

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

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IN THE MATTER OF APPLICATION NUMBER 3832 BY E. B.
ANDERSON AND APPLICATION NUMBER 4170 OF E. W. NEWELL
TO APPROPRIATE WATER FROM WALNUT CREEK, TRIBUTARY OF
SUISUN BAY IN CONTRA COSTA COUNTY, FOR AGRICULTURAL
PURPOSES

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DECISION NO. 3832 and 4170, D 58
Decided June 2, 1925

APPEARANCES AT HEARING HELD AT MARTINEZ, MARCH 4, 1925

For Applicant, E. B. Anderson,	in propria persona
For Applicant, E. W. Newell,	S. W. Newell
For Protestants, Allerton Bancroft Reid and Wells Fargo Bank and Union Trust Company, Trustee, for Fannie N. Bancroft,	Heller, Ehrman, White and McAuliffe, By A. B. Tinning
For Protestant, Port Costa Water Company,	Jones and Dall, by M. R. Jones and E. H. Shibley
Examiner:	Edward Hyatt, Jr., Chief of Division of Water Rights, Assisted by Walter E. Stoddard, Hydraulic Engineer.

APPEARANCE AT DEPOSITION OF MR. BERT BANCROFT AT SAN
FRANCISCO ON MARCH 20, 1925.

For Applicant, E. W. Newell	S. W. Newell
For Protestant, Alberta Bancroft Reid and Wells Fargo Bank and Union Trust Co., Trustees for the Estate of Fannie W. Bancroft,	Heller, Ehrman, White and McAuliffe, By A. B. Tinning

O P I N I O N

Application Number 3832 was filed by E. B. Anderson on February 8, 1924. It proposes an appropriation of 0.20 cubic feet per second of the waters of Walnut Creek for agricultural purposes, the diversion to be directly applied to beneficial use without storage and to be so diverted from November 1st to June 30th of each season. It was protested by Alberta Bancroft Reid and Wells Fargo Bank and Union Trust Company, Trustees for Fannie W. Bancroft, and by the Port Costa Water Company.

Application Number 4170 was filed by E. W. Newell on August 22, 1924. It proposes an appropriation of 0.50 cubic feet per second of the waters of Walnut Creek for agricultural purposes, the diversion to be directly applied to beneficial use without storage and to be so diverted from November 15th to July 1st of each season. It was protested by Alberta Bancroft Reid and Wells Fargo Bank and Trust Company, Trustees of the Estate of Fannie W. Bancroft.

These applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for public hearing at 10:00 o'clock A.M. on Wednesday, February 4, 1925, at 707 Forum Building, Sacramento, but the hearing was later postponed at the request of the attorneys for the protestant Estate of Fannie

Bancroft, to 10:30 o'clock A. M. March 4, 1925, at the Court House at Martinez.

Of this hearing applicants and protestants were duly notified. Mr. Bert Bancroft, one of the principal witnesses for the protestants Alberta Bancroft Reid and the Trustees for the Bancroft Estate was not present at the hearing and his deposition was taken on March 20, 1925, at the offices of Messrs. Heller, Ehrman, White and McAuliffe, in Room 700 of the Wells Fargo Nevada Bank Building, San Francisco, said deposition being made a part of the evidence at the hearing, by stipulation at that time.

The protest of Alberta Bancroft Reid and Wells Fargo Bank and Union Trust Company, Trustees of the Trusts Declared in and By the Last Will and Testament of Fannie W. Bancroft, Deceased, against Application Number 3832 was filed April 15, 1924, and against Application Number 4170, on December 10, 1924.

Protestants allege that the flow in Walnut Creek is not uniform and that during certain months of the year the flow ceases altogether; that the stream usually flows only from the month of November to the month of June of each year; that for the past twenty-five years, or more, the protestants and their predecessor, Fannie W. Bancroft, have used approximately the entire flow of the said stream from April 1st until the stream ceased to flow each year, and that if applicant is permitted to appropriate the amount of water asked for in his application there will not be sufficient water for the use and

needs of the protestants during the dry season of the year.

The protestants claim the right by appropriation to the water of Walnut Creek to the extent of 150 miner's inches and as riparian owners further claim the right to the use of the remaining water of the stream during the dry months of the year.

The protest of the Port Costa Water Company against Application Number 3832 was filed April 21, 1924.

The protestant alleges that it is a public service corporation engaged in the production by means of wells, distribution and sale of water for domestic and industrial purposes and serving territories within Contra Costa County, containing a population of over 10,000 inhabitants.

