

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 14158 by N. R. Stanley to Appropriate Water from an Unnamed Stream-Tributary via Scott Creek and Clear Lake to Cache Creek, in Lake County, for Irrigation Purposes.

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Decision A. 14158 D. 755

Decided August 29, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriation on August 29, 1951:

Nicholas R. Stanley	Applicant
Nicholas R. Stanley, Jr.	The applicant's son
Bert Busch	State Senator
Dean Turner	County Supervisor
Frank Sowell	Editor, Clear Lake Observer
Nellie Gree	Weather Observer at Lakeport
Allen Payne and) Merl Britton)	(Representing U. S. Soil (Conservation Service
Guy Carris	A lower water-user on Scott Creek
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 applicant seeks to appropriate 160 acre-feet per annum at a point within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, T15N R10W, MDB&M, on an unnamed stream, tributary via Scott Creek and Clear Lake to Cache Creek. The

water is to be collected between November 15 and April 15 in an on-stream reservoir and used for irrigation, the irrigation season extending from about April 15 to about November 15. The project includes an earth storage dam 47 feet high by 220 feet long and 3000 lineal feet of earth ditch of a carrying capacity of 1.5 cubic feet per second. The dam creates a reservoir which is said to be 7.2 acres in surface area and 173 acre-feet in capacity. Some 22 acres of general crops, 10 acres of alfalfa and 10 acres of pasture are to be irrigated. The applicant claims also a riparian right, and an appropriative right under Application 11499, the latter being in the amount of 0.5 cubic foot per second.

Protest

The Clear Lake Water Company protests the application claiming that the diversion that the applicant proposes will reduce in like amount the supply available for its own purposes. It claims a water right based upon a prior application, also a right based on an appropriation initiated prior to December 19, 1914. In that connection it states:

"Protestant or its predecessors have made continuous use of all waters flowing into Clear Lake from creeks tributary to it since 1860. Since 1914, all this water, excepting during years of abnormal rainfall, has been stored in Clear Lake and then released for irrigation purposes. This water is released from Clear Lake and diverted for use between April 1st and November 1st. The water is used for irrigation purposes in Yolo County - - - ."

It describes its point of diversion as being located within T10N R2W, MDB&M, a distance of 6617 feet northerly from the NW corner of Block F of the Arnold and Gillings Subdiversion of a part of Rancho Canada de Capay. It states that it will suffer substantial injury if its protest is disregarded

and dismissed.

Answer

In answer to the protest the applicant states as follows:

"The dam which we are contemplating to build will dam only waters coming from the watershed on our personal property and will be used to irrigate cultivated land which we own and make our living from. At this time we do hold a water right on Scotts Creek to pump water from two points but during the peak of the season Scotts Creek is dry and we are unable to obtain sufficient water for irrigation. By building the proposed dam we can store sufficient water to carry our crops through the drought period, then release the excess water into Scotts Creek upon harvest of crops. This normal flow of water draining from our watershed causes us considerable damage each year so by building the proposed dam we could have sufficient irrigation water and have a flood control project also. We hereby request that a hearing be held in regard to this matter."

Field Investigation

The applicant and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on August 29, 1951 by an engineer of the Division. The applicant was present during the investigation. The protestant was unrepresented.

Records Relied Upon

Application 14158 and all data and information on file therewith.

Discussion

Although the protestant was not represented during the field investigation, the engineer who conducted that investigation states in his report thereof that Walter Ward, the protestant's manager, was interviewed, in connection with the application, on August 24, 1951, at Kelseyville, that Mr. Ward stated during that interview that he saw no reason for him to be present at the investigation, and that the protestant does not

object to approval of the application if the applicant is given clearly to understand that he cannot collect water except at such times as water is wasting through the Cache Creek gates.

As to the physical situation in the vicinity of the proposed development the report of investigation states that the watershed above the applicant's dam site is moderately wooded, has an area of about 1.6 square miles and an average annual rainfall of around 30 inches. The report states further that except for a little standing water caused by seeps near the dam site the source was dry at the time of the investigation and that normally there is little or no ^{water} therein except during storm periods. Finally, the report states, it was explained to the applicant that, should his application be approved, he would only be able to store after the protestant's own storage is accomplished and at such times as the protestant is wasting water into Cache Creek.

