

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 13997 by the City of Suisun City to  
Appropriate Water from an Unnamed Creek, Tributary to Suisun Creek,  
in Solano County, for Municipal Purposes.

oOo

Decision A. 13997 D. 730

Decided January 23, 1952

oOo

Appearances at Hearing Held at Fairfield, September 13, 1951

For the Applicant

City of Suisun City

Kenneth Jones, City Attorney

For the Protestants

Samuel H. P. Martin )

May C. Smith )

Estate of W. A. Neitzel )

J. N. Valine )

Vincent Valine )

Leslie Valine )

Goodman, Goodman and Raftery,  
Attorneys at Law  
By Richard A. Raftery

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division  
of Water Resources.

Also present - Lawrence C. Spencer, Associate Hydraulic Engineer, Division  
of Water Resources.

oOo

## OPINION

### General Description of the Proposed Development

The application contemplates an appropriation of 3 cubic feet per second from October 1 to April 30 of each season from an unnamed tributary to Suisun Creek, in Solano County, for municipal use. The project includes an earth diverting dam, 9 feet high by 80 feet long, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T5N R3W, MDB&M, and a pump of a stated capacity of 1346 gallons-per-minute, located close by. It also includes a cast iron and concrete conduit, 8 inches in diameter and 675 feet long which discharges into Suisun City Reservoir, the latter being located on an adjacent tributary of Suisun Creek and designated in the application as a point of redirection. From that reservoir the water currently sought is to flow through an existing conduit to the place of use, the City of Suisun City, located within Sections 25 and 36 of T5N R2W, MDB&M.

### Protests

Samuel H. P. Martin and Mary C. Smith protest the application jointly, alleging that the proposed appropriation will result in the taking, by the applicant, of all of the normal flow of Suisun Creek. They refer to the Supreme Court case of Peabody v. City of Vallejo as establishing that normal flow as being 3 second feet from December to February and 1 second foot in March and April. They claim to divert at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T5N R9W, MDB&M., under both riparian and appropriative rights. They state that first use was made in 1876, that they presently irrigate 202.1 acres and water livestock, and that field crops,

orchard and vineyard have been irrigated, from 1917 to 1951, on a year round basis. They complain that the cities of Suisun and Fairfield have been pumping for many years from wells in Suisun Valley thereby depleting the water resources of that valley and that that practice is harmful to their (the protestants') crops and fruit trees.

The Estate of W. A. Neitzel protests on grounds nearly identical to those asserted by Protestants Martin and Smith. The protestant Estate's diversion is said to head within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, T5N R2W, MDB&M., the water having been used since 1880. They argue that any water diverted from Suisun Creek adversely affects the water table on riparian properties.

J. N. Vincent and Leslie Valine protest on the same general grounds. They mention irrigation of orchards since 1927, state that their diversion heads within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, T5N R2W, MDB&M.

#### Answers

In answer to each of the protests the applicant denies that it is sought under the application to divert all or any of the normal flow of Suisun Creek, stating in that connection that the proposed point of diversion commands but a very small proportion of the watershed above the protestants, that the stream filed upon has practically no normal flow, discharging into Suisun Creek only during heavy rains, that the waters which the applicant seeks to divert are freshet and storm waters occurring between October 1 and April 30, and that when such freshet and storm waters occur Suisun Creek is in flood and wastage occurs into Suisun Bay. The applicant also asserts in its answers that divertable surplus water flows past the proposed point of diversion only during storm periods for a few days each year, and that at other times the flow is too small in amount to warrant operation of the applicant's pump. The applicant denies that the proposed diversion will affect wells in Suisun Valley, alleging that waters occurring

at the proposed point of diversion never reach the protestants' wells, and alleging further that the waters sought represent but a negligible proportion of the waters that waste into Suisun Bay.

Hearing Held in Accordance with the Water Code

Application 13997 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for formal hearing under the provisions of Section 733(a) of the California Administrative Code, Title 23, Waters, on Thursday, September 13, 1951 at 10:00 o'clock A.M. in the Supervisors' Room, Solano County Court House, Fairfield, California. Of the hearing the applicant and the protestants were duly notified.

Discussion

Witnesses at the hearing at Fairfield testified in substance as follows:

John R. Burnham, City Engineer of Suisun, testified (pages 6 to 41 of transcript) that the source yields an estimated 24413000 gallons or more, annually, that the flow is flashy, most of it occurring for but a few days at a time, that there is a trickle for a considerable time in winter but 50% or more of the runoff occurs immediately after a rain, that the source is dry in summer, that when the source flashes Suisun Creek generally is at flood stage also, that waters at such times waste into the Bay, that the flow of the source is very minor in comparison with flood flows in Suisun Creek, that the watershed tributary to the source is an infinitesimal part of Suisun Creek watershed, that the purpose of the proposed reservoir is to divert and not to store, that the proposed dam is to be provided with a bypass, that the proposed reservoir is 7 feet deep, 70 feet wide and 130 feet long, indicating a capacity of about  $\frac{1}{2}$  acre-foot, that Suisun Creek, below the lowest protestant, was running nearly bank full on April 30 of an average year,

that the drainage area above the proposed point of diversion is 222 acres, and that the source is dry during summers of dry years.

P. M. Neitzel, a witness on behalf of the protestant Neitzel Estate, testified (pages 41-55 of transcript) that he has observed the flow of Suisun Creek for many years, that he is an appropriator on Suisun Creek, that in some years there is no water in Suisun Creek at any season, that in 1939 the flow of Suisun Creek never reached <sup>his</sup> (the witness') place, that in an average year, in his opinion, demand exceeds supply, that this year (1951) rainfall was above normal yet Suisun Creek did not reach flood stage, that when flow started this spring (1951) he pumped in early April but had to stop because water users upstream were taking all the water, that the flow of Suisun Creek up to April 30 in his opinion has not been equal, on average, to his pumping needs, that different varieties of fruits require water at different times, that he has a 6 inch centrifugal pump with a 10 horsepower motor and that "when the water level is up in the creek 2 or 3 feet it will pump a thousand gallons a minute, from a thousand to eleven hundred, depending on the water level", that there are frequent occasions during rains and following rains when considerable water flows past his place, that in November, 1950 when heavy rains occurred the creek was not flowing to capacity but nevertheless carried a considerable flow, that the wells along Suisun Creek and the water levels in them depend upon the flow of Suisun Creek.

Applications senior to Application 13997 to divert from Suisun Creek or its tributaries are as follows:

Application:	Permit :	Appropriator :	Amount :		Location of Point of Diversion :
			Sec.Ft:	Ac.Ft:	
1908	1042	City of Vallejo:	7.0	10000	Sec. 19, T6N R2W, MDB&M
12167	7206	Nye, Allenby :		6:	10 6 3
12981	7704	Lambert Bros. :	0.3		19 5 2
12982	7705	Lambert :	0.64		7 5 2
12983	7706	Glashoff :	0.36		6 5 2
12984	7707	Glashoff :	0.31		6 5 2
12990	7708	Martin, Smith :	2.5		32 5 2
12992	7709	Valine :	0.43		32 5 2
12993	7710	Valine :	0.75		32 5 2
13026	7775	Neitzel Estate :	1.2		32 5 2
13157	7858	Jones :	0.4		6 5 2
Totals			13.89	10006	

Should the above listed appropriators divert from October 1 to April 30 (the period during which appropriation is sought under Application 13977) at the maximum rates authorized under their permits the total amount necessary to satisfy their demands would be  $(13.89 \times 2 \times 7 \times 30)$  plus 10006 or about 15840 acre-feet annually.

