

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 13919 by Maxwell Irrigation District to
Appropriate Water from Lurline Creek, Tributary to the Trough of Colusa
Basin, in Colusa County, for Irrigation and Recreational Purposes.

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Decision A. 13919 D. 747

Decided June 17, 1952

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Appearances at Hearing Held at Colusa, January 22, 1952:

For the Applicant

Maxwell Irrigation District

(Ralph B. Rutledge, Secretary-
Attorney, and Charles Welch,
President, Board of Directors,
Maxwell Irrigation District

For the Protestant

Orville J. Kuhl

(Arthur C. Huston, Jr., Attorney
at Law
Orville J. Kuhl

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

Also present - Kenneth L. Woodward, Associate Hydraulic Engineer, Division of
Water Resources, Department of Public Works.

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OPINION

General Description of the Proposed Development

The application initiates an appropriation of 30 cubic feet per second
to be diverted from March 1 to December 1 of each year, from Lurline Creek,

at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T16N R2W, MDB&M, the water to be utilized for irrigation and recreational purposes within the boundaries of Maxwell Irrigation District. Diversion is to be effected by means of a pumping plant of a capacity of 14000 gallons per minute. The project includes an earth ditch 1200 feet long and 30 cubic feet per second in capacity. A total of 2039.2 acres are to be irrigated, of which 1000 acres are to be in rice, 500 acres in pasture and 539.2 acres in duck ponds. Irrigation is to extend from about March 1 to about December 1.

Protests

Luta King protests the application, stating that she depends upon the flow of water in "canal 2047" for her irrigation supply and fears that the diversion that the applicant proposes would diminish that flow. She objects especially to the proposal to use some of the water for recreation. She asserts an appropriative right under Application 12459 and also a riparian right. She states that she and her renters have irrigated approximately 120 acres of rice during the last 2 years, that land lying within Section 20, T14N R1W, MDB&M.

Orville J. Kuhl protests that there is not enough water in Lurline Creek for the irrigation or for the recreational uses that the applicant proposes. He asserts an appropriative right under Permit 8320 and an appropriative right based upon use begun prior to December 19, 1914. He asserts further that the point at which the applicant proposes to divert coincides exactly with his own point of diversion under Application 13735. He states that the lands that the applicant proposes to irrigate are already supplied adequately from Stone Corral Creek. He states also that the applicant's project is infeasible because the point of diversion thereunder is lower than

the land to be irrigated, water would have to be backed upstream some 2 miles in the open ditch proposed and lands adjacent to the lower end of that ditch would be injured by the excessive seepage that would inevitably result.

Answers

In answer to the protest by Luta King the applicant argues that since the protestant's lands are 13 miles south and 6 miles east of the proposed point of diversion she would be affected very little by the appropriation sought. The applicant asserts that the recreational use which it proposes is a lawful and rightful use. It maintains that unappropriated water exists in the source filed upon and that an investigation will so disclose.

In answer to the protest by Orville J. Kuhl the applicant asserts that the point at which it proposes to divert is actually the junction of its lateral "F" with Lurline Creek. It asserts ownership of a strip of land extending 30 feet on either side of the center line of lateral "F" and a strip 5 feet wide, contiguous to Lurline Creek. It denies having granted Protestant Kuhl any right to maintain and/or operate diversion works at his proposed point of diversion. It denies that the supply of water in Stone Corral Creek is sufficient for its needs, maintains that unappropriated water exists in Lurline Creek and questions the validity of the protestant's alleged rights on that stream insofar as those rights are based upon use prior to December, 1914.

Hearing Held in Accordance with the Water Code

Application 13919 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 Tuesday, January 22, 1952 at 10:00 o'clock A.M., in the Supervisors Room, Colusa County Court House, Colusa, California. Of the hearing the applicant and the protestants were duly notified.

