

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 14006 and 14490 by Dick R. Friesen to Appropriate Water from an Unnamed Stream Tributary to Angwin Creek and from Angwin Creek Tributary to Conn Creek, in Napa County, for Irrigation, Domestic, Recreational and Stockwatering Purposes.

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Decision A 14006, 14490 D. 763

Decided October 31, 1952

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Appearances at Hearing Held at Napa on May 7, 1952:

For the Applicant

Dick R. Friesen

Lowell Palmer

For the Protestants

City of Napa

Ralph Trower by Bob Smith

Katherine Pringle)

(Sullivan, Roche, Johnson & Farragher

Beaulieu Vineyard)

(By George Chadwick

W. E. Lawson

No appearance

Charles Wagner

No appearance

Harvey Miller

No appearance

Frank Wood

No appearance

William E. Cole

No appearance

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON, State Engineer.

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

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OPINION

General Description of the Proposed Developments

Application 14006 initiated appropriations of 40 acre-feet per annum from an unnamed tributary of Angwin Creek and 90 acre-feet per annum from Angwin Creek, a tributary of Conn Creek, which in turn flows into Napa River and so on into San Francisco Bay. The water is to be collected between October 1 and May 1 of each season and stored in 3 reservoirs called Friesen Reservoirs No. 7, No. 8 and No. 9 and located respectively within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T 9 N, R 5 W, the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, T 9 N, R 6 W, and the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T 9 N, R 5 W, MDB&M. The reservoirs are described as having surface areas respectively of 5, 5 and 6 acres and capacities respectively of 90, 80 and 90 acre-feet. The reservoirs are to be created by earth dams which, respectively, are to be 35, 30 and 35 feet high and 300, 250 and 250 feet long. The project includes an 8-inch steel pipe line 7425 feet long. The water is to be used for irrigation, domestic, recreational and stock-watering purposes within portions of Sections 5, 6, 7, 8, 18 and 19 of T 8 N, R 5 W, Sections 1, 12, 13 and 24 of T 8 N, R 6 W, Sections 31, 32 and 33 of T 9 N, R 5 W and Section 36 of T 9 N, R 6 W, MDB&M. According to the application the domestic supply is wanted for the service of up to 100 residences with appurtenant gardens, and the irrigation supply for 390 acres of general crops which require water from March 1 to November 1. Some 500 head of livestock are to be watered. Recreational use is to consist of boating and swimming at the reservoirs. The applicant claims other water rights under Division Applications 8512, 8801 and 11275.

Application 14490, substantially, is a duplication of Application 14006. It initiates a second appropriation of 130 acre-feet per annum, thereby increasing the over-all appropriation under the two applications to a total of 260 acre-feet per annum.

### Protests

Each of the two applications is protested by the same parties.

The City of Napa protests that the proposed appropriations will jeopardize its Hennessey Lake (formerly known as Conn Lake) water supply. It asserts a right under a prior application to use of water from the source in question, stating that its diversion heads within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, T 7 N, R 5 W, MDB&M. It states that its protest may be disregarded and dismissed if the applicant will agree to store only when the water behind Conn Dam is at elevation 335.

Beaulieu Vineyard, a California Corporation, Douglas Pringle, W. E. Lawson, Charles Wagner, Harvey Miller, Frank Wood and William E. Cole all protest on much the same grounds. They all claim riparian rights, rights as overlying landowners and rights based upon an order allegedly issued by the Division of Water Resources in connection with the matter of Application 10990. Protestant Lawson claims also a right under Application 3717, License 470. The protestants claim that the region is one of deficient rainfall during late spring, summer and early fall, that in dry periods streamflow is small but is nevertheless important in the maintenance of ground water levels and that the diversions proposed by the applicant would adversely affect the supply, both surface and sub-surface, available to them. The acreages irrigated by these protestants

and the locations of the lands irrigated, insofar as stated in the protests, are as follows:

<u>Protestant</u>	<u>Acreage Irrigated</u>	<u>Section</u>	<u>Township</u>	<u>Caymus Rancho Subdivision</u>
Beaulieu Vineyard		10, 11, 14 & 15	T 7 N, R 5 W	
Pringle				Lots 5 & 6, Block B
Lawson	180			
Wagner	75.98			Lot 5, Block B
Miller	155.09			
Wood	54			Lot B of Dinning Tract
Wood	16	3	T 7 N, R 5 W	
Wood	11	10	T 7 N, R 5 W	
Cole	143.17			Lots 2, 3 & 4, Block B

The protestants state that their protests may be disregarded and dismissed if the applicant will agree to divert only during periods between November 1 and May 1 and to refrain from diverting at any time when total inflow into Conn Valley Reservoir does not exceed 10 cubic feet per second.

