

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

oOo

IN THE MATTER OF APPLICATION NUMBER 2316 OF A. B. THROOP  
FOR A PERMIT TO APPROPRIATE WATER FROM INCONSTANCE CREEK,  
SISKIYOU COUNTY, FOR INDUSTRIAL PURPOSES.

DECISION A-2316. D-21.  
Decided August 9, 1924.

APPEARANCES AT HEARING:

For A. B. Throop, Applicant - No appearance  
For E. J. Murray, Protestant - No appearance

Edward Hyatt, Jr., Acting Chief of Division of Water Rights

-oOo-

O P I N I O N

On April 21, 1921, A. B. Throop filed Application Number 2316 for a permit to appropriate three cubic feet per second of the waters of Inconstance Creek, in Siskiyou County, said water to be used for industrial purposes, i. e., to obtain deposits of sand and gravel carried in suspension by the water. Thereafter the application was duly advertised and a protest against the same was filed by E. J. Murray.

The protestant owns a gravel pit created by means of a dam constructed across the natural channel of Inconstance Creek about one-quarter of a mile below the proposed point of diversion of the application. He claims a right to 300 miner's inches of water from Inconstance Creek, which amount of water he claims to have been using for the purpose of obtaining deposits of sand and gravel, for more than ten years last past. The protest is based upon the contention that the diversion of water from Inconstance Creek above his gravel pit will not only deprive the protestant

of the deposits of sand and gravel which he has received in the past, but will also result in his gravel pit becoming silted due to the fact that insufficient water will reach it to wash out the fine silt.

The applicant, in his answer to the protest, claims that in the past the protestant has required less than twenty-five percent of the water available in Inconstance Creek, for his operations.

A field investigation was made by Hydraulic Engineer Gordon Zander of the Division of Water Rights on August 8, 1921, a report of which is on file under Application 2316 - Folder No. 5. The following conclusions have been drawn from the Engineer's Report:

- (1) Inconstance Creek is an intermittent stream originating in a snow bank on the north slope of Mt. Shasta, at an altitude of about 10,000 feet, and flowing in a general northwesterly direction for a distance of about nine miles to a point immediately below the protestant's gravel pit, where the entire flow sinks in the porous gravel formation.
- (2) At the proposed point of diversion, the flood flow of the stream starts suddenly about 4:00 o'clock each afternoon, rising gradually to a maximum about midnight, and then gradually decreasing to a minimum about 2:00 P.M. On the day of the investigation the flood flow at 4:00 P. M. was roughly estimated at 15 cubic feet per second.
- (3) The stream carries a great quantity of sand and gravel in suspension.
- (4) At the time of the investigation, the applicant had already constructed a wooden flume about 1200 feet long leading from the point of diversion, as described in the application, to a point on the Klamath Falls Branch of the Southern Pacific Railroad, where a gravel pit had been constructed by means of a wooden bulkhead.
- (5) The applicant was conducting gravel operations on the day of the investigation, and was diverting about 1.5 cubic feet per second of the flood flow of the stream thru the flume, which diversion was slightly less than the maximum capacity of the flume. According to a measurement made by Mr. Jack Stewart, engineer for the applicant, the maximum capacity of the ditch is 1.67 cubic feet per second.

- (6) The facts pertaining to the protestant's installation and operations appeared substantially as set forth in the protest.

Measurements of the flow reaching the protestant's gravel pit were made by C. T. Darley, Civil Engineer of Klamath Falls, covering the period from 4:15 P. M. on July 14, 1921, to 4:10 P. M. on July 15, 1921. Similar measurements were also made by C. W. Watson, Civil Engineer of Montague, covering the period from 12:45 P. M. on July 16, 1921, to 12:45 P. M. on July 17, 1921. Copies of the reports of the results obtained by both of these engineers are attached to the Engineer's Report, and they show that the flow reaching the protestant's gravel pit was in excess of the 300 miner's inches claimed by him, during the flood period of each of the two days during which observations were made.

Action upon the application has been withheld pending a decision in a suit brought by the protestant against the applicant, seeking to enjoin him from diverting any of the waters of Inconstance Creek from their natural channel. Under date of June 22, 1923, the applicant submitted a copy of a letter from Taylor and Tebbe, his attorneys, advising that the suit had been dismissed.

After due notice to the applicant and protestant, a public hearing on the application was held before Acting Chief Edward Hyatt, Jr., at Room 707 Forum Building, Sacramento, California, at 10:00 A. M., on Thursday, June 19, 1924. Neither applicant or protestant appeared at the hearing.

The observations of Engineers Darley, Watson, and Zander all indicate that there is an excess of water in Inconstance Creek over and above the 300 miner's inches claimed by the protestant, during the flood flow period of each day.

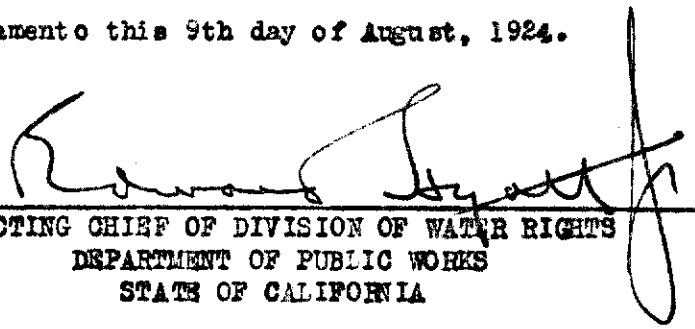
It is therefore determined that there is unappropriated water in Inconstance Creek available for use under the application.

ORDER

Application Number 2316 for permit to appropriate three cubic feet per second of unappropriated water from Inconstance Creek in Siskiyou County having been regularly filed, a protest having been received, a field investigation having been made by an engineer of the Division of Water Rights, a hearing having been held, and the Division of Water Rights being now fully informed in the premises;

IT IS HEREBY ORDERED that said application be approved subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 9th day of August, 1924.

  
\_\_\_\_\_  
ACTING CHIEF OF DIVISION OF WATER RIGHTS  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA