

SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T6N, R6E, MDB&M. The water is to be pumped from a sump and conveyed through 3,700 feet of 14 inch concrete pipe to the place of use, which consists of 70 acres within the SE $\frac{1}{4}$ of said Section 6. In addition to irrigation purposes, the water will also be used for stockwatering. The diversion system is to have a capacity of 1,200 gallons per minute (gpm) and the conduit system, which is already installed, will also be used in connection with applicant's well.

Protests

George P. Barney holds Permit 8680 issued pursuant to prior Application 14234 to appropriate from the same unnamed drain and claims that the proposed appropriation by Mr. Busi exceeds the flow of the drain, and that if Application 17752 is approved, his Permit 8680 cannot be supplied and his installation will be rendered useless. Mr. Barney indicates that he irrigates about 25 acres from the drain.

Jack Van Sickle protests Application 17752 on the basis of prior Application 16260, License 5037. He claims that the proposed amount requested by Mr. Busi exceeds the flow of the creek and that all of the water in the creek is now being used. Mr. Van Sickle indicates that there are no conditions which will relieve the protest.

Answers

In reply to the protests, Applicant Busi stated that the water he is applying for is return flow from his own irrigated lands and from the lands of a neighbor, a Mrs. Harrison, and that Mrs. Harrison had verbally agreed that he could use the water from her fields.

Mr. Busi further stated that this water was causing a swamp on his and part of his neighbor's property; that he has no desire to deprive the protestants of water they are putting to beneficial use, and that he would enter into an agreement with the protestants providing he is allowed to use the runoff water from the sources cited.

Field Investigation

The applicant and protestants with the approval of the State Water Rights Board, stipulated to the proceedings in lieu of hearing as provided for under Section 737 of the Board's rules and regulations, and a field investigation was conducted on June 13, 1958, by Arthur N. Webb, an engineer of the Board. The applicant and protestants were present or represented at the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 17752 and all relevant information on file therewith,

with particular reference to the report on the field investigation of June 13, 1958; the report of field inspection of Application 14234, Permit 8680; the report of field inspection of Application 16260, License 5037; and United States Geological Survey, Elk Grove quadrangle, 7½ minute series.

Information Obtained by Field Investigation

According to the report of field investigation, the source of supply is a drain in relatively flat country and the watershed area is not clearly defined, except that one boundary is the Grant Line Road. The report indicates that the drain rises in Section 5, T6N, R6E, MDB&M, at about elevation 50 feet and courses in a general northwesterly direction approximately six miles to its confluence with Laguna Creek, which continues about three miles to Beach Lake. The report further indicates that the total flow reaching Applicant Busi's sump at the time of the investigation was approximately 7 gpm and that no flow was passing this point. The drain channel on Applicant Busi's land had been cleared of all brush but from the proposed point of diversion to Protestant Barney's place, the channel had a heavy covering of tules and brush. The parties present agreed that the entire flow of the drain during the irrigation season is runoff water from upstream irrigation originating from wells. The protestants indicated that they had been getting sufficient water until Applicant Busi's pump went into operation, and that since then they have not had sufficient water. They stated that Protestant Van Sickle had told

them that he had only been able to get about one-tenth of the amount allowed under his license.

Applicant Busi stated that the upstream owners have indicated that they may install pumps to recover their drain water, thus eliminating most of the water flowing in the drain. He also stated that because of the condition of the drain part of his and his neighbor's land were becoming swamps, and because of the mosquito's he was asked to do something about the problem. His neighbor, Mrs. Harrison, indicated that if he would clean out the ditches on her property, he could use all of the drain water from her land. For this reason, the applicant expended considerable money cleaning the ditches on both his and his neighbor's land, dug a sump, installed a pump and is now in a position to recapture all of his own drain water and the drain water from the upstream irrigators.

Information from Other Sources

The files of the State Water Rights Board indicate that rights of record prior to Application 17752 include: Permit 8387 (Application 13964) of Marvin B. and Elizabeth M. Jones for 2.12 cfs (license action is pending for 0.73 cfs as recommended by the inspecting engineer), Permit 8680 (Application 14234) of George P. and Emma P. Barney for 0.31 cfs, and License 5037 (Application 16260) of Jack Van Sickle for 0.37 cfs.

The report of inspections made June 16 and 19, 1958, in connection with Permit 8680 of Protestant Barney indicates that

the project is incomplete mainly because of an upstream diversion which prevented full use of water. The report further indicates that the flow on June 16, 1958, was an estimated 50 gpm and on June 19, 1958, an estimated 550 gpm. This report states "... party upstream has built a sump to take most of the water...construction complete...all that remains is to get some water...whenever party upstream pumps there is very little water for permittee". An extension until 1960 has been granted under Permit 8680 to complete use of water.

The report of inspection made December 5, 1957, in connection with Permit 10256 (now License 5037) of Protestant Van Sickle states as follows:

"The source under this filing is a more or less natural winter drainage channel which is supported during the summer months entirely by drainage water from upstream lands that are irrigated chiefly from wells. During 1956, the average flow exceeded 1 cfs and there was sufficient water for all needs under this filing. However, in 1957 there was somewhat of a deficiency due to increased use from the source upstream and possibly because of more careful handling of water by those whose drainage supports the flow in the source."

Discussion

In view of the foregoing information, together with the fact that an extension of time under Permit 8680, has been granted because of a lack of sufficient water, and Applicant Busi's statement to the effect that the upstream owners have intentions of recovering their own drain water, thus further reducing the supply, it appears that unappropriated water to supply Application 17752 of James Busi is normally nonexistent during the

irrigation season and to allow further appropriation from the drain would only aggravate the conditions further.

The right of applicant to recapture his irrigation waste and seepage water before it passes beyond his land and his right to recapture such waste and seepage from the land of his neighbor by reason of an agreement with her, are private matters not properly within the jurisdiction of the Board and this decision does not purport to determine them. To the extent such rights exist, they are not dependent upon issuance of a permit to applicant.

Conclusion

The information indicates and the Board finds that unappropriated water is ordinarily nonexistent during the irrigation season in the proposed source and that Application 17752 should be denied.

ORDER

Application 17752 for a permit to appropriate unappropriated water having been filed with the State Water Rights Board, protests having been received, applicant and protestants having stipulated to the proceedings in lieu of hearing as provided under Section 737 of the Board's rules, a field investigation having been made by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17752 be, and the same is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 23rd day of January, 1959.

/s/ Henry Holsinger
Henry Holsinger, Chairman

/s/ W. P. Rowe
W. P. Rowe, Member

/s/ Ralph J. McGill
Ralph J. McGill, Member