Discussion

The gist of the testimony introduced at the hearing is as follows: Charles Welch testified to the effect that the Maxwell Irrigation District is dependent upon the Glenn-Colusa Irrigation District to pump and deliver water, that the supply so furnished by Glenn-Colusa Irrigation District at times is insufficient, that to supplement that supply the Maxwell Irrigation District is obliged to pick up water where it can, that Stone Corral Creek affords a partial but not a firm supply, that Lurline Creek carries 40 or 50 second-feet at times, that the flow of Lurline Creek fluctuates, that Lurline Creek carries little natural flow but mainly carries return flow of water previously pumped and that the recreation use contemplated in the application is use related to duck hunting.

Leo Yates testified to the effect that he is a director of the Maxwell Irrigation District, that he has been acquainted with conditions in the locality since about 1930, that the flow of Lurline Creek is variable but ranges between 30 and 40 second-feet from April through July or August, that the flow of Stone Corral Creek is insufficient to supply the particular lands that the diversion under Application 13919 would serve, that his statement as to the amount flowing in Lurline Creek is a guess rather than a measurement, that use in connection with duck hunting starts in early September and extends until the rains begin, that in the last 3 years Lurline Creek, in March, has carried more than enough water to supply both Protestant Kuhl and the applicant, that the flow of Lurline Creek is less in April or May than in March but increases

in June since by that time drainage from rice lands has begun and that during May, June and July Lurline Creek carries more water than the amount appropriated under Protestant Kuhl's application.

Joseph Garibaldi testified in effect that he is a director of Maxwell Irrigation District, lives in Sacramento, owns land in the District and that the District formerly pumped from Lurline Creek but discontinued pumping when water became available from Glenn-Colusa Irrigation District, because of the expense incidental to an 18 foot pumping lift.

Orville J. Kuhl testified in effect that he owns property bordering on Lurline Creek, that he acquired his property in 1941, that he owned other properties in the same neighborhood prior to 1941 and that he has been diverting at his present location since 1943 or 1944. He produced a sketch showing land ownerships in the locality and the sketch was introduced into the record as "Protestant's Exhibit 1." He testified further that Lurline Creek empties into "2047 drain" and that "Lateral F" has never come within 50 feet of the 2047 drain, stating in that connection (on page 39 of transcript):

"When I put my pumping plant in there I had to extend lateral F out at least 50 feet and probably nearer a hundred feet, but at least 50 feet. The right of way for the Maxwell Irrigation District Lateral F does not come down and touch the 2047 drain."

Mr. Kuhl testified further that there is practically no water in Lurline Creek until after the Glenn-Colusa Irrigation District begins pumping, that that district begins pumping about April 1 and that from 15 to 20 days later the ditches are full and surpluses reach the 2047 drain. As to conditions in May he testified (on page 42 of transcript):

"From the first of May we usually get our rice crops sowed - about the first of May - and there is just about enough water for us to pump for approximately two hundred fifty acres of rice, but it varies from day to day depending on how much water the Glenn-

Colusa Irrigation District is dumping of their surplus water. The only water we get there during the month of May and June while all of the district's rice lands are being flooded, is any surplus water that might have filled up their main canals too full and they will dump it - - - -

"It usually takes until the first of June at the very earliest before there is any appreciable runoff from the rice fields that go into that particular source."

As to conditions after the rice fields begin to drain Mr. Kuhl testified (on page 43):

"There is probably an average two feet of water in the drain all of the time - an average, however, that can fluctuate depending on whether or not there is an excess of drainage water from the rice fields - whether it is real hot, whether it needs water, whether it goes down in this 2047 drain.

"I mean from eighteen inches to two feet in depth."

Mr. Kuhl further testified, in substance, that after the rice fields begin to drain, supply at his point of diversion is not continuous, that he has been diverting from his present point of diversion since 1943 or 1944, that it is often necessary to dam the canal both early in the season and again after September 15 in order to collect enough water to pump, that the drain tends to dry up, that he operates a 16 inch pump that is rated at 7000 gallons per minute, that when the drain is dammed it takes about 30 minutes for the drain to fill and 7 or 8 minutes for the pump to empty it, that the pump is equipped with a float switch, that during June, July and August supply is more than sufficient for his needs, although it fluctuates, that he has never been required to stop diverting by any prior applicant, that supply is sufficient during the first 2 weeks in September, that besides irrigating his own land he furnishes "duck water" to neighboring lands, that that service is a "friendly gesture" and is not authorized in his permit, that the "duck water" he furnishes

serves 50 acres of duck lake and that damming the drain is necessary from about the first to about the middle of May.