Answers

No answers to the protests are of record.

Hearing Held in Accordance with the Water Code

Applications 14006 and 14490 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested were set for formal hearing under the

provisions of Section 733(a) of the California Administrative Code, Title 23, Waters, on Wednesday, May 7, 1952, at 10:00 o'clock A.M., in the City Council Chamber, City Hall, Napa, California. Of the hearing the applicant and the protestants were duly notified.

#### Discussion

The substance of the testimony adduced at the hearing is as follows:

Applicant Friesen testified (pages 10 to 27 of transcript), in effect, that his property which is known as the White Cottage Ranch is located about 7 miles northeast of St. Helena, that he is at present storing water in 6 or 7 reservoirs under appropriations within the Angwin Creek watershed, that his water system serves Angwin, St. Helena Sanitarium and Pacific Union College which is at Angwin, that the College uses water for irrigation, that he operates a guest ranch, that recreational use is made of water stored in the reservoirs as for boating, that the streams which feed his reservoirs usually run for a day or two after a heavy rainfall and then stop, that the watershed is mostly exposed bedrock and most of the rainfall runs off, that the projects under Applications 14006 and 14490 will add 30 acres to the area tributary to his reservoir system, that he has no objection to a restriction of diversions under these applications to periods extending from November 1 to May 1, that the waters he is seeking under the applications at issue flow downstream to Pacific Ocean, that the arresting and retention of such flow is beneficial to downstream

landowners, that storage in his reservoirs permits irrigation of the college lands and that runoff from such irrigation sustains summer flow in Conn Creek, that since Angwin Creek and Conn Creek flow generally over exposed bedrock channel losses are very low, and that current demands upon his water system exceed his presently authorized supply. On cross examination Applicant Friesen testified that the unnamed creek which is one of the sources he has filed upon discharges into Angwin Creek which in turn is tributary to San Francisco Bay via Conn Creek and Napa River, that 200 customers on his domestic line means 200 accounts, that 200 homes are served, that the college irrigates 60 acres, that he does not serve the St. Helena Sanitarium proper but only the community called Sanitarium, that of his own 60 acres about 30 acres are in Ladino clover and are served by his present water system and that the other 30 acres are to be served by the supply sought under the pending applications, and that that supply would also enable more water to be furnished to the college, whose present supply for irrigation is insufficient.

H. C. McDonald testified in effect (pages 28 to 37 of transcript) that he is the City Engineer of the City of Napa, that the City has a prior right to a certain amount of water in Conn Creek, that applications to appropriate from that stream have a cumulative effect, that the City will withdraw its protest if the applicant agrees to store water only when water stands in Conn Reservoir at elevation 315 which is spillway elevation, that the water reached that elevation on December 28, 1951, that in future years there is no way of telling on

what date the reservoir will spill, that pursuant to an agreement with downstream water users the City, when reservoir space is available, stores for those users all the inflow up to 10 second feet in winter time and all of the inflow in summer time, that under the same agreement when the reservoir spills it is the downstream water users' water that runs out first, and that so far, during the 1951-52 season, some 30,000 acre-feet have spilled. Witness McDonald further testified that the reservoir took 5 years to fill and has so far spilled in but two seasons, that in the 1950-51 season spillage occurred from December until April, that the City maintains gaging stations on Conn Creek, Sage Creek and Chiles Creek, and that normally there is a little flow in Conn Creek in summer time.

Katherine Pringle testified in effect (pages 37 to 41 of transcript) that she is the wife of Douglas Pringle who protested the application but has since transferred to her the land referred to in his protest, that she asserts the same grounds of protest that he asserted, that the property in question is about 100 acres in extent and is planted to grapes and walnuts, that it is all irrigated, that her source of water supply for irrigation is Conn Creek, that there are domestic wells on the property, that there is also an irrigation well which is of the nature of a sump in the creek, that the reservation of 10 second-feet between November and May is none too much, that shortages have occurred, that she is unwilling to surrender any part of that reservation, and that anything over 10 second-feet is a concern of the City. Under cross

examination Mrs. Pringle testified that she makes use of spillage from Conn Reservoir in that she and others have built a small dam to hold back waters that pass Conn reservoir.

