

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 11818 of Harry L. Hodges to Appropriate Water from Yewood Creek Tributary to Dobbin Creek in Trinity County for Industrial Purposes.

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Decision A. 11818 D. 613

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 MAY 19, 1948:

H. W. Connely

Representing the Applicant

Ralph Burgess

Protestant

A. S. Wheeler

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

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OPINION

The project contemplates the diversion from Yewood Creek in Trinity County of 0.025 cubic foot per second, year round, for direct application to beneficial use without storage, and the diversion of 3 acre-feet per annum to be collected at any time of year for temporary storage pending later utilization. The use for which the water is wanted is the maintenance of water level in a log pond and the cooling of saws in a saw mill. The proposed point of diversion lies within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, T 3 S, R 6 E, H.B. & M. The diverting dam and the storage dam are one and the same, an earth and log structure 10 feet high from streambed to overflow level and 30 feet in crest length. The log pond (storage reservoir) is described as having a surface area of 1 acre and a capacity of 3 acre-feet.

PROTEST

Ralph Burgess protested the application on grounds that it will take water heretofore appropriated by him and by his predecessor and now used for irrigation and for the generation of power. The protestant asserts that there is no unappropriated water in the stream. He bases his claim of a right to use the water in question upon a notice of appropriation posted and recorded by one Edward F. Burgess in April, 1908, upon continued use to date under that appropriation, and by another appropriation under approved Application 11507. He claims that the earlier of the appropriations mentioned is in the amount of 48 miner's inches measured under a 4 inch pressure and for the purpose of irrigation; whereas the right initiated by the filing of Application 11507 is for power purposes, principally for lighting and for the operation of a freezer unit, now in use year round. He explains that his permit covers the use of 75 gallons per minute during August, September and October and 125 gallons per minute during the remainder of the year.

The applicant answers the protest by stating that the flow in the creek is not diminished (appreciably) by his project which is already in operation; that there is a free flow of water from the lower part of the dam as well as overflow over the dam; and that the only purpose for which he diverts water from the stream channel is that of cooling saws in his sawmill, which is accomplished by a small stream delivered through a 1/4 inch pipe. He contends that the operation of his log pond and his diversion of water for saw cooling still leaves in the creek, sufficient water to meet all of the protestant's requirements for irrigation and for power.

Field Investigation

The applicant and the protestant having stipulated to an informal hearing 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 May 19, 1948 by an engineer of the Division. The applicant and the protestant were present or represented during the investigation.

Records Relied Upon

Application 11818 and all data and information on file therewith.

Discussion

The protestant's asserted rights appear to be concurrent rather than cumulative, the water used for power generation being used also for irrigation after passing through the power plant and being in fact a portion of the larger amount claimed under the older appropriation for irrigation. The claim of a right for power purposes to divert 75 gallons per minute during August, September and October and 125 gallons per minute during the other nine months is in agreement with the provisions of Permit 6824 (Application 11507). The extent to which the claimed right to 48 miner's inches is valid is not conclusively supported by the data at hand, but in view of the reported irrigation by the protestant of some 50 acres and of water service to a group of cabins a right of the order mentioned seems not unlikely.

The flow of Yewwood Creek except during low stages is in excess of the 48 miner's inches claimed by the protestant. At the time of the investigation (May 19, 1948) the flow was estimated at 3.5 cubic feet per second. On May 27, 1949, in connection with an inspection of the protestant's project (Application 11507) the flow was estimated at 1.5 cubic foot per second. On August 19, 1938 according to a protest by California Fish and Game Commission against Application 11507 the flow was 150 gallons per minute. The investigating engineer's statement to the effect that the contributory watershed is heavily wooded, is one square mile in extent and has an annual rainfall of 75 inches is indicative of a relatively abundant and sustained runoff; but statements of those present at the investigation

of May 19, 1948 were to the effect that during the low flow period the flow is little more than the protestant's minimum requirements, for power purposes, of 75 gallons per minute.

Of the protestant's two rights the protestant appears particularly concerned about interruptions to his supply for power purposes, caused by logging operations at applicant's mill pond. Such interruptions occur when logs are removed from a full reservoir, thereby causing the water surface to drop slightly and spillage to lessen or to cease until inflow has replaced the water displaced by the logs. These interruptions can be eliminated if the amount necessary to satisfy the protestant's right for power alone is passed to him through the outlet pipe near base of dam instead of over the spillway. The dam is equipped with such an outlet pipe, through which outflow may be regulated by a valve. Should a measuring device be added to enable the applicant to know exactly how much to open his outlet valve in order to permit the correct amount for power purposes to pass down stream, the protestant's objections as to irregularity of flow should be met. In such event any remaining flow present in Yewood Creek, less the relatively small amount lost by evaporation from the reservoir surface or diverted by the applicant for saw cooling, would overflow the spillway and so pass on to the protestant also.

When the natural flow of the stream is less than or no more than enough to fully satisfy the protestant's rights the applicant must pass the streamflow down to him in its entirety. This during dry periods may be expected to interrupt the applicant's operations unless he secures an auxiliary supply from another source; but on the other hand the protestant may not assert his right for irrigation continuously and periods may occur even during the ordinarily "dry" months when supply will exceed demand. Such surpluses are unappropriated, they can be used beneficially by the applicant, they are subject to appropriation and their appropriation will not injure the protestant.

For the reasons stated it is not apparent that a valid ground exists for the protest by Ralph Burgess against Application 11818 and that protest is therefore dismissed without prejudice as insufficient.

To facilitate the release by the applicant of amounts required for the satisfaction of the protestant's rights, including particularly his right to a sustained minimum flow of 75 gallons per minute during August, September and October and to a sustained minimum flow of 125 gallons per minute during all other months, through his power plant, a clause should be inserted in such permit as may be issued, providing for the installation and maintenance by the applicant of a suitable measuring device in the stream channel below his dam.

Subject to the inclusion of a clause of the nature just mentioned, the application should be approved and permit issued, subject also to the usual permit terms and conditions.

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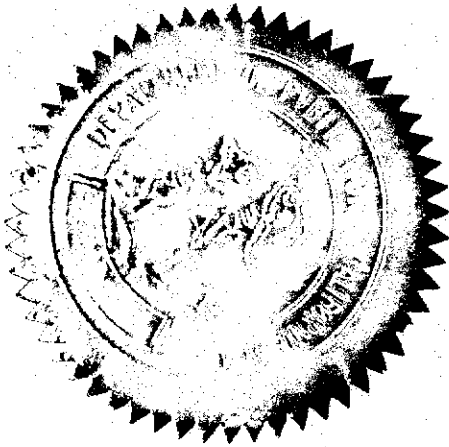
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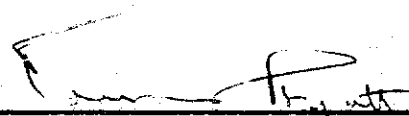
Application 11818 for a permit to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises.

IT IS HEREBY ORDERED that Application 11818 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate, and subject also to the following special clause, to-wit:

"Permittee shall install and maintain a suitable measuring device in the stream channel below his dam as an aid in insuring that a minimum of 75 gallons per minute of natural flow will reach the point of diversion under Application 11507, Permit 6824."

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