Protestant Luta King was not in attendance at the hearing nor was she represented. No explanation of her non-attendance or non-representation is of record. Protestant King holds Application 12459 Permit 8279, under which 3 cubic feet per second may be diverted from April 1 to October 30, from Reclamation District 2047 Main Drain, at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T14N R1W, MDB&M, for irrigation. That point scales approximately 16 miles downstream from the point at which the applicant seeks to appropriate. The flow occurring in Reclamation District 2047 Main Drain (also called Colusa Trough) at a point some 3 miles downstream from the Luta King intake has been recorded since 1946, and the records published in Sacramento-San Joaquin Water Supervision Reports. The record shows monthly mean flows, at the point mentioned (Colusa Trough near College City), in cubic per second, to have been as follows:

	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950</u>
April	391	177	825	345	284
May	776	416	769	950	754
June	621	605	1235	541	658
July	551	418	503	561	475
August	716	644	748	892	726
September	912	888	1080	1101	1144
October	345	298	359	355	429

In view of the large flows, relatively, which prevail in the channel in question at a point below Protestant King's diversion and the absence of protests by parties farther downstream, it is evident that this protestant cannot be injured

by the appropriation sought under Application 13919.

Protestant Kuhl under Application 13735 Permit 8320 is authorized to divert 7 cubic feet per second from April 1 until October 1, from a lateral drain of Reclamation District 2047, tributary to Colusa Trough, at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T16N R2W, MDB&M, for the irrigation of 282.8 acres of rice. Protestant Kuhl's claim, in his protest, of an appropriative right based upon use prior to December 19, 1914 is unsupported. His testimony (page 44 of transcript) that he has been diverting since 1943 or 1944 suggests that any right based upon use prior to 1914 may have lapsed. Inasmuch as his approved application authorizes diversions only from April 1 until October 1 and his earlier claimed right is not supported his objection to diversions by the applicant during March, October or November cannot be recognized as valid. During June, July, August and early September Mr. Kuhl concedes (page 54 of transcript) unappropriated water to exist. He apparently diverts little if any water during April, testifying in that connection (page 53 of transcript):

" - - - - we never put our rice crop in until the first of May because of the fact that we are afraid that there would not be enough water until the first of May."

As to use of water during May he testified:

"I think one or two years we had put a sack dam in there to hold the water because our pump pumps seven thousand gallons a minute and it would suck it up faster than it would come down."

As to the time required for the filling of his rice checks he testified:

"Oh about - it depends of course on how many acres. We had the most acreage this year, one hundred seventy-five acres and it took about two weeks' time."

From the 3 last-quoted items of testimony it appears that the protestant can

have little basis for objection to diversion by the applicant during April, insofar as flow occurs in that month, and that he can have a valid basis for claiming possibly one-half but certainly not all of the flow that occurs in May.

Summary and Conclusions

The circumstances above outlined indicate that unappropriated water probably exists in the source from which appropriation is sought under Application 13919 and that such water may be taken and used beneficially in the manner proposed by the applicant without injury to other water users. It is the conclusion of this office therefore that Application 13919 should be approved, subject to the usual terms and conditions.

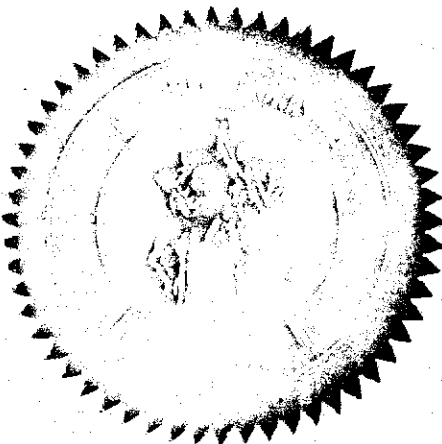
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ORDER

Application 13919 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests 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 13919 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 June 1952.



A. D. Edmonston

A. D. Edmonston
State Engineer