J. Ponti testified (pages 42 and 43 of transcript) to the effect that he is employed by the Beaulieu Vineyard and knows well its 240-acre property bordering on Conn Creek, that the entire acreage is in grapes except that there is a 3-acre nursery which alone is irrigated, that there are 2 houses and a labor camp on the property, that water is obtained from Conn Creek to irrigate the nursery, that irrigation extends from May 1 to September 1, and that he does not believe there is any relationship between the flow of Conn Creek and the yield of the wells.

The flow of Conn Creek, to which the sources filed upon by the applicant are directly or indirectly tributary, have been measured and recorded by the U. S. Geological Survey, since November, 1929, at a point within the NW $\frac{1}{4}$  of Section 3, T 7 N, R 5 W, MDB&M. That point is about 4 miles southeast of St. Helena and about 6 miles upstream from the junction of Conn Creek with Napa River. At that point, which is termed "Conn Creek near St. Helena" USGS Water Supply Papers show the flow of Conn Creek to have averaged 34.7 second-feet over the 15-year period prior to the construction by the City of Napa, in 1945, of Conn Valley Dam. The gaging station is roughly 2 miles below the dam and immediately above the group of protestants (other than the City of Napa).



Conn Valley Dam creates Conn Valley Reservoir (called also Lake Hennessey), where water is stored by the City of Napa. Under Application 10990, Permit 6960, which is the basis of that city's water right on Conn Creek, diversion is authorized, each season, in the amount of 35 cubic feet per second from about November 1 to about May 1 plus 30, 500 acre-feet per annum, collected between those same dates, the water in both cases to be used for municipal, irrigation, industrial and domestic purposes. Since those amounts altogether are equivalent to a continuous flow of about 59.3 cubic feet per second and the 15-year average yield as mentioned in the preceding paragraph is but 34.7 cubic feet per second it is apparent that Conn Creek is already over-appropriated and that when and if the project under Application 10990 comes into full operation no water at all will be available, in a year of normal runoff, for the projects under Applications 14006 and 14490 and certain other pending applications.

The other pending applications just mentioned are Application 13373 by Christian J. and Carrie D. Hershey to appropriate 5 acre-feet per annum, collected between September 1 and June 15, for irrigation purposes, from an unnamed tributary of Conn Creek at a point within projected Section 9, T 8 N, R 5 W, MDB&M; Application 13374 by the same applicants Hershey to appropriate 1 acre-foot per annum, collected between September 1 and June 15 for irrigation purposes from an unnamed tributary of Conn Creek at a point within Section 8 of the same T 8 N, R 5 W; Application 13943 by Alexander Matheson to appropriate 180 acre-feet per annum, collected between November 1 and July 1, for irrigation

purposes, from an unnamed stream tributary to Conn Creek, at a point within projected Section 26, T 8 N, R 4 W; Application 14075 by Henry L. Chiles to appropriate 100 acre-feet per annum, collected between October 1 and April 1, for irrigation purposes, from an unnamed tributary of Conn Creek at a point within projected Section 7, T 8 N, R 4 W; and Application 14204 by David Fasken to appropriate 115 acre-feet per annum, collected between November 1 and May 1, for irrigation and recreational purposes, from an unnamed tributary of Conn Creek at a point within projected Section 20 of T 8 N, R 5 W. These 5 applications were protested, the protests against Application 14204 were withdrawn and Applications 13373, 13374, 13943 and 14075 were investigated in the field on October 4, 1951.

The applications therefore, within the Conn Creek watershed, that await permit action at the moment are as follows:

<u>Number</u>	<u>Applicant</u>	<u>Amount</u>
13373	Hershey	5
13374	Hershey	1
13943	Matheson	180
14006	Friesen	130
14075	Chiles	100
14204	Fasken	115
14490	Friesen	130
Total (acre-feet per annum)		661

It is intended to act upon these 7 applications at one time even though Applications 14006 and 14490, only, are within the scope of the present findings.

