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 13568 by Delbert Niegel to Appropriate Water from an Unnamed Stream Tributary to Fish Creek in El Dorado County for Irrigation Purposes.

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Decision A. 13568 D. 698

Decided March 8, 1951

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON AUGUST 29, 1950:

Delbert Niegel. . . . . Applicant

M. B. Abrams . . . . . Protestant

S. Skeehan . . . . . Associate 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 as amended initiates an appropriation of 0.05 cubic foot per second to be diverted from April 15 to November 1 from a certain unnamed stream tributary to Fish Creek at any point on

that stream within the W½ of Section 28, T 12 N, R 9 E, MDB & M, for the irrigation of 160 acres of pasture within the same section. Diversion is to be effected by means of an earth dam 5 feet high by 30 feet long. Small earth ditches heading on the stream at various points are to spread the water over the place of use. The application provides that diversions thereunder are to be limited to waste and return water flowing in the unnamed stream described. The applicant asserts also a riparian right to divert from the same source.

Protest

M. B. Abrams protests that the amount of summer flow reaching his point of diversion is insufficient to satisfy his prior rights, and that the proposed diversion would further diminish that scant supply. Protestant Abrams claims rights under Applications 10731 and 13123 to divert from the source filed upon by the applicant. He states that his predecessor irrigated approximately 10 acres, and that it is his expectation to irrigate 100 acres. He describes his diversion point as being within the NE¼ SW¼ of Section 33, T 12 N, R 9 E, MDB & M.

In answer to the protest the applicant avers that the flow of water in the stream in question is sufficient both to satisfy the protestant's rights and to provide the amount sought under Application 13568.

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 August 29, 1950. The applicant and the protestant were both present at the investigation.

Records Relied Upon

Application 13568 and all data and information on file therewith.

Discussion

The sources designated in the application as initially filed are two unnamed streams tributary via Fish Creek and Hastings Creek in turn to the South Fork of American River. The amount initially applied for was two cubic feet per second. According to the report of the field investigation of August 29, 1950, these unnamed streams unite to form Fish Creek, the junction of the stream occurring just south of the property line separating the applicant (north) and the protestant (south). According to the same report the flow of the easterly unnamed stream at the time of the investigation, near the property line mentioned was about 5 gallons per minute, and the flow of the westerly unnamed stream, about 25 gallons per minute. The same report states in effect that there is no record of the flow of the two unnamed streams but that the applicant is of the opinion that the flow of the westerly stream stays about the same all summer and that, due to check dams having been recently installed by an upstream irrigator to recapture his waste water, the flow of the easterly stream will be too much reduced to support any worthwhile diversion. The report further states that about 0.5 mile downstream from the fence line between applicant and protestant and 500 feet upstream from the protestant's reservoir, the flow of Fish Creek at the time of the investigation was about 15 gallons per minute.

By letter dated September 21, 1950, the applicant requested in effect that Application 13568 be so amended as to provide for a diversion of 2 miner's inches instead of 2 cubic feet per second, and to delete as a source the easterly of the unnamed streams mentioned in the original application.

The protestant under Application 10731, Permit 6307, is authorized, subject to prior rights, to divert for irrigation and domestic purposes 3 cubic feet per second from about April 1 to about November 1 of each season, and 49 acre-feet per annum; the latter to be collected between November 1 and June 1. The time within which construction work and utilization of water are to be completed under Application 10731 has been extended until December 1, 1951. According to a progress report dated October 5, 1949, use of water had not then commenced. Under Application 13123, Permit 7488, the protestant is authorized to divert for irrigation purposes 120 acre-feet per annum, collected between November 1 and June 1, construction to be completed by December 1, 1952, and complete utilization by December 1, 1953.

Other applications, all prior to Application 13568 and filed upon the waters in question within the same township are Application 12999, Permit 7757, for 0.75 cubic foot per second in Sections 16 and 21; Application 13520 for 40 acre-feet per annum within Section 16; and Application 13521 for 150 acre-feet per annum within Section 21.

In view of the investigating engineer's observation on August 29, 1950, of a flow of about 15 gallons per minute 500 feet upstream from the protestant's reservoir, the applicant's statement that the flow all summer is about as the amount then observed, the protestant's authorization under

Application 10731 to divert up to 3 cubic feet per second during the irrigation season and the prior appropriations initiated by the filing of Applications 12999, 13123, 13520 and 13521, it is manifest that no unappropriated water exists in the source filed upon by Applicant Niegel, during the period designated in his application.

Inasmuch as no unappropriated water appears to exist in the source from which appropriation is sought under Application 13568, it is the opinion of this office that that application should be denied.

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ORDER

Application 13568 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 13568 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 8th day of March , 1951.

A. D. Edmonston
State Engineer

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