Direct measurements of the flow of Suisun Creek are not of record. However data contained in Department Bulletin No. 5 - "Flow in California Streams" - enable a rough estimate to be made. According to data contained in that bulletin (on page 245 thereof) the streams of the Suisun Creek Group (which includes Suisun, Ulati, Ledgewood, Green Valley and Sulphur Springs Creeks) flow at the mean, seasonal rate of approximately 421 acre-feet per square mile of tributary watershed lying above the main agricultural area. According to the same reference the distribution, by months, of seasonal runoff from streams of the Suisun Creek Group averages as follows:

<u>Month</u>	<u>% of year's total</u>	<u>Month</u>	<u>% of year's total</u>
January	36.2	July	0.3
February	26.4	August	0.2
March	19.4	September	0.1
April	5.4	October	0.1
May	2.1	November	1.3
June	0.8	December	7.7

These figures indicate that 96.5% of the runoff of an average year occurs between October 1 and April 30. That portion of the Suisun Creek watershed which lies above the mouth of the small tributary on which the Suisun City reservoir is located (into which it is proposed to divert under Application 13997) scales approximately 44.8 square miles. Also contributing to the flow of Suisun Creek above the intake of the lowermost protestant are approximately 2.2 square miles of productive watershed. The average seasonal runoff entering Suisun Creek above the lowermost protestant may be supposed to be about  $0.965 \times (44.8 \text{ plus } 2.2) \times 421$  or about 19100 acre-feet, an amount some 20.5% in excess of the total amount the appropriators may be supposed to divert.

Witness Neitzel when questioned as to whether he contends that water should be allowed to waste into the Bay in order to prevent ground water levels from receding, replied (page 52 of transcript):

"I don't know; I suppose in effect that no one is using it, I suppose as true of anything else, maybe it is going to waste. As to whether it is going to waste at the expense of something else, I don't know. But I do know this: that when Suisun Creek doesn't run, that the water level on my ranch, and my neighbor's ranch, is considerably lower than when it does run. I know that. And we also know that the higher the creek gets over a period of time, that also the water level in the neighboring ground is also higher; we know that. Now whether that water is wasted or not is something that I wouldn't be able to answer."

The testimony just quoted indicates that the witness confuses inconvenience due to a lowering of water levels with injury due to a failure of water supply. Obviously recessions of ground water levels or of water levels in open channels increase pumping costs and introduce difficulties in operation. It is a long recognized principle however that such increased costs and operation difficulties do not in themselves constitute a sufficient basis for disapproval of an application to appropriate water at some point upstream and that the ruling consideration in such a situation is the existence or non-existence of unappropriated water.

#### Summary and Conclusions

It is evident from the testimony and from other information outlined in preceding paragraphs that unappropriated water exists at times in Suisun Creek, that at other times, particularly during late spring, summer and early fall, supply is less than downstream demand, that the proposed appropriation cannot affect the protestants from May to September, both inclusive, because appropriation is not sought during those months, that when diversion from the tributary filed upon is practicable flow is relatively abundant in Suisun Creek also, that the watershed topped by the applicant's project is negligibly small as compared with the watershed contributory to the protestants, and that the effect, if any, upon the protestants, by the proposed diversion, must therefore be extremely small.

In view of all the circumstances it is the opinion of this office that the reasons advanced by the protestants are insufficient to warrant disapproval of Application 13997, that unappropriated water exists at times in the source filed upon, that such water may be taken and used beneficially in the manner proposed by the applicant without injury to other users within Suisun Creek watershed and that the application should be approved, subject to the usual terms and conditions.



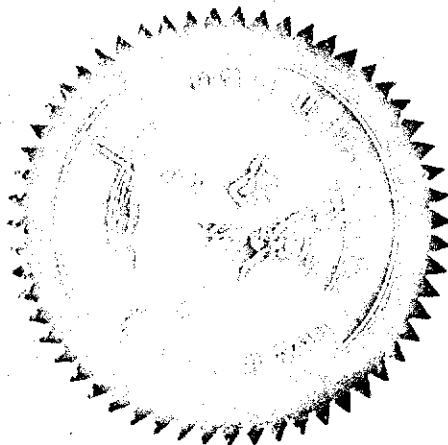
oOo

ORDER

Application 13997 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13997 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 23rd day of January 1952.



  
\_\_\_\_\_  
A. D. Edmonston  
State Engineer