

BEFORE THE DIVISION OF WATER RESOURCES
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

cOo

In the Matter of Application 9617 of M. P. Fischer to Appropriate
from Woodruff Creek, tributary to North Fork of Yuba River
in Sierra County for Irrigation, Domestic and Fire
Protection Purposes.

cOo

DECISION A. 9617, D 452

Decided *February 19, 1940*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, DECEMBER 12, 1939.

For Applicant
No appearance

For Protestant
No appearance

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of
Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Application 9617 was filed by M. P. Fischer on June 15, 1939. Applicant sought 0.10 cubic foot per second from January 1st to December 31st from Woodruff Creek, tributary to the North Fork of Yuba River but subsequent to the hearing reduced the amount to 0.055 cubic foot per second.

Diversion is proposed in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 8, T 19 N, R 10 E, M.D.B.&M. and use is proposed for domestic, fire protection and irrigation purposes within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ and SW $\frac{1}{4}$ of SW $\frac{1}{4}$ Section 5, T 19 N, R 10 E, M.D.B.&M.

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Diversion is proposed through an existing ditch owned by the Kirkpatrick Mines Company and known as the Sunset Ditch.

PROTEST

Application 9617 is protested jointly by Andrew and Isabel G. Bachele. It is the position of these protestants that during the low flow period of the year there is no surplus or unappropriated water in Woodruff Creek and that they will be prevented from further expansion under the rights claimed by them.

HEARING SET IN ACCORDANCE WITH SECTION 1a
OF THE WATER COMMISSION ACT

Application 9617 having been completed and being protested, the matter was scheduled for hearing on December 12, 1939. Of this hearing due notice was given to the interested parties.

No appearances were made by the interested parties due to the fact that they had agreed to rest their case upon the findings of the Division of Water Resources resulting from a field investigation of the matter on November 27, 1939.

The information secured at the time of the investigation indicates that normally surplus or unappropriated water exists in Woodruff Creek in excess of the amount sought by applicant and accordingly no bar to approval of Application 9617 on the grounds of non existence of surplus or unappropriated water is evident.

Relative to the claim of protestants to all of the water in Woodruff Creek, it is clear, under the provisions of the Water Commission Act and in the decisions of the courts, that the protestants may claim only such an amount as they can beneficially use under reasonable methods of diversion and use and that wasteful methods of diversion and use cannot be countenanced.

The protestants operate as a public utility in serving the town of Goodyears Bar and they contend that approval of Application 9617 will prevent extension of their service to new consumers. In this connection it is well to note that it has been held that a claimant may not retain a right indefinitely in anticipation of some problematical future use to the detriment of other proposed appropriators.

In regard to the contention on the part of applicant that protestants are wasting more water into the North Yuba River and by excessive conveyance losses than is sought by him, it is clear from information submitted by him and obtained by the Division of Water Resources at the time of its field investigation, that his contention is correct.

Owing to the nature of their diversion system it is necessary for protestants to maintain sufficient flow in their conduits to insure a potable supply and to meet the demands of all consumers during peak periods of use. In consequence, during periods of little use, a high percentage of the amount diverted by them is wasted into the river.

Owing to the condition of their diversion system the protestants are subject to excessive conveyance losses exceeding the amount sought by applicant and which could be eliminated by the construction of adequate dams, a new flume in the Stewart and Schriber Ditch and proper maintenance.

From the foregoing the obvious conclusion is that protestants are employing wasteful methods of diversion and use and to deny approval of Application 9617 in order that protestants may continue to enjoy such methods of diversion and use would be contrary to the provisions of the Water Commission Act.

O R D E R

Application 9617 to appropriate water from Woodruff Creek in Sierra County having been completed and advertised, protests having been received, a field investigation having been made, a hearing having been held and the Division of Water Resources now being fully informed in the premises,

IT IS HEREBY ORDERED that said Application 9617 be approved and that a permit be issued subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 19th day of February, 1940.

EDWARD HYATT, State Engineer

BY HAROLD CONKLING

Deputy

(Seal)
ASW:MP