

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19355)
of Paul J. and Victoria Cesari to)
Appropriate from Little Stony Creek)
in Colusa County)

Decision D 1042

ADOPTED NOV 13 '61

DECISION DENYING APPLICATION

Paul J. and Victoria Cesari having filed Application 19355 for a permit to appropriate unappropriated water and protests having been received, a public hearing was held before the State Water Rights Board on March 1, 1961, in the City Hall, Orland, California, Board Member Ralph J. McGill presiding; the applicant and protestants having been notified of the said hearing; evidence having been offered and received at said hearing; the Board, having considered the evidence, finds as follows:

1. Application 19355 is for a permit to appropriate 1 cubic foot per second by direct diversion between April 1 and October 1 of each year from Little Stony Creek for irrigation purposes. The point of diversion is located within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T18N, R6W, MDB&M.

2. The applicants' point of diversion is located just below East Park Reservoir on Little Stony Creek and above Stony Gorge Reservoir on Stony Creek. These reservoirs, along with lower diversion works, are the major features of the Orland project



constructed by the U. S. Bureau of Reclamation. Protestant Orland Unit Water Users Association operates this project under contract with the Bureau of Reclamation, serving approximately 20,000 irrigated acres. Its point of diversion is on Stony Creek approximately 18 miles below Stony Gorge Reservoir. Protestant Glenn-Colusa Irrigation District diverts from Stony Creek below the protestant Orland Unit Water Users Association 5 miles above the Sacramento River-Stony Creek confluence for the irrigation of approximately 76,000 acres.

3. The protestants claim that there is no unappropriated water to satisfy the applicants, as the entire flow of Stony Creek and its tributaries, which include Little Stony Creek, is required to satisfy their prior rights as set forth in a decree of the United States District Court, Northern Division, Northern District of California, Second Division, in the case of United States of America v. H. C. Angle et al., Equity No. 30.

4. By the terms of the above-mentioned decree, protestant Orland Unit Water Users Association has a right to divert 265 cubic feet per second, year-round, of the natural flow of Stony Creek in addition to the right to store water, and protestant Glenn-Colusa Irrigation District has the right to divert 500 cubic feet per second of the natural flow of Stony Creek from March 15 to October 1, providing the rights of the Orland Unit Water Users Association are first satisfied.

5. The records of the mean monthly flows of Stony Creek recorded by the USGS gaging station "near Hamilton City" located just above the diversion dam of the protestant Glenn-Colusa Irrigation District show that during the irrigation season the entitlement of protestant Glenn-Colusa Irrigation District is only exceeded during the months of April and May, and this entitlement is only exceeded during 7 of the 19 years of record during the month of April and during only 2 of the 19 years of record during the month of May.

6. The decree in U.S. v. Angle (supra) recognized a right in the protestant Glenn-Colusa Irrigation District initiated in 1904 to appropriate the waters of Stony Creek by means of damming up the stream and diverting its entire flow into its main canal during the irrigation season. This practice has continued to the present time (California Department of Water Resources Bulletin No. 23-58, "Surface Water Flow for 1958," p. 63), substantiating the protestant's contention that the entire flow of Stony Creek and its tributaries during the irrigation season is necessary to satisfy their decreed prior rights.

7. Unappropriated water does not occur with sufficient frequency, therefore, to merit granting a permit.

8. In answer to the filed protests, applicants claim a right to divert from the named source based upon the riparian nature of the two parcels of land designated in the application as the proposed place of use. The matter of applicants' riparian rights is not at issue in this proceeding; this decision in no

way affects such rights, if any. The protestants argue that the applicants are now barred from asserting a riparian right inasmuch as the applicants' predecessors in interest signed statements disclaiming any such rights (United States of America v. H. C. Angle et al., supra) (RT 11). In any event, the courts rather than this Board are the appropriate forum for a determination of asserted riparian rights.

From the foregoing findings, the Board concludes that Application 19355 should be denied.

IT IS HEREBY ORDERED that Application 19355 be, and the same, is 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 day of , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member