

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of Applications 13773 and 13774 by Christian J. and
Carrie D. Hershey; 13943 by Alexander Matheson and 14075 by Henry
L. Chiles to appropriate water from certain unnamed streams in Napa
County for irrigation purposes.

oOo

Decision A. 13773, 13774, 13943, 14075 D. 764

Decided October 31, 1952

oOo

In Attendance at Investigation Conducted by the Division of Water
Resources on October 4, 1951:

Christian J. Hershey	Applicant
Carrie D. Hershey	Applicant
Alexander Matheson	Applicant
Lowell Palmer	Representing Applicants Chiles and Matheson
Theodore Roche, Jr.	Representing all protestants
Douglas Pringle	Protestant
Frank Wood	Protestant
Harvey Miller	Protestant
Mrs. W. Merrifield) D. T. Ratliff) James Everett) David Fasken) Dick R. Friesen)	Interested parties
Kenneth L. Woodward	Associate Hydraulic Engineer, Division of Water Resources

A. S. Wheeler

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

oOo

OPINION

General Description of the Projects

Under Application 13773 the applicants Hershey seek to appropriate 5 acre-feet per annum from an unnamed stream at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 9, T8N R5W, MDB&M. The water is to be collected between September 1 and June 15 by means of an earth dam 10 feet high by 200 feet long, the dam creating a reservoir 0.5 acre in surface area and 5 acre-feet in capacity. It is to be used in irrigating 7 acres of general crops, located within the same projected Section 9. The land to be irrigated is said to have no other water right or source of water supply.

Under Application 13774 the applicants Hershey seek to appropriate 1 acre-foot per annum from an unnamed stream at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 8, T8N R5W, MDB&M. The water is to be collected between September 1 and June 15 by means of an earth dam 10 feet high by 50 feet long, the dam creating a reservoir 0.1 acre in surface area and 1 acre-foot in capacity. It is to be used in irrigating a 2 acre orchard, located within the same projected Section 8. The land to be irrigated is said to have no other water right or source of water supply.

Under Application 13943 Applicant Matheson seeks to appropriate 180 acre-feet per annum from an unnamed stream at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$

of projected Section 26, T8N R4W, MDB&M. The water is to be collected between November 1 and July 1 by means of an earth dam 30 feet high by 745 feet long, the dam creating a reservoir 12 acres in surface area and 90 acre-feet in capacity. According to the application the reservoir is to be filled twice each season. The water is to be used in irrigating 10 acres of alfalfa and 40 acres of pasture, located within the same projected Section 26 and the adjoining Section 35. Irrigation is to extend from about April 1 to about November 1. The applicant claims a riparian right.

Under Application 14075 Applicant Chiles seeks to appropriate 100 acre-feet per annum from an unnamed stream at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of projected Section 7, T8N R4W, MDB&M. The water is to be collected between October 1 and April 1 by means of an earth dam 38 feet high and 685 feet long, the dam creating a reservoir 7 acres in surface area and 100 acre-feet in capacity. It is to be used in irrigating a 50 acre pasture located within projected Section 18 of the township mentioned. Irrigation is to extend from about April 15 to about October 1. The land to be irrigated is said to have no other water right or source of water supply.

Protests

Seven parties - W. E. Lawson, Charles Wagner, Harvey Miller, Frank Wood, William E. Cole, Douglas Pringle, and Beaulieu Vineyard - filed individual protests against each of the four applications; two parties - Jane C. Everett and Jack R. Bradley - protested Application 14075 only.

The protests filed by the seven parties are much alike except as to the descriptions of the protestants' own lands and works. They all claim riparian rights, rights as overlying land owners, and rights "pursuant to order of Division of Water Resources made in the matter of Application 10990, City of Napa." They argue that the region in which their lands and the

applicants' are located is a region within which late spring, summer and early fall rainfall is deficient, that the flow of Conn Creek depends upon rainfall, that in dry periods the flow while small is important for the maintenance of ground water levels, and that the diversions proposed by the applicants would interfere with said maintenance and would thereby increase their difficulties in securing necessary water. As to the locations of and extent of use under their own developments the protestants state as follows:

Lawson: "1923 - usage started from May to October for both irrigation and domestic use. - - - - the lands of protestant making use of underground waters lie within the Caymus Rancho, Napa County - - - - and consist of 180 acres."

Wagner: "Water used for over ten years. - - - - the lands of protestant making use of water of Conn Creek comprise approximately 75.98 acres of land, more or less, being a portion of Lot 5 in Block B, of Caymus Rancho - - - -."

Miller: "Water used for over fifteen years. - - - - the lands of protestant making use of water of Conn Creek comprise approximately 155.09 acres - - - -."

Wood: "Water used for over twenty years. - - - -the lands - - - - comprise 54 acres in Lot B of Dinning Tract of Caymus Rancho; 16 acres - - - - in - - - - projected Section 3 - - - - and 11 acres - - - - in - - - - projected Section 10, T7N R5W, MDB&M. - - - -."

Cole: "Water used for over 25 years. - - - the lands comprise 143.17 acres - - - - being - - - - in Block B of Caymus Rancho - - - -."

Pringle: "Water used since approximately 1920. - - - the lands - - - comprise a portion of Lots 5 and 6, Block "B" of Caymus Rancho. - - -"

Beaulieu Vineyard: "Water used since approximately 1921. - - - - the lands - - - are in Block C of Caymus Rancho - - - - in Sections 10, 11, 14 and 15 of T7N R5W, MDB&M - - -."

