

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
ENGINEER IN CHIEF
OFFICE OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 13655 by Lester G. Hammond to appropriate
Water from an Unnamed Stream, Tributary via Rock Creek to the South
Fork of Dry Creek in Placer County for Domestic Purposes and Irrigation.

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Decision No. 13655 D. 717

Decided August 27, 1951

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In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on April 18, 1951:

Lester G. Hammond	Applicant
Kern E. Tindall	Applicant's Attorney
Stanley Woodward	Representing the protestant Woodward Brothers
Ernest Musso	Representing Protestant Alvin G. Musso
William Simpson	Former owner of Sather property
J. J. Webb	Protestant as successor-in-interest to Ernest J. Sather
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

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DEFINITION

Description of the Project

The application contemplates an appropriation of 0.05 cubic
foot per second, year-round, from an unnamed stream tributary via Rock

Creek to the South Fork of Dry Creek, for domestic purposes and irrigation. The proposed point of diversion is to be located within the NE $\frac{1}{4}$ of Section 35, T13N R3E, MDECA. The project includes a 150 gallons-per-minute pumping plant and an earth regulatory dam 5 feet high by 135 feet long. The proposed place of use is located within the same quarter quarter section as the intake. The proposed use is the irrigation, from March 1 to November 1, of 10 acres of clover and the domestic supply of two homes, including minor stock watering.

Protests

Ernest J. Sather protests the application, stating that he diverts from the same source about a half mile below the applicant, that he irrigates a truck garden which is his principal means of support, that he has no other means of obtaining water and that sometimes the creek runs dry. He states further that in 1922 he purchased his property, which included a water right located by one L. Simpson some years earlier, that the water has been used practically ever since the location was made and that use for gardening purposes during the past 4 years has been in the amount of 5 miner's inches, whenever that amount has run in the creek.

Alvin W. Musso protests that the water applied for is a portion of the water that he (the protestant) has been using since 1930. He claims a riparian right and prior use, the amount used varying from 15 to 20 miner's inches. He states that his diversion heads about $\frac{1}{2}$ mile southwest (downstream) from the point at which the applicant proposes to divert, that he uses water for the irrigation of fruit trees and that irrigation usually extends from May 15 to October 1.

Woodward Brothers claim to divert from the same stream at a point about 1 mile downstream from the applicant. They state that their land is riparian and that as the flow of the creek reaches their property they use it for domestic purposes, garden irrigation and stock watering. They state that their protest may be disregarded and dismissed if such permit as may be issued to the applicant protects them from any interference with their riparian right and prevents diversions to points without the watershed.

Answers

In answer to the protest by Ernest J. Sather the applicant denies that that protestant has any rights to the water applied for because the alleged right upon which the protestant relies is based upon a Notice of Appropriation made and recorded on August 3, 1915, a procedure at variance with the Water Commission Act and no application has ever been filed by Protestant Sather or his predecessor in interest in accordance with that Act. The applicant asserts that had a proper right existed it would have been lost by non-use for more than 5 consecutive years. He also asserts that no right has been established by Protestant Sather by prescription.

The applicant answers the protest by Woodward Brothers by stating that if a permit is issued to him in response to his application that permit will not authorize him to apply water to lands other than those described in the application, which lands lie within the same watershed as the stream filed upon. The applicant also states that riparian rights would not be affected by the proposed appropriation because at the time of year when water is most needed the flow of the

source is made up mainly of foreign water to which riparian rights do not attach.

In answer to the protest by Alvin T. Musso the applicant asserts that that protestant has not thusfar used all the water that flows in the source filed upon, and that the use that he (the applicant) would make of the water in question would be wholly within the watershed of the stream from which he seeks to divert it. The applicant asserts further that protestant Musso's claimed riparian rights would not be affected, most if not all of the flow reaching that protestant during the irrigation season being foreign water, rather than natural flow.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on April 18, 1951 by an engineer of the Division. The applicant and the protestants were present or represented at that investigation.

Records Relied Upon

Application 13655 and all data and information on file therewith.

Discussion

According to the report of the investigation of April 18, 1951, the source filed upon, a small stream heading in the Sierra Nevada foothills and flowing southwesterly, drains a moderately wooded area, the extent of which is about 0.45 square mile above the applicant's proposed point of diversion and about 1.0 square mile above the intake of the lowermost protestant. Except during storm periods, the report states, the natural

stream flow is small and originates for the most part below the applicant's proposed point of diversion, from a cut on the Southern Pacific Railroad right of way, from a small tributary which joins near the lower end of the Musso property and from some small seeps or springs. At the time of the investigation the streamflow, all of which was natural, is reported to have been about 0.05 second-foot at the applicant's place, 0.50 second-foot just below the railroad cut and 0.60 second-foot at Protestant Musso's lower property line. All present at the investigation agreed, the report states, that the 0.05 second-foot then flowing at the applicant's place is about the normal low, that the natural flow from the railroad cut is about 0.15 second-foot and that the tributary entering at the Musso place carries no natural flow in summer but does, occasionally, carry a small amount of waste water. The report states that usually about mid-May the Pacific Gas and Electric Company begins to deliver irrigation water within the watershed and that thereafter wastage from such deliveries (foreign water) at times, according to the applicant, amounts to as much as 0.35 second-foot at the applicant's place; but the report also states that Protestant Musso contends that these occasional flows represent transfers by him of water from a place which he owns upstream from the applicant.

As to the protestants' use of water the report of investigation states that Protestant Musso pumps 0.123 second-foot, on average, from the source filed upon, for the irrigation of 20 acres of orchard; that Protestant Musso also receives some irrigation water as well as his domestic supply from the Pacific Gas and Electric Company; that Protestant Sather (whose property has recently been transferred to J. B. Webb) has irrigated a 3.5 acre truck garden, has used not to exceed 2

miner's inches therefor and has obtained his domestic supply from a spring; and that the Woodward brothers claim to use a maximum of 2 miner's inches, their use including a domestic supply for 10 people in 4 houses and the irrigation of a small nursery.

Discussion between the parties during the course of the field investigation resulted, according to the report, in a statement by the protestants that in view of the reduction of the amount applied for in the application to 0.05 cubic foot per second they would have no further objection to the application's approval, even though they did not see fit to sign written withdrawals of their protests. Upon being informed by the investigator that their alleged riparian rights cannot entitle them to divert foreign waters, the protestants decided, the report further states, that they would themselves file applications covering the diversions upon which they depend. Such applications (Applications 14264, 14265 and 14266) have since been filed.

No relevant information other than that above reported is of record.

Conclusion

From the information above set forth it is concluded that unappropriated water at times exists in the source from which appropriation is sought under Application 13655, that such water may be taken and used beneficially in the manner proposed in that application without infringement upon prior rights and that the application should therefore be approved, subject to the usual terms and conditions.

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ORDER

Application 13655 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 13655 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 27th day of August, 1951.

Original signed by

A. B. Johnston
State Engineer

WJH:clm