

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

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In the Matter of Applications 11634 and 11635 of Graham Nissen to
Appropriate Water from an Unnamed Stream, Tributary to Brushy Creek,
in Contra Costa and Alameda Counties, for Stockwatering Purposes.

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Decision A. 11634, 11635 D. 570

Decided February 2, 1948

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Appearances at Investigation conducted on August 6, 1947, under the
Provisions of Article 13, Section 733b of the California Administrative
Code:

For Applicant

Graham Nissen

Oris Engblom

For Protestants

Wesley L. Armstrong)
Samuel A. Armstrong)
Roy S. Griffith)
Teresa H. Griffith)

In propria persona

Olive C. Armstrong)
George Hausser)
Joseph F. Santana)
Souza & Pimentel)
Joe Avila Souza)
A. Souza)

No appearance

For the State Engineer

Biscoe Kibbey, Associate Hydraulic Engineer, Division of
Water Resources, Department of Public Works, State of California

Also in Attendance:

Jim Hosker
Theodore Redin
Irving Grover, Representing Soil Conservation Service
Howard Runde, " " " "

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OPINION

General Description of the Proposed Developments

Applications 11634 and 11635 were filed with the Division of Water Resources on November 29, 1946, by Graham Nissen. The applications as submitted were for appropriations of 4 and 3.7 acre feet respectively, to be collected between January 1 and December 31 of each year, and utilized for stock watering. The proposed points of diversion lie within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T 1 S, R 3 E and within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T 2 S, R 2 E, M.D.B.&M., respectively. At each of these points an earth fill dam is contemplated, one such dam to be 15 feet high and 205 feet long and the other 16.5 feet high and 208 feet long. The damsites lie on the course of the source described, which is an unnamed stream, tributary to Brushy Creek, the latter in turn discharging into Italian Slough. Each dam is to create a small reservoir. No ditches or other conduits are contemplated: 200 head of live stock which range nearby are expected to drink directly from each reservoir.

Protests

Ten protestants united in submitting a single, group protest. Their lands lie along Brushy Creek, below the mouth of "Unnamed Stream," the source described in the applications. They claim riparian ownership and use begun prior to December 19, 1914, for stock watering and allege that the source yields insufficient water to allow storage during the entire year as proposed without depriving them of water which they use and to which they are entitled. They state that the protest may be

disregarded and dismissed if the application is withdrawn and the obstructions (to the free flow of water in the source) removed..

The applicant answers the protest by stating that the protestants do not water their stock from Unnamed Stream for 12 months during any one year; that Unnamed stream is usually dry from about July 1 until December, flow occurring during the rainy season only; that the protestants derive their supply from Brushy Creek which flows year-round; that the storage applied for causes no damage during wet years and that during dry years there is no water to store; that the storage requested will increase the yield of springs below the damsites; and that he is willing to reduce the storage season applied for to the months of December to July inclusive.

Hearing Held in Accordance with the Water Code

Applications 11634 and 11635 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources. Stipulations to an informal hearing under the provisions of Article 13, Section 733b of the California Administrative Code having been entered into by both the applicant and the protestants and the stipulation^s having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on August 6, 1947.

Records Relied Upon

Applications 11634 and 11635 and all data and information on file therewith.

Discussion

At the investigation it was generally agreed that there is

Normally no flow above the reservoir sites after approximately mid-June; that any water stored after May 1 would probably affect the summer supply of lower users; and that in any year when there is sufficient run-off for storage the reservoirs can be filled between December 1 and May 1 without hardship to the applicant or injury to the protestants.

Subsequent to the investigation the applicant amended Applications 11634 and 11635 to specify the season of diversion as beginning December 1 and ending May 1.

In view of all the facts it is the opinion of the Division that the applications in question, amended as above noted, should be approved and permits issued subject to such of the usual terms and conditions as may be appropriate.


ORDER

Applications 11634 and 11635 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations under Article 13, Section 733b of the California Administrative Code having been received, a field investigation having been made and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 11634 and 11635 be approved and permits 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 2nd day of February 1948.




State Engineer