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STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 16995) Source: An unnamed stream
by Rolland J. Kelly) County: Placer

Decision No. D 901

Decided: May 14, 1958

In attendance at Investigation conducted by the State Water Rights Board on August 23, 1957:

Rolland J. Kelly)	Applicant
R. L. Hopkins)	
Office Engineer)	
W. H. Shinn)	Representing the protestant
Placer Division Representative))	Nevada Irrigation District
S. L. Andrews)	Representing State Water
Associate Hydraulic Engineer))	Rights Board

DECISION

Substance of the Application

Application 16995 is for a permit to appropriate 0.38 cubic foot per second by direct diversion to be diverted from April 1 to November 1 of each year and 5 acre-feet per annum by storage to be collected from November 1 of each year to March 1 of the succeeding year for irrigation and stockwatering purposes. The source is an unnamed stream tributary to Doty Ravine thence Coon Creek in Placer County. The applicant proposes to take the water under control by means of an earth storage dam 18 feet high and 170 feet long at a

point within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 1, T12N, R7E, MDB&M. The applicant claims ownership of the land at the point of diversion and of the land to be served. The water will be used to irrigate 29.5 acres of pasture, some shrubbery and a small garden within the SW $\frac{1}{4}$ of Section 1 and the NW $\frac{1}{4}$ of Section 12 of the same township and for stockwater. The irrigation season is to extend from April 1 to November 1.

Protest

Nevada Irrigation District protests Application 16995 on the apprehension that the proposed appropriation will reduce the supply of water available to the district's Doty South Ditch and will require that the district purchase supplemental water from Pacific Gas and Electric Company. The protestant claims a right to the use of the water in question based upon prior usage and that all of the flow in the unnamed stream during the irrigation season is seepage from its Dudley Canal or return water from upstream irrigation which is used by the district. The district's point of diversion is said to be located within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 36, T13N, R6E, MDB&M.

Answer

The applicant submitted merely a categorical denial of the allegations contained in the protest.

Field Investigation

The applicant and protestant, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules, and a field investigation was conducted on August 23, 1957, by

S. L. Andrews, an engineer of the Board. The applicant and protestant were either present or represented at the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 16995 and all relevant information on file therein with particular reference to, "Report of Field Investigation of Application 16995", dated October 3, 1957; United States Geological Survey, Gold Hill and Lincoln Quadrangles, 7.5 minute series; U. S. Weather Bureau Climatological Data for California.

Source

According to the report of field investigation (hereinafter referred to as the "Report") the unnamed stream, from which the applicant proposes to divert, heads at an elevation of about 1,270 feet about 3.5 miles north of the town of Newcastle within the NW $\frac{1}{4}$ of Section 1, T12N, R7E, MDB&M. From this point the stream extends in a general southwesterly direction a distance of about one mile to its confluence with Doty Ravine. The applicant's point of diversion is located about 1/4-mile upstream from the confluence with Doty Ravine and the drainage area at this point is estimated by the investigating engineer to be about 80 acres.

Protestant's Project

Contained within the Report are statements to the effect that the area in the vicinity of the applicant's project is within the boundaries of the Nevada Irrigation District and substantially all of the surface water used is supplied by the district through the Dudley Canal; that according to the district representatives, flow in the Dudley Canal is almost entirely water imported from the Bear River

through the Gold Hill System; that water entering Doty Ravine from the unnamed stream is diverted through the Doty South Ditch which heads on Doty Ravine in the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 36, T13N, R6E, MDB&M; that, according to Mr. W. H. Shinn, the entire flow of Doty Ravine is diverted into Doty South Ditch as early as May 1; and that the ravine supply must be supplemented beginning about July 1 from Auburn Ravine via Auburn Canal to meet the district's demands.

