

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 11942 of Myrtle G. Campbell to Appropriate Water from Kirkham Creek, Tributary to Trinity River in Humboldt County for Domestic Purposes.

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Decision A. 11942 D. 612

Decided August 10, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON SEPTEMBER 25, 1948:

Shirley M. Hannah

Protestant

G. Edward Goodwin

Attorney for Protestant Hannah

Kenneth D. Sevier

Attorney for Protestants John
and Mary Swanson

E. H. Mitchell

A lower user

A. S. Wheeler

Assistant Hydraulic Engineer
Division of Water Resources
Department of Public Works
representing the State Engineer

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OPINION

General Description of Project

The project contemplates the diversion of 500 gallons per day, year-round, from Kirkham Creek, tributary to Trinity River, in Humboldt County, for domestic purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T 7 N, R 5 E, H.B. & M. Diversion is to be effected by means of a small concrete box placed in the creek bed with a 1 inch galvanized

iron pipe 1500 feet long leading therefrom to the place of use, the latter being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of the above mentioned Section 17. The domestic purposes for which the water is wanted include household use at two cabins, and the watering of domestic gardens and domestic fowl.

PROTESTS

John and Mary Swanson protest that during the summer months the proposed appropriation will deprive them of sufficient water for their personal and domestic requirements. They base their claim of a water right upon a filing by one Annie Garrett on May 27, 1914 and upon use begun during that same year. They assert that that right entitles them to use 100 miner's inches, year-round; and that in summer time they use practically the entire flow of Kirkham Creek for personal, domestic and irrigation purposes, and that use has been continuous since 1914. They offer no objection to use of water during the winter months but state no terms under which their protest may be dismissed. They describe their point of diversion as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T 7 N, R 5 E, H.B. & M.

Shirley M. Hannah protests that the proposed diversion will make it impossible for him to obtain sufficient water during the summer season for his domestic and ranch purposes. He claims to have succeeded to rights formerly held by John and Mary Swanson and describes his point of diversion as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T 7 N, R 5 E, H.B. & M. He states that the protest may be disregarded and dismissed if the applicant is not permitted to divert when such diversion will reduce the supply below the point necessary to meet his own requirements. He explains that he has purchased the property formerly owned by John and Mary Swanson and intends to move upon it and engage in ranching.

Field Investigation

The applicant and the protestants having stipulated to an informal hear-

ing as provided for in Section 733(b) of the California Administrative Code, a field investigation was conducted at the site of the proposed appropriation on September 25, 1948 by an engineer of the Division. The protestants were present or represented during the investigation. Also present was Mr. E. H. Mitchell, a lower user. The applicant was neither present nor represented.

Records Relied Upon

Application 11942 and all data and information on file therewith.

Discussion

The investigation of September 25 disclosed that John and Mary Swanson had sold their property and rights on Kirkham Creek to Protestant Hannah prior to the investigation. It follows therefore that John and Mary Swanson cannot longer be injured by the proposed appropriation, and that Mr. Hannah is in fact the only protestant whose protest need be considered. The protest by John and Mary Swanson, against Application 11942 is therefore dismissed, without prejudice.

Information developed during the investigation to the effect that there is some flow from creek to river at all times and that the flow of the creek below the protestant's intake was usually sufficient to maintain fish life, indicates that an unappropriated surplus exists, in relation to which the 500 gallons per day applied for is insignificant.

The protestants alleged rights to waters of Kirkham Creek appear from the investigation to be supported by actual use to the extent of some eight miner's inches, in comparison with which the proposed appropriation again is immeasurably small.

At the investigation Protestant Hannah stated that he had no desire to prevent the applicant from securing enough water for household needs and that he

would be disposed to withdraw his protest if protection were afforded him by an agreement by the applicant to certain proposals, these proposals, after modification by later correspondence, being:

- (1) That the applicant move her proposed point of diversion to a point downstream from the protestant's, and
- (2) That the applicant install a tank of 500 gallons capacity to be filled at night and the diversion system closed during the daytime.

The applicant was not present at the investigation. She has since been informed by letter of the terms as above stated under which the protestant is willing to withdraw his protest but she has not signified her acceptance of those terms.

It does not appear that Mr. Hannah's protest is sufficiently substantial to operate or a bar to the approval of the application. Since the data show that an unappropriated surplus of water exists in Kirkham Creek below present diversions in an amount sufficient to support fish life, the argument that the abstraction of the small amount applied for will injure the protestant is untenable. The protestant's proposals that the applicant shift her point of diversion below his and divert at night only are an unnecessary precaution on his part, and insistence by this Division that the applicant conform to such proposals is unwarranted, the protestant's rights being sufficiently safeguarded by the normal wording of any application to appropriate water and permit issued pursuant thereto. The protest by Shirley M. Hannah against Application 11942 is accordingly dismissed, without prejudice.

Mr. Mitchell, the lower user who also attended the investigation

entered no real objection to the proposed appropriation. He is a co-owner of property served under Application 9971, Permit 5650 by a diversion of not to exceed 2000 gallons per day from Kirkham Creek at a point within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T 17 N, R 5 E. Mr. Mitchell admitted that there is some flow from Kirkham Creek into Trinity River at all times.

In view of the dismissal of the protests by John and Mary Swanson and Shirley M. Hannah respectively and the absence of substantial objection by Mr. Mitchell, no bar remains to the approval of Application 11942, by issuance of permit thereon subject to the usual terms and conditions.

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ORDER

Application 11942 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11942 be approved and that a permit be issued to the applicant, 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 10th day of August, 1949.


Edward Hyatt, State Engineer

