

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 Applications 12410 and 13386 by Elias Bushati to
Appropriate Water for Domestic and Mining Purposes and Application
13072 by the United States - Inyo National Forest to Appropriate
Water for Domestic, Recreation, Irrigation and Fire Protection Purposes,
from Unnamed Springs, Tributary to Leevining Creek, in Mono County.

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Decision A. 12410, 13072, 13386 D. 732

Decided March 14, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources
at the Site of the Proposed Appropriations on August 24, 1951:

Elias Bushati

Applicant under Applications
12410 and 13386; Protestant
against Application 13072.

Ranger Leo Slattery) (
Forest Supervisor Eldon Bell) (

Representing the United States -
Inyo National Forest, Applicant
under Application 13072 and
(Protestant against Applications
(12410 and 13386.

S. Sreehan

Associate Hydraulic Engineer,
Division of Water Resources,
Department of Public Works,
Representing the State Engineer.

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OPINION

General Description of the Projects

Application 12410 (Bushati) contemplates an appropriation of 0.5
cubic foot per second, year round, from unnamed springs tributary to Leevining
Creek, for domestic and mining purposes. The proposed point of diversion is

described as being located North 1600 feet and East 1600 feet from the west quarter corner of Section 19, T1N R26E, MDB&M. The development is to include a concrete collecting box, a 500 gallons-per-minute pump operating against a 200 foot static head and a riveted steel pipe line, 12 inches in diameter and 3200 feet long. The proposed place of use is described as lying within the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 24, T1N R25E, MDB&M. A domestic supply is wanted for some 200 people, who are to be quartered in some 50 houses. The property to be served is referred to as a lode property, comprising the so-called "Old Glory Mining Claims". An estimated 500000 gallons per day are to be used on that property in ore mining and milling operations. The application states that the water will be polluted by chemicals and will not be returned to any stream.

Application 13072 (United States - Inyo National Forest) initiates an appropriation of 2000 gallons per day, year round, from a spring described as tributary to Leevining Creek and located S66°W3175 feet from the section corner common to Sections 17, 18, 19 and 20 of T1N R26E, MDB&M. The purposes for which the water is sought are domestic, recreation, irrigation and fire protection. The project includes a concrete tank and 3000 lineal feet of 3 inch and 5676 lineal feet of 2 inch steel pipe. The pipeline is said to have been completed in 1934. The proposed place of use is described as lying within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T1N R26E, MDB&M. Use is expected to include domestic consumption by 6 people, the watering of 5 horses, the irrigation of 1.25 acres of general crops and pasture from May 1 to October 1 and recreational use at Leevining Public Camp, of a stated capacity of 40 persons.

Application 13386 (Bushati) is an application to appropriate an additional 0.29 cubic foot per second, year round, for domestic and mining purposes, from the same source as designated and by the same facilities as described in Application 12410.

Protests

Elias Bushati (initiator of Applications 12410 and 13386) protests Application 13072. He asserts that diversions as proposed under that application will jeopardize his rights to divert and use water for domestic and mining purposes at his proposed mill site. He bases his claim of a right to divert from the source designated in Application 13072 upon his own prior application. He describes his diversion as heading within the ~~MEAD~~ of Section 19, T1N R26E, MDB&M. He mentions no terms under which his protest may be disregarded and dismissed.

The United States - Inyo National Forest (initiator of Application 13072) protests Application 13886, stating,

"Our Application 13072 for 0.15 c.f.s. - - - is prior to the above application and supplemented our permit No. 5482. Actual measurements on June 4, 1950 show a flow of only 0.14 c.f.s. - - -. Thus if our previous rights are recognized there remains no unappropriated water for Mr. Bushati."

As to its present and past use the protestant states:

"- - - the amount piped to the station and camp grounds amounts to 0.074 c.f.s. and the balance flows onto government land thru an irrigation ditch and is used on a small meadow."

* * * * *

"Applicant proposes to divert from our overflow pipes thus cutting off the flow of water to the meadow."