Water Supply

At the time of the investigation on August 23, 1957, no water was flowing into the applicant's reservoir and the applicant stated that in the 13 years he has lived on the property he has never observed water entering Doty Ravine from the unnamed stream during the irrigation season. The Report indicates that the flow in the stream about 600 feet above the applicant's dam was 2.5 gallons per minute, that an estimated 10 to 15 acres of pasture, served by water from the district's Dudley Canal, were being irrigated upstream from the applicant's property, that there was a measured flow of 1.5 gallons per minute immediately upstream from this irrigated area (about 1/2-mile above applicant's dam), that the flow was originating from a rock outcrop about 750 feet above the point of measurement, and that Dudley Canal traverses the watershed of the unnamed stream along a contour about 150 feet in elevation above and approximately 750 feet horizontally upstream from the rock outcrop. There was no visible seepage loss from the Dudley Canal in that area.

The United States Weather Bureau Climatological Data for California indicates that the long-term mean precipitation in inches

at Auburn* during the proposed irrigation season is as follows:

<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>
2.85	1.28	0.67	0.01	0.01	0.43	1.77

Other Matters

According to the Report the protestant has no objection to the storage feature of the application or at the present time to the direct diversion feature inasmuch as the flow, even if unimpeded, according to the applicant and the protestant's representatives does not contribute to Doty Ravine during the irrigation season. The protestant's concern is that expanded future use of water from Dudley Canal in the upstream watershed will result in significant return flows to the stream which, if not diverted, would contribute to Doty Ravine and be available for reuse by the protestant.

The Report further indicates that the applicant's property is contiguous to the unnamed stream and that he (the applicant) can probably assert a riparian right for the diversion of the small amounts of natural flow that may exist.

Discussion

The protestant has indicated that it has no objection to the storage feature of the application or at present to the proposed direct diversion. However, should the return flow from expanded future use of Dudley Canal water result in significant flows arriving at the applicant's point of diversion, which if unimpeded would contribute to Doty Ravine, then the protestant would object. Undoubtedly the protestant can assert a valid claim of right to

*The Auburn precipitation station is located at elevation 1,363 feet and approximately 4 miles southeast of the area under consideration.

recapture any return flow from lands supplied by its Dudley Canal by virtue of Water Code Section 22078 provided such water is placed to beneficial use.

The fact that the applicant's watershed area is only about 80 acres would indicate that there is probably little natural flow in the unnamed stream from rainfall which could be put to direct beneficial use during the irrigation season. The precipitation records for the station at Auburn indicate that under normal conditions there would undoubtedly be considerable runoff at times during the months of April, May and October. However, with the limited area of the watershed it would not seem reasonable to expect such flows to be sustained much beyond the period rainfall was actually occurring and rainfall of sufficient quantity to cause streamflow would undoubtedly obviate the necessity for irrigation.

The flow anticipated by the applicant from natural springs and from runoff of upstream irrigation shows little promise. On August 23, 1957, the total from both sources equaled only 2.5 gallons per minute as against the 170 gallons per minute requested. Irrigation requirements for the area are usually greatest in August and September and the return flow from upstream irrigation would likewise ordinarily be greatest during that period. As indicated by the protestant, under present irrigation demands this supply is inconsequential. Furthermore, although production from any springs in the area may be greater in the earlier part of the season, there is no evidence to that effect. However, to the extent water from this source is of value to the applicant, use thereof probably can be made under claim of riparian ownership.

Conclusions

In view of the foregoing information and particularly the applicant's statement to the investigating engineer that in 13 years he has not seen surface water from the unnamed stream during the irrigation season reach Doty Ravine (some 0.25 mile downstream), it must be concluded that the availability of unappropriated water during the proposed irrigation season occurs in too small a quantity or during such times that it would be of no material benefit to the applicant to warrant approval of the direct diversion feature of the application.

It is further concluded that unappropriated water usually exists in the source during the period water is desired for diversion to storage; namely, November 1 to March 1, that the proposed uses are beneficial and that the storage feature of the application may be approved without injury to any lawful user of water.

ORDER

Application 16995 for a permit to appropriate unappropriated water having been filed, protest having been submitted, an investigation having been held by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16995 be, and the same is hereby approved in part, and it is ordered that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 5 acre-feet per annum by storage to be collected from about November 1 of each

year to about March 1 of the succeeding year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before September 1, 1958, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

8. That portion of Application 16995 seeking appropriation of 0.38 cubic foot per second from April 1 to November 1 is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 14th day of May, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member