

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 13698 by John K. Wilson to Appropriate
Water from an Unnamed Stream Tributary to Secret Ravine in Placer
County for Domestic Purposes and Irrigation.

oOo

Decision A. 13698 D. 722

Decided September 17, 1951

oOo

In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on April 23, 1951:

John K. Wilson	Applicant
Sam Logan	Protestant
Tadao Yamashiro	Protestant
Joe Boisa	Protestant
Ervin G. Pekuri	Protestant
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

oOo

OPINION

General Description of the Project

The application contemplates an appropriation of 0.025 cubic foot per second from May 1 to October 31 and of 2.5 acre-feet per annum to be collected from November 1 to April 30 of each season for domestic purposes and irrigation. Diversion is proposed from an unnamed stream

tributary to Secret Ravine, in Placer County, at a point within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T12N R7E, MDR&M. The project includes a 150 gallons-per-minute pumping plant, an earth dam 8 feet high by 160 feet long, a reservoir 0.4 acre in surface area and 2.5 acre-feet in capacity and 360 lineal feet of 4 inch steel or fiber pipe line. According to the application a 36 acre orchard and 2 acres of pasture located within the same Section 26, are to be irrigated and a domestic supply is wanted for one house occupied by 3 people as well as for a half/^{acre}garden and for livestock (2 head of cattle, 4 hogs, 40 chickens). Irrigation is to extend from May 1 to October 31. The application states that water is also available from the Pacific Gas and Electric Company ditch at \$45.00 per inch.

Protests

Sam Logan and Tadao Yamashiro protest the application jointly because according to their understanding and belief the proposed diversion will take water to which they are entitled and which has been diverted and put to beneficial use for more than 50 years. They claim both an appropriative and a riparian right. They state that the entire flow of the unnamed stream is diverted by a dam within the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, T12N R7E, MDR&M, and conducted by ditch from the dam to garden and orchard lands in the same Section 26 for the purpose of irrigation. For domestic use they state that the flow of a spring is piped to Protestant Logan's dwelling. No conditions are stated under which the protest may be disregarded and dismissed.

Ervin O. and Polly Pekuri protested but subsequently withdrew their protest. They state that they have 2 acres of ladino clover, garden and lawn which have already suffered from lack of water (summer of 1950) and would be permanently damaged by diversion of additional amounts upstream. They base their claim of a water right upon the filing of Application 13075.

Joe Boisa also protested and subsequently withdrew his protest. He states that he has about 45 acres in orchard and green feed which has already suffered from lack of water (protest dated August 3, 1950), due to the drying up of the stream. He bases his claim of a water right upon the filing of Application 7646 and states that his diversion heads within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T11N R7E, MDE&M. As to conditions under which his protest may be disregarded and dismissed Protestant Boisa writes:

"I have dismissed protests before with the idea of the applicant buying water and putting it in the creek when it ran dry. There was and still is too much lack of cooperation in this respect. I can't run this risk again."

In answer to the protests the applicant invites the protestants' attention to the amendment of his application which reduces the amount of the direct diversion therein applied for to 0.025 cubic foot per second.

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, a field investigation was conducted at the site of

the proposed appropriation on April 23, 1951 by an engineer of the Division. The applicant and the protestants were present or represented during that investigation.

Records Relied Upon

Application 13698 and all data and information on file therewith.

Discussion

The investigation of April 23, 1951 disclosed that the source filed upon drains about 0.5 square mile of sparsely wooded Sierra Nevada foothill watershed, that the flow at the proposed point of diversion at the time of the investigation was about 0.01 cubic foot per second, which was natural flow, and was practically the maximum natural flow that occurs at that point, except during storm periods. The investigation disclosed also that practically all flow during the irrigation season is runoff from lands irrigated by foreign waters delivered to the area by the Pacific Gas and Electric Company. According to those present at the investigation the maximum flow during the irrigation season is about 0.25 cubic foot per second, of which all but about 0.01 cubic foot per second is foreign.

None of the protestants, according to the report of the investigation, objected to the storage feature of the application. Protestants Boisa and E. G. Pekuri stated that they doubted that any of the small summer flows in the unnamed stream ever reach their places, stated that the direct diversion proposed by the applicant would probably have no appreciable effect upon them, and signed withdrawals (Forms 23c)

of their protests.

As to the possibility of conflict by the applicant's proposed diversion with present use by Messrs. Logan and Yamashiro the report of investigation states that Protestant Logan irrigates some 2.0 acres, his diversion heading on Secret Ravine just below the point at which the unnamed stream filed upon enters that ravine, that Protestant Logan obtains his domestic supply from a spring, and that Protestant Yamashiro diverts from the stream upon which the applicant has filed, irrigates a maximum of 5 acres, depends mainly, however, for irrigation, upon water purchased from the Pacific Gas and Electric Company and delivered through a pipe line and obtains his domestic supply from a well. When it was explained to these protestants that return flow from lands irrigated with foreign waters cannot be claimed under a riparian right Protestant Logan stated, according to the report of investigation, that the deed which conveyed the land from the Federal Government in 1856 specifically included rights to all timber and water and that he therefore felt that he and Protestant Yamashiro could also claim appropriative rights; and he requested that action upon the application be deferred long enough to enable him to have a title search made, to support if possible a claim to such appropriative right. It appeared to the investigator, according to his report, that unless an appropriative right can be shown, Protestants Logan and Yamashiro can claim none of the water normally present in the unknown stream during the irrigation season except possibly the 0.01 cubic foot per second, more or less, of natural flow.

Inasmuch as more than 2 months have passed without further word from Protestant Logan it is inferred that that protestant cannot or does not desire to press the matter of a possible appropriative

right. Even should such a right exist it would be necessarily limited in amount to an amount commensurate with the beneficial use made of it - in the present situation the irrigation of some 7 acres, for which 7/80 or 0.087 cubic foot per second is ordinarily deemed sufficient. The possession by Protestants Logan and Yamashiro of an appropriative right or rights therefore would not preclude the approval of Application 13698 provided that surpluses beyond the protestants' rights, including possible appropriative rights, exist.

According to the report of the investigation of April 23 the flow of the unnamed stream attains a maximum of some 0.25 cubic foot per second. That flow while neither large nor firm is nevertheless in excess, when it occurs, of the amount applied for by the applicant as well as the amount reasonably necessary for the 7 irrigated acres of Protestants Logan and Yamashiro, and being made up almost entirely of return flow, may be supposed to occur during the irrigation season repeatedly.

As to the applicant's proposal, set forth in the application, to irrigate 38 acres, the report of investigation states that his actual intention is to use the water applied for on an area around his house only, that area probably not exceeding 1 acre. According to the report the applicant purchases his main irrigation supply from the Pacific Gas and Electric Company and proposes to secure his household supply from a well.

Conclusion

Surpluses occur at times in the source from which appropriation is sought under the application at issue. Such surpluses result mainly from return flow from irrigated lands. They are therefore erratic but they are apt to occur repeatedly during the irrigation season, and they can

then be used beneficially by the applicant without injury to lower users. The protest by Messrs. Logan and Yamashiro is deemed insufficient as a bar to the approval of the application and the other protests against the application have been voluntarily withdrawn. This office is of the opinion therefore that Application 13698 should be approved, subject to the usual terms and conditions.

oOo

ORDER

Application 13698 having been filed with the Division of Water Resources as above stated, protests 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 13698 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 17th day of September 1951.

A. D. EDMONSTON
State Engineer

SCW:dm