

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 13722 by the Estate of Vittorio M. Mattel,
Deceased, to appropriate water from an unnamed creek tributary to Pescadero
Creek in San Mateo County for irrigation purposes.

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Decision A. 13722 D. 728

Decided December 31, 1951

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In Attendance at Investigation Conducted by the Division of Water Resources
at the Site of the Proposed Appropriation on May 2, 1951:

M. R. Mattel	Representing the applicant
Edna M. Davis	Representing Protestant Albert L. Davis
Joe S. Lawrence	Protestant
J. E. Cabral	Protestant
A. C. Carpy	Protestant
Mr. Cinnelli	Protestant Carpy's Lessee
A. S. Wheeler	Senior 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 initiated an appropriation of 0.312 cubic foot per second to be diverted from March 1 to July 31 for direct application to beneficial use, and 45 acre-feet per annum storage to be collected between November 1 and April 30. The source designated is an unnamed tributary of Pescadero Creek in San Mateo County. The proposed point of

is located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T7S R5W, M&B&M. The project includes a 150 gallons-per-minute pumping plant, 400 lineal feet of 4 inch aluminum pressure conduit and an earth impounding dam, the latter to create a reservoir 8 acres in surface area and 45 acre-feet in capacity. The water is to be used in irrigating a 25 acre pasture located within the W $\frac{1}{2}$ SW $\frac{1}{4}$ of the same Section 34. Irrigation is to extend from about March 1 to about November 1.

Protests

Joseph E. Cabral by letter dated July 13, 1950 supplemented by letter dated July 21, 1951, protests that the proposed appropriation would take all the water from the creek designated, that said creek is his only source of supply for irrigation, that he does not irrigate at present but does water cattle, and that his point of diversion is downstream with respect to the applicant. He states that it is his desire to maintain his share in the water rights on the creek in order that he may properly and adequately irrigate his land when necessary.

Albert F. Davis protests that the creek filed upon flows through his property which consists of 102.4 acres within Section 3, T8S R5W, M&B&M, that he pastures up to 40 head of cattle on his property, that the proposed diversion will leave too little water in the creek to meet his needs for stockwatering, domestic use and irrigation (proposed) of permanent pasture.

Albert C. Carpy protests that if there is any diminution of present streamflow, insufficient water will remain to water his cattle. He asserts a

riparian right, stating that now and for 25 years last past he or his tenant has watered cattle at a point on the source in question near the Pescadero-San Gregorio Highway crossing. He states that his protest may be disregarded and dismissed if his rights as a riparian owner as exercised at present and in the past are fully protected and if any right granted to the applicant is made subordinate to these rights.

Joe E. Lawrence states that he has 10 acres planted to permanent pasture and protests that the proposed appropriation will ruin that pasture and will also deprive his livestock of water. He states that he has used water from the stream in question for stockwatering and for irrigation since 1913 and that his point of diversion is 2100 feet downstream from the applicant's project.

Answers

The applicant, by M. A. Mattei, concedes that the protestants are located below him on the stream filed upon and that they all use water from that stream for stockwatering. He points out however that diversion under the application is sought only until July 31 and asserts that supply is usually sufficient until that date. He states that Protestant Cabral has never irrigated and has another source of supply for domestic purposes including stockwatering, that Protestant Davis has another source of supply but has no planted pasture, that Protestant Carpy borders on Pescadero Creek from which he could divert if he cared to but that he gets along in slack years by damming "unnamed stream" and conserving seepage, and that Protestant Lawrence has never irrigated his pasture, relies on seepage for stockwatering when the stream dries up and also obtains water from developed springs.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 703(b) of the California Administrative Code, Title 29, Waters, a field investigation was conducted at the site of the proposed appropriation on May 2, 1951, by an engineer of the Division. The applicant and the protestants were present or represented during that investigation.

Records Relied Upon

Application 13722 and all data and information on file therewith.

Discussion

According to the report of field investigation the watershed tributary to the proposed point of diversion is about 3 square miles in extent, is heavily wooded and has an average annual rainfall of some 25 inches. According to the Halfmoon Bay quadrangle, U.S.G.S., the watershed is hilly, elevations ranging from about 100 to nearly 1000 feet. According to Department Bulletin 5 -- "Flow in California Streams" -- seasonal runoff from the 222 square miles of watershed tributary to the streams of the Pescadero Creek Group (which includes the watershed under discussion) has averaged an estimated 45 acre-feet per square mile over a 50 year period. These data indicate that the watershed tributary to the proposed point of diversion will probably yield the 45 acre-feet which the applicant proposes to collect annually in storage, by a wide margin.

According to the report of investigation the flow of the creek filed upon, at the time of the investigation, was about 0.5 cubic foot per second, which amount, the report states, is in excess of the protestants' present and estimated future requirements. According to the report the parties present at the investigation agreed that after July 1 the flow normally

is no more than enough to maintain water holes in the stream channel.

According to the Department bulletin no. 5 above referred to, distribution of seasonal runoff by months, from streams of the Pescadero Creek Group, has averaged as follows:

January	35.1	July	.9
February	30.5	August	.7
March	23.2	September	.6
April	4.4	October	1.2
May	2.5	November	1.3
June	1.5	December	5.3

According to the report of field investigation a conference between the parties present at that investigation resulted in an admission by the applicant's representative of the probability that normally there is insufficient flow during most of the irrigating season to support the direct diversion applied for; and in formal withdrawal of protests by Protestants Cabral and Lawrence, subject to the condition that direct diversion be eliminated from the application.

Subsequent to the field investigation a letter was received from the applicant requesting that direct diversion be eliminated and the application was so amended; Protestant Carpy signed a withdrawal of his protest, contingent upon elimination of the direct diversion feature from the application; and a letter from Protestant Davis' attorneys advised that that protestant desired his protest to stand.

A careful consideration of the Davis protest leads to the conclusion that that protest is insufficient in view of the elimination of the direct diversion feature from the application. According to the report of field investigation Protestant Davis irrigates about 0.25 acre of garden, waters 20 head of cattle and contemplates irrigating 5 acres ultimately. The

application as amended seeks only an appropriation of 45 acre-feet to be collected between November 1 and April 30, during which months water supply is greatest and irrigation demands are least. The application if approved would be approved subject to vested rights: its approval therefore could confer no authority upon the applicant to impede such flow, even between the dates mentioned, as is necessary to satisfy vested rights downstream. It is not apparent that the approval of the application would occasion any damage to Protestant Davis whatsoever and his protest is therefore dismissed.

Summary and Conclusion

Unappropriated water in the source from which appropriation is sought under Application 13722 occurs at times during periods extending from November 1 to April 30. Such water ordinarily may be taken and used as proposed in that application without injury to lower users. The protest by Albert F. Davis is deemed insufficient as a bar to the approval of the application and the other protests against the application have been voluntarily withdrawn. It is the opinion of this office that the application should be approved, subject to the usual terms and conditions.

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ORDER

Application 13722 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 13722 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 31st day of December 1951.

Original signed by A. D. Edmonston

A. D. Edmonston
State Engineer

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