The protestants agree, the protests state in effect, that their protests against Applications 13773, 13774 and 14075 may be disregarded and dismissed if the applicants will collect only from November 1 to May 1 and will not divert when the aggregate flow into Conn Valley Reservoir does not exceed 10 cubic feet per second. The terms under which protests against Application 13943 may be dismissed, the protestants state, are that the applicant shall agree to install a measuring device to enable the flow of the proposed source to be determined, that no water will be diverted except as the flow of the source exceeds 10 cubic feet per second, and that only those waters shall be appropriated from the source which are in excess of 10 cubic feet per second.

Jane C. Everett in her protest against Application 14075 asserts that she has used water since about 1915 upon a portion of Lots 3 and 4, Block B, Caymus Rancho, claims riparian rights, rights as an overlying owner and rights based upon an order by the Division of Water Resources in connection with Application 10990, and states the same grounds of objection and the same terms under which her protest may be disregarded and dismissed as did the 7 protestants first discussed.

Jack R. Bradley in protesting Application 14075, bases his objection upon apprehension that the diversion proposed by the applicant will

prevent his (the protestants) pasture from being properly irrigated and will diminish the value of his property. He cites Application 631, Permit 318, License 161 as the basis of his right to divert. He states in effect that between 30 and 35 acres of his land have been irrigated since 1923, that irrigation has extended from about May 1 to about October 15, and that such irrigation requires 0.44 cubic foot per second. He states further that his protest may be disregarded and dismissed if "sufficient water is available to properly irrigate said pasture at water's lowest level, also that those pumping from said river and its tributaries without a permit to pump are made to comply with the law and first obtain a permit if sufficient water is available."

Answers

The applicants addressed identical answers to the protestants against Applications 13773 and 13774, the body of each answer reading as follows:

" - - - - -. We the undersigned wish to register a denial of interference. We wish only to store rain runoff for summer use. To drain the land where winter water now stands until too late for planting.

"By storing this water during rainy season the seepage from such storage would be of far more value to the protesting parties in the dry months than in the wet. Summer flow from seepage will be far above normal."

The protests against Applications 13943 and 14075 appear not to have been answered.

Field Investigation

The applicants and the protestants 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 on October 4, 1951 by an engineer of the Division. The applicants and

protestants were present or represented during the investigation.

Records Relied Upon

Applications 13773, 13774, 13943 and 14075 and all data and information on file therewith.

Discussion

According to the report of the field investigation of October 4, 1951 all of the sources filed upon under the 4 applications under consideration were dry at the time of the investigation, those sources usually have little or no flow except during storm periods, the protestant's attorney stated that if the storage periods under the applications are limited to periods extending from October 1 to May 1 the protests could be considered withdrawn and that in that event the protestants' requirement that there be no storage when the flow of Conn Creek is 10.0 cubic feet per second or less would not be insisted upon. Applicants Matheson and Chiles were agreeable to that limitation of the storage period, the report states, but the applicants Hershey were not. According to the report of field investigation the protestants' requirements total a little over 6 cubic feet per second plus transmission losses.

The flow of Conn Creek, to which all of the sources herein considered are tributary, has 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, T7N R5W, 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 as having 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 uppermost of the group of protestants.

Conn Valley Dam creates Conn Valley Reservoir, 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 30500 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 59.8 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 13773, 13774, 13943, 14075 and certain other pending applications.

The other pending applications just mentioned are 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 Section 20, T8N R5W; and Applications 14006 and 14490 by Dick Friesen, to appropriate a total of 260 acre-feet per annum, collected between October 1 and May 1, for irrigation, domestic, recreational and stockwatering purposes, from an unnamed tributary to Angwin Creek and from Angwin Creek itself, which is a tributary of Conn Creek, at points within Section 31 of T9N R5W and Section 25 of T9N R6W, MDB&M. These 3 applications were protested, but the protests against

Application 14024 have been withdrawn and Applications 14006 and 14490 were heard formally on May 7, 1952.

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

It is intended to act upon these 7 applications at one time even though Applications 13373, 13374, 13943 and 14075, 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, yet as a practical matter the diversion of 661 acre-feet per annum (equivalent to 0.92 cubic foot per second), as proposed by the applicants listed in the preceding paragraph, is unapt to injure that city materially or at all, for some years to come, or to injure the protestants in the matter at issue, provided the diversions by the applicants are suitably timed. Application 10990 was filed in order to ensure 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 August 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 could 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	1520
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	16700
1946-47	14900	18700
1947-48	16500	21300
1948-49	18000	27400

Complete data for the water years since 1948-49 are not available. However the City Engineer, City of Napa, testified at a hearing on May 7, 1952 held

in connection with Applications 14006 and 14490, to the effect that the City does not object to the impounding of waters of Conn Creek and its tributaries by the upstream 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 has amounted to about 30,000 acre-feet, that the reservoir also spilled in the year previous, but that the reservoir did not spill in any of the first three years of operation.

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 7 pending applications which include among others those four applications that are the subject of the current hearing. And it follows directly that, under conditions that have existed in 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 those applications are approved, should be restricted to periods commencing November 1 and ending May 1.

Summary and Conclusion

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 13773, 13774, 13943 and 14075 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.

oOo

ORDER

Applications 13773, 13774, 13943 and 14075 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests 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 Applications 13773, 13774, 13943 and 14075 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 13773, 13774, 13943 and 14075 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.


A. D. Edmonston
State Engineer