While the appropriation initiated by the City of Napa under Application 10990 considerably exceeds the probable average yield of the watershed, the diversion of 661 acre-feet per annum (equivalent to a continuous flow of 0.92 cubic feet per second) as proposed by the applicants listed in the preceding paragraph, is unapt, as a practical matter, to injure that city materially or at all, for some years to come, or to injure the other protestants in the matter at issue either, provided the diversions by the applicants are suitably timed. Application 10990 was filed in order to insure a supply sufficient for future as well as current needs. According to statements contained in the application domestic use was proposed "for individuals, cities and towns and possibly state and federal institutions," municipal use "for cities and towns in Napa Valley," and industrial use "for possible supply to industries which may locate in the service area." Future growth obviously cannot be foretold with certainty, yet may well, in time, require the full amount sought under the application. That time however may be somewhat distant.

Permit 6960, issued in approval of Application 10990, contains the following clause:

"This permit is issued expressly subject to the terms of that certain stipulation dated April 18, 1947 and placed on record in the office of the State Engineer on October 23, 1947."

Among the provisions of the stipulation referred to is one to the effect that the City will pass through Conn Reservoir from November 1 to May 1 of each season such waters as enter that reservoir up to an aggregate of 10 cubic feet per second (which in a 6-months period might amount to 3600 acre-feet) and from May 1 to November 1 will pass the total surface inflow.

Flows passing the USGS gage on Conn Creek since the construction of the dam, in terms of acre-feet per annum are reported to have been as follows:

<u>Water-year</u>	<u>Acre-feet</u>
1945-46	1500
1946-47	1500
1947-48	2110
1948-49	2160
1949-50	2540

Ranges in amounts in storage for the first four years of reservoir operation are reported to have been as follows:

<u>Season</u>	<u>Acre-feet in storage</u>	
	<u>Least</u>	<u>Greatest</u>
1945-46	0	16,700
1946-47	14,900	18,700
1947-48	16,500	21,300
1948-49	18,000	27,400

Complete data for the water years since 1948-49 are not available. However according to City Engineer McDonald's testimony on May 7,

1952, the City does not object to the impounding of Conn Creek drainage by the applicants when Conn Valley Reservoir is filled to its spillway elevation, that in 1951 the reservoir commenced to spill on December 28, that spillage since that date had amounted to some 30,000 acre-feet, and that the reservoir also spilled in 1950 but did not spill in any earlier year.

In view of the record of flows passing the USGS gage (Conn Creek near St. Helena) and the clause inserted in Permit 6960; and in view further of year by year increases in the amount of water stored in Conn Valley Reservoir in its first four years of operation and the fact that it spilled during both of the last two such years, it is clear that runoff for that six-year period has substantially exceeded the current requirements of the City of Napa, the necessities of the protestants along Conn Creek below the Conn Valley Reservoir, and the amounts sought under the seven pending applications which include among others the two applications that are the subject of these findings. And it follows directly that under conditions that have existed along Conn Creek, thus far at least, unappropriated waters exist. Such waters, which represent excesses over the present requirements of a municipality, are eligible for temporary appropriation, under Sections 1203 and 1462 of the Water Code.

Inasmuch as the City of Napa is bound by the stipulation that it entered into in connection with Application 10990 to pass downstream all of the surface flow that occurs from May 1 to November 1, for the

satisfaction of downstream rights, it appears equitable that diversions under the applications now at issue, if these applications are approved, should be restricted to periods commencing November 1 and ending May 1.

Summary and Conclusions

Unappropriated water temporarily exists in Conn Creek during periods which ordinarily extend from about November 1 of one year until May 1 of the next. Such water may be taken and used beneficially in the manner proposed in Applications 14006 and 14490, without injury to the protestants or other downstream users, until such time in the indefinite future as the project under Application 10990 comes into substantially full operation.

It is the opinion of this office that the protestants' objections are insufficient to warrant disapproval of the applications and that the applications should be approved, subject to the usual terms and conditions, but subject also to a limitation of diversions to periods extending from about November 1 to about May 1, and to a special term or condition emphasizing the subordination of these applications to the prior filing on Conn Creek by the City of Napa.

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ORDER

Applications 14006 and 14490 for permits 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 Applications 14006 and 14490 insofar as those applications relate to diversion from about November 1 to about May 1 be approved and that permits be issued subject to such of the usual terms and conditions as may be appropriate and subject also to the following

special term or condition, to wit:

Issuance of this permit shall not operate to the prejudice of any prior rights, including rights initiated by the filing by the City of Napa of Application 10990.

IT IS FURTHER ORDERED that authorization to divert under Applications 14006 and 14490 between about May 1 and about November 1 be denied.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 31st day of October, 1952.

  
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A. D. Edmonston  
State Engineer

