

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 12570 by J. E. Willard and Morris Milius to
Appropriate Water from Campo Flores Gulch Tributary to Middle Fork of
Mokelumne River in Calaveras County for Irrigation and Domestic Purposes.

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Decision A. 12570 D. 648

Decided February 28, 1950

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER
RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON JULY 18, 1949:

J. E. Willard	Applicant
James M. Marquis	Protestant
Fred Patterson	An interested party
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

Note: Applicant Morris Milius, was prevented by illness
from attending the investigation but was later
interviewed.

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General Description of the Project

The application contemplates an appropriation of 0.05 cubic
foot per second, year-round, from Campo Flores Gulch, a tributary to
Middle Fork of Mokelumne River in Calaveras County, for irrigation and

domestic purposes. Diversion is to be effected at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T 6 N, R 13 E, M.D.B.&M. The water is to be pumped through some 660 lineal feet of 2 inch pipe against a head of approximately 140 feet. The place of use, located within the W $\frac{1}{2}$ NE $\frac{1}{4}$ of the above mentioned Section 12, is to include 2 homes, a half acre garden and a 4 acre orchard. Irrigation is to extend from about June 1 until about October 31.

Protest

James M. and Dorothy E. Marquis protest that Campo Flores Gulch supplies insufficient water to adequately meet irrigation, mining and domestic needs on their 21 acre property within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T 6 N, R 13 E, M.D.B.&M. They assert that there is not now and never has been a surplus of water in Campo Flores Gulch. They contend that to diminish the present scant supply will destroy the value of their property. They claim that water has been used constantly by them or their predecessors since prior to 1887, under an appropriative right, and they also claim a riparian right.

The applicants answer the protest by stating that Campo Flores Gulch is the only source available to them and their families whereas the protestants have access to other sources, that they (the applicants) are authorized under Permit 6365 (Application 10950) to divert 300 gallons per day for domestic and garden use, that 1948 was an exceptionally dry year, that other springs may be developed along Campo Flores Gulch to augment the present flow, and that they are permanent residents whereas the protestants are only part time residents.

Field Investigation

The applicants and the protestants 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 July 18, 1949 by an engineer of the Division. The applicants and the protestants were all present or represented at the investigation.

Discussion

The applicants in the matter at issue also hold licensed Application 10950 which was initiated by one M. W. Brill. According to Application 12570 the diversion therein proposed is to head at the same point as the diversion under Application 10950. According to the description contained in the Marquis' protest their diversion (the protestants') heads in the next quarter-quarter section to the south, which places them roughly 1/4 mile downstream from the applicants. Apparently the Marquis' immediate predecessor in interest was one A. J. Carlson. Mr. Carlson by letter dated June 19, 1945 stated that he had just sold his place to Mr. Marquis. The purpose of Mr. Carlson's letter was to complain of a diversion by one Neuman Portius but the letter also roughly established that he (Carlson) was situated below both Brill and Portius and that Brill is also below Portius.

A field inspection was made on August 19, 1946 in connection with license action on Application 10950. The report of that inspection states among other things that Campo Flores Gulch above the point of diversion (Brill then, Willard and Milius now) drains a watershed which is moderately hilly, moderately wooded, 3000 feet in average elevation and some 1/2 square mile in extent. It states that precipitation on that watershed averages approximately 50 inches, and that the flow of the stream at the time of inspection was of the order of 4 gallons per minute.

At the time of the investigation of July 18, 1949 the flow of Campo Flores Gulch at the Porteous (Portius) place was estimated to be 0.001 cubic foot per second (about 0.45 gallon per minute). Protestant Marquis who was present at the investigation and had also complained of allegedly excessive use by Porteous, withdrew his complaint upon observing the smallness of the supply and its beneficial use at the Porteous household and garden. The report of the same investigation states that on the same date the flow at the applicants' point of diversion measured 1.5 gallons per minute. It also states that the applicants operate a pump of a rated capacity of 275 gallons per hour which when running cuts off all flow below; and that seeps and springs between applicants and protestants produce some water but not enough to meet the protestants' minimum summer needs. The investigating engineer concluded from his investigation that Campo Flores Gulch, from June to September inclusive yields insufficient water to permit the proposed diversion to be made without unduly depleting the protestants' supply. The protestants' present requirements, according to his report, are those incidental to domestic consumption by 5 people in a fully plumbed house, the watering of 3 horses and the irrigation of 1/4 acre of garden and lawn, their place being occupied currently during the summer months and during occasional week ends at other seasons.

The applicants admitted during the investigation that their application (originally for 0.10 cubic foot per second) is for more water than is available during the irrigation season and that they probably will not irrigate more than 4 acres instead of the 8 acres named in the application. They expressed a belief that from 12,000 to 16,000 gallons per day (up to approximately 0.025 cubic foot per second) of additional water can be developed on their property. By letter dated November 1, 1949 they authorized the reduction of their application from 0.10 cubic foot

per second to 0.05 cubic foot per second. The protestants were informed of this amendment of the application but have not seen fit to withdraw their protest thereagainst, despite the reduction in amount.

In view of the above summarized data it is plain that the natural flow of Campo Flores Gulch is insufficient to justify the approval of Application 12570. While it is possible that some additional water can be developed by the exploitation of springs no evidence has been presented that such development has been or will be accomplished. While the applicants have reduced their application downward there is no evidence that the 0.05 cubic foot per second named in the application as it now stands, or any amount whatsoever, is surplus in the source in question during the summer months. For orchard irrigation, the major purpose of the application, the issuance of a permit to divert during months when surpluses may occur, as in winter and spring but expressly excluding authorization to divert during the summer months would not be of material benefit to the applicants and therefore is considered unwarranted. It is the opinion of the Division that Application 12570 should be rejected and cancelled upon the records of this office.

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ORDER

Application 12570 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 12570 be rejected and cancelled upon the records of the Division of Water Resources, without prejudice.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 28th day of February , 1950.

A. W. Edmonston

A. D. Edmonston
State Engineer