The protestant also states that its use of water extends year round and includes domestic use for 6 people, recreational use for 70 people during June, July, August and September, irrigation of gardens, lawns, a small pasture and a pine plantation, and occasional use for fire fighting, amounts drawn for the latter purpose being limited to the capacity of one two inch fire hydrant. The protestant states that the protest may be disregarded and dismissed if the application is withdrawn. The protestant finally states:

"Mr. Bushati filed on 0.5 c.f.s. under Application 12410 on three springs 100 feet west of our water right on March 17, 1948 and did not develop them - - - - he filed for 1.0 c.f.s. under Application 13386 which later was amended to 0.29 c.f.s. The above amounts do not exist as the total group of springs including our developed system measured only 0.206 c.f.s. when measured on June 4, 1950 at a point below the road and 30 feet from the convergence point of all springs. - - - -"

Answers

According to the office files no answer has been submitted to either of the above mentioned protests.

Field Investigation

The parties having stipulated to an informal hearing under the provisions of Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriations on August 24, 1951, by an engineer of the Division. The applicants and the protestants were present or represented at the investigation.

Records Relied Upon

Applications 9744, 12410, 13072 and 13386 and all data and information on file therewith.

Discussion

The report of the investigation of August 24, 1951 upon the applications at issue states in part as follows:

"The source - - - - is a spring area located at an elevation of approximately 7500 feet near bottom of a hillside overlooking Leevining Creek. It is roughly 250 feet wide by 150 feet long containing 4 recognizable spring channels plus numerous minor seeps. The most easterly spring is the only one covered under Application 13072 and is known as the Ranger Spring. The latter had a measured tank overflow of 0.17 c.f.s. The other three springs have not yet been developed, however, channel flow is as follows:

West Spring	0.025 c.f.s.
Middle Spring	0.011 c.f.s.
East Spring	0.007 c.f.s.
Total	<u>0.043 c.f.s.</u>

The spring area is covered at present by a rank growth of grass which consumes considerable water as a measurement made at a main collecting ditch some 200 feet below the springs amounted to only 0.14 c.f.s. Measurements made by the Forest Service on June 4, 1950 showed a flow of 0.14 c.f.s. at the Ranger Spring alone and 0.21 c.f.s. at the collecting ditch. Mr. Bushati intends to develop the three other springs as well as tap the overflow of the Ranger Spring and feels confident that 0.6 c.f.s. can be obtained. The Forest Service is not interested in any spring but the Ranger Spring, according to Forest Supervisor Bell."

* * * * *

"In view of the lack of development of the three westerly springs and a present development of 0.17 c.f.s. of the developed Ranger Spring it appears to be a reasonable assumption that sufficient unappropriated water may at times be available for all three applications. In this connection it should be noted that the total 0.213 c.f.s. measured does not include transpiration losses due to rank grass in spring area or minor seep overflow too small to measure."

As to use of water the same report states:

"Under licensed Application 9744 the - - - - Forest Service has a right to 7500 gallons per day from the Ranger Spring. According to Mr. Slattery present use of water is about the same as described in the 1942 report under Application 9744 and consists of use by six people at the ranger station - - - use by 10 persons in camp ground - - - - and the irrigation of approximately 16000 square feet of lawn and garden area."

"The Forest Service intends to increase its irrigated area to approximately $1\frac{1}{2}$ acres, this increase in water use to be covered by Application 13072. At present overflow of spring area merely wastes into a meadow below highway. All parties agreed no stock was served by meadow."

"- - - - to date Mr. Bushati has made no use of water for mining purposes. At present he - - - uses water for domestic purposes via bucket. - - - -."

Application 9744 Permit 5482 License 2589, held also by the United States - Inyo National Forest, confirms a right to divert from the same spring that is named as a source in Application 13072, in the amount of 7500 gallons per day, year round. Extracts from the report of the inspection of the project under Application 9744 on September 14, 1942 are as follows:

"The spring lies on the hillside a short distance off Leevining Creek. Measured flow was at the rate of 0.15 c.f.s."

"The pipe line - - - - capacity is 25 g.p.m."

"Estimated use of water is as follows: Irrigation. There are 16600 sq. ft. in lawn about the ranger's house and office, 10000 sq. ft. in horse pasture along the creek - - - and 16000 sq. ft. in pine tree nursery also used as pasture - a total of 42600 sq. ft. - - - - estimated average summer use for the whole is 16 g.p.d. per 100 square feet. - - - - household use is 250 g.p.d. Five horses are watered at a drinking trough using some 75 g.p.d. Leevining Public Camp - - - - campers - - - consumption of 200 g.p.d. - - - office - - - use - - - probably runs around 150 g.p.d."

