located within Lot 2 of the same Section 27, for domestic purposes. Use is to include minor stockwatering and garden irrigation. No other water right or source of water supply is claimed.

#### Protests

The County of Humboldt protests against the three applications, taking the position that any diversion of water from Eel River or from its tributaries will affect Humboldt County adversely. It argues that the general health and welfare of the people demand a maximum quantity of water in Eel River, especially in summer, to ease the threat of poliomyelitis, allegedly greatest during low river stages. It argues in effect that the sources filed upon are parts of a natural drainage system which supplies water to residents of Humboldt County and that abstractions from those sources will diminish its net water supply and cause ground water levels to recede and will be detrimental to the fish and wild life of the region.

### Answer

Applicant Smith answers the protest against Application 13086 by stating in effect that Eel River fluctuates between wide limits during the proposed diversion period, that proof is lacking that the incidence of poliomyelitis is affected by the stage of Eel River, that the salmon spawning run up Eel River does not occur until after the first rains when irrigation is over, and that the welfare of the people of Humboldt County can better be served by a reasonable restriction of irrigation use than by a categorical denial of diversions from Eel River for that purpose.

Answers to protests against Applications 12923 and 13240 were not submitted.

### Field Investigation

The applicants and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, a conference was held at Eureka, California on the morning of August 8, 1950 and field investigations were conducted at the sites of the proposed appropriations on the afternoon of August 8 and on August 9, 1950 by an engineer of the Division. The applicants and the protestant were present or represented during the conference. The applicants or their representatives were present during the field investigations but the protestant waived the privilege of representation during the field investigations and did not participate therein.

### Records Relied Upon

Applications 12923, 13086 and 13240 and all data and information on file therewith.

### Discussion

A 35 year record of the discharge of Eel River at Scotia is

available in the water supply papers of the U. S. Geological Survey. According to Water Supply Paper 1121 the flow of Eel River at that station has averaged 6235 second feet; it has been as much as 345,000 second feet and as little as 10 second feet. The drainage area tributary to the Scotia gage is 3070 square miles in extent. Diversions proposed under Applications 13086, 13240 and 12923 head roughly 6 miles, 75 miles and 105 miles, respectively, upstream from the Scotia gage. Scotia is itself some 55 miles (by river) within Humboldt County. It is some 20 miles above the mouth of Eel River and it is upstream from the flat, populous Eel River Valley.

Minor diversions, as proposed in the applications at issue, are insignificant when compared with the average flow of Eel River but they are appreciable when compared with the flow of that river during its lower stages. Average monthly discharges of Eel River at Scotia during June, July, August and September for example, for the last 10 years of published record, are as follows:

Monthly Mean Discharges of Eel River at Scotia  
(second feet)

	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>
1939	566	192	84	53
1940	759	256	123	117
1941	1924	576	267	192
1942	3422	713	274	152
1943	1861	423	184	122
1944	1158	368	156	73
1945	1417	378	146	90
1946	574	223	111	79
1947	1036	254	149	73
1948	3154	676	291	287

During September, 1939 when monthly mean discharge was the lowest of any of the months considered (in the tabulation), daily mean discharges ranged between 63 second feet and 42 second feet.

It is apparent from the data set forth in the preceding paragraph that the aggregate of the amounts applied for in the applications at issue (approximately 0.7 second-foot) is small in comparison with the flow of the river, even during low stages.

No showing was made during the conference or during the field investigations to support the protestant's contention that the depletion of the flow of Eel River resulting from the proposed appropriations would be detrimental to fish and wild life and would cause lowering of ground water levels. In the absence of such showing and in the absence of any information derived by field investigation or office study that would support the protestant's contentions in that regard it is concluded that any effect that the proposed appropriations would have upon fish and wild life or upon ground water levels of the locality would be too slight to justify consideration as the basis of a protest.

The protestant's contention that the proposed appropriations would so reduce the flow of Eel River as to increase the incidence of poliomyelitis likewise was unsupported. In that connection the protestant County's District Attorney announced the protestant's withdrawal of its objections to the three applications insofar as such objections were based upon the hazard to health alleged in the protests.

In view of the circumstances above discussed it is the opinion of this office that the protests by the County of Humboldt against Applications 12923, 13086 and 13240 are insufficient and that those appli-

cations should be approved, subject to the usual terms and conditions.

oOo

ORDER

Applications 12923, 13086 and 13240 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12923, 13086 and 13240 be approved and that permits be issued to the applicants, 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 23rd day of February, 1951.



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