The USGS Water Supply Papers contain certain information about Clear Lake, to which the source filed upon is indirectly tributary. From those Papers it appears that Clear Lake is some 65 square miles in surface area, that the drainage area tributary to its outlet, including the surface of the lake itself, is about 528 square miles, that the lake-surface has fluctuated, since 1913 (inclusive), between gage-reading minus 3.50 and gage-reading plus 11.12, that the lake is regulated by a concrete overflow dam at its outlet, that the capacity of the lake between gage-readings 0.00 and plus 7.56 (limits stipulated in 1920 by court decree) is about 319,000 acre-feet, and that water is released from the lake into the natural channel of Cache Creek, from which it is diverted at a point or points downstream.

Cache Creek from the outlet of Clear Lake flows easterly and southeasterly. Its flow has been measured and recorded by the US Geological Survey at 3 stations, the uppermost of which, designated "Cache Creek near

Lower Lake," is 500 feet downstream from "Clear Lake Dam," the dam mentioned in the preceding paragraph. The recorded flow of Cache Creek near Lower Lake therefore may be supposed to represent quite closely the releases from Clear Lake. That flow during November, December, January, February and March of the 5 seasons of published record in acre-feet, and the reported rainfall, at Lakeport, for the seasons of which those 5 month periods are a part, are as follows:

Table I

<u>Season</u>	<u>November</u>	<u>December</u>	<u>January</u>	<u>February</u>	<u>March</u>	<u>Rainfall at Lakeport</u>	
						<u>Inches</u>	<u>% of Normal</u>
1944-45	119	103	123	126	159	25.66	92.0
45-46	119	123	39,330	111	183	28.09	100.6
46-47	236	234	116	208	261	21.11	75.6
47-48	216	217	199	166	166	26.77	95.9
1948-49	253	233	208	196	296	19.29	69.2

The tabulation indicates that in all of the seasons considered, of which all but one appear to have been seasons of sub-normal rainfall, releases from Clear Lake from November to March, both inclusive, were in excess of the amount the applicant seeks to appropriate.

Some 40 miles downstream from the USGS gaging station just discussed is a USGS gage designated "Cache Creek near Capay." That station is said to be located 2 miles upstream from the Clear Lake Water Company's diversion dam. The flows of Cache Creek near Capay, in acre-feet, during the same months that were considered in Table I appear from the record to have been as follows:

Table II

<u>Season</u>	<u>November</u>	<u>December</u>	<u>January</u>	<u>February</u>	<u>March</u>
1944-45	4,440	11,970	7,600	55,220	21,280
45-46	8,720	101,300	83,460	13,130	11,040
46-47	2,170	6,890	2,030	14,800	23,310
47-48	965	1,230	7,110	2,830	12,890
1948-49	708	4,050	6,140	14,770	85,960

It is common knowledge that lands served from Cache Creek seldom if ever require irrigation during November, December, January, February or March. The occurrence of the relatively large flows shown in Table II, upstream from the protestant's intake, indicates that those flows, even if reduced by the 160 acre-feet per annum sought by the applicant, are definitely in excess of the protestant's needs, if any needs there are at that season of the year.

The excesses of the amounts tabulated in Table II over the corresponding figures of Table I evidently are due to inflow from tributaries to the main channel of Cache Creek. Since protests were not received from diverters other than Clear Lake Water Company it may be inferred that inflow from tributaries is sufficient to meet any November-to-March demands by parties unknown.

In view of the excesses of the flows of Table II over the flows of Table I necessity is not seen for releasing water from Clear Lake at all, during November-to-March periods, except for the occasional passage of flood waters and the perpetual passage of unavoidable leakage at the dam. In the absence of showing to the contrary it is to be presumed that the outflow from Clear Lake as reflected by the records of flow of Cache Creek near Lower Lake contains an element of wastage aggregating, during November-to-March periods of normal seasons, more than the 160 acre-feet sought by the applicant. The existence of wastage at the outlet of Clear Lake indicates the existence of unappropriated water in tributaries to that lake, such as the tributary from which the applicant proposes to divert.

Conclusion

The data point to the probability that unappropriated water exists in the source from which the applicant seeks to appropriate under Application

14158 and that such water may be taken and used beneficially in the manner proposed in that application without injury to downstream users. It is the opinion of this office therefore that Application 14158 should be approved and permit issued, subject to the usual terms and conditions.


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ORDER

Application 14158 having been filed with the Division of Water Resources as above stated, a protest 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 14158 be approved and that a permit be issued to the applicant, subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 29th day of August 1952.



A. D. Edmonston
State Engineer