"All use is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17 - - -."

In the Report of Licensee for the years 1949, 1950 and 1951 use during those years by all users under the license is stated as follows:

"Domestic use for one family year long and for one other family for $\frac{1}{2}$ year each year (Apr. thru Oct.). Domestic use for about 40 persons camping in public camp ground served by system for 4 months each year (June thru Sept.). Domestic use by station visitors - about 5 per day thru June, July, Aug. and Sept. Stock water for 5 saddle horses kept for official use from May thru Nov. Irrigation use for 16600 sq. ft. lawn, 16000 sq. ft. nursery & over 20000 sq. ft. pasture from April thru Nov. each year."

From the information above arrayed it is apparent that unappropriated water exists but that the amount thereof is largely a matter of conjecture. The amount certain is evidently the overflow from the Ranger Spring plus the yield of the other three springs in their presently undeveloped state. These quantities were observed by the investigator on August 24, 1951 to be 0.17 c.f.s. and .043 c.f.s. respectively or about 0.21 c.f.s. in all. The Ranger Spring may be supposed to be fully developed and its yield to have been, on August 24, 1951, the amount piped to the Ranger Station (presumably 7500 g.p.d. or 0.012 c.f.s.) plus the 0.17 c.f.s. overflow, or about 0.18 c.f.s. altogether. If West Spring, Middle Spring and East Spring can each be developed so as to produce as much as Ranger Spring the combined yield from the 4 springs will closely approach the total amount sought under the 3 applications. Applicant Bushati expresses confidence that the yield of the undeveloped springs can be considerably increased and the investigating engineer inclines to the same opinion.

The 2000 gallons per day sought by the United States - Inyo National Forest, equivalent to 0.0031 cubic foot per second, is relatively very small

in comparison with present wastage from the Ranger Spring or with the amount sought by Applicant Bushati under his two applications. It is less than 2% of the former and less than 0.5% of the latter. The availability of a water supply sufficient for Applicant Bushati's needs evidently hinges mainly on the success of his contemplated exploitation of the three undeveloped springs. The possibility that his operations can be affected materially by the small appropriation sought under Application 13072 seems too remote for consideration. Again the consummation of Applicant Bushati's project even if successful will consume an appreciable time for development whereas the facilities essential to the utilization of the additional 2000 gallons per minute sought under Application 13072 are already in place and utilization of that water can commence at once. The precaution of withholding approval of that application because Application 12410 may at some future time be entitled to take precedence seems unwarranted.

In view of the circumstances set forth in preceding paragraphs it is the opinion of this office that Applications 12410, 13072 and 13386 should all be approved, subject to the usual terms and conditions. This is because, specifically, Application 12410 is unopposed and a partial supply of unappropriated water is known to exist as well as a reasonable prospect for the development of more; diversions under Application 13072 despite the protest standing against that application may be made without injury to the protestant until at least the time when the project under Application 12410 becomes operative and quite probably thereafter; and diversions under Application 13886 are dependent upon the successful development of springs other than the spring from which the protestant is supplied, and therefore, apparently, may be made without injury to that protestant.

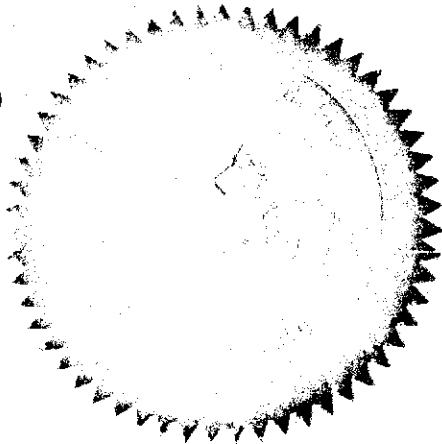
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ORDER

Applications 12410, 13072 and 13386 for permits to appropriate water having been filed, protests having been filed, a field investigation having been made, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12410, 13072 and 13386 be approved and that permits be issued to the applicants, 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 14th day of March 1952.



A. D. Edmonston

A. D. Edmonston
State Engineer