That the company has five producing wells in a tract of land commonly known as the Hollar Field Tract which is approximately 3 miles in a northeasterly direction from the lands of the applicant, and three producing wells on the Bisso Christopher Tract, situated about four miles northeasterly of the applicant's lands.

That the waters underlying the westerly portion of these tracts come in part from the percolation of waters originally flowing in Walnut Creek, especially during the rainy season when such waters after passing said property of applicant overflow the entire territory adjacent to the lands of the protestant on the west and at times a portion of the lands of the protestant, and that any diminution of the flow of said waters in Walnut Creek would seriously interfere with the sources from which the protestant can obtain the supply

of water in the westerly part of its lands and would materially diminish the amount of water which it can take from a large part of its lands, and will interfere with the supply of water which is needed by the protestant for the purpose of furnishing water for the territory now supplied by it.

A similar protest was filed by the Port Costa Water Company on November 5, 1924, against Application Number 4170, but on November 25, 1924, the company informed the Division that the purpose of the protest was to direct the applicant's attention to the company's claim and that if any permit which might be issued was made subject to all existing rights as was done in the ^{matter} months of Application Number 2081 of W. S. Mitchell, the Port Costa Water Company would be satisfied and which statement the Division interpreted as a withdrawal of the protest and so notified the company.

However, Mr. Newell, not being informed of the withdrawal filed a reply to the Water Company's protest on January 7, 1925, stating that the Company had not proved that there was no unappropriated water; that all of his land was on the banks of Walnut Creek and its tributary, Tice Creek, and that any water that would enter the lower strata would return to the creeks as the water table stands at a higher elevation than the bed of the creek and that it is not the intent of the Water Act that water should be appropriated to the extent that a person or corporation can have a sufficient quantity to supply its possible future demands to the detriment of users who wish to make immediate use of same.

An answer to the protests directed against his application was filed by Mr. E. B. Anderson on May 16, 1924. Mr. Anderson alleges that the protests are not based upon facts and are therefore unwarranted and unjust; that the Bancrofts, by threats and intimidations, have usurped the waters of Walnut Creek to the exclusion of the rights of others for years.

Applicant claims a right to a reasonable amount of water flowing by his place and states that the protestants ^{Bancroft} claim all the water and are storing or have stored it in the past by means of a dam across the creek; that in 1924 they had forbidden him to pump in order that they might store the waters of the creek for their future use. That the wells of the Port Costa Water Company are not on the stream and are five or six miles from his pumping plant and that to his best knowledge and belief, Walnut Creek is not the source of the company's water supply but that the stream which drains Pine Canyon and the watershed to the east of their wells is the source of supply.

Furthermore that he does not intend to divert water from the watershed but uses the water at a place less than one-quarter mile from the creek; that his proposed diversion cannot possibly injure the Company and that his winter pumping might be of benefit to the Company if its source of supply is the Walnut Creek watershed.

Walnut Creek, in Contra Costa County, has two main tributaries, San Ramon Creek and Lafayette Creek, which unite just south of the town of Walnut Creek to form Walnut Creek proper. Lafayette Creek is sometimes called Walnut Creek and as such appears in the application

Number 4170 by E. W. Newell, who proposes to divert at a point near the junction of Lafayette Creek and its tributary Tice Creek, the area of watershed above the proposed point of diversion being approximately 27.6 square miles.

Under Application Number 3832, Mr. E. A. Anderson proposes to divert at a point on the main Walnut Creek about three-quarters of a mile north of the town of Walnut Creek and tributary to which there is a watershed of approximately 79.2 square miles.

The Creek is one which rises rapidly subsequent to a storm, at which time there is considerable water which finds its way to Suisun Bay, but the flow diminishes about as rapidly as it rises and even during the season of maximum run-off there may be times when the run-off is not in excess of what may be necessary for those claiming prior vested rights.

Bulletin #5 of the Department of Public Works, Division of Engineering and Irrigation, gives the estimated mean seasonal run-off from the Mount Diablo Creek Group, which includes the run-off from Kirker Creek, Walnut Creek, Rodeo Creek and Pinole Creek, draining an area of approximately 200 square miles, as about 350 acre feet per square mile and estimates the distribution of seasonal run-off by months.

Based upon the value of 350 acre feet per square mile as given above and which may be considered as being indicative of the run-off from the Walnut Creek watershed, the following table has been computed which shows the monthly run-off from the watersheds above the points of diversion named in the two applications:

T A B L E I

PROBABLE RUN-OFF OF WALNUT CREEK ABOVE THE
PROPOSED POINT OF DIVERSION DURING A NORMAL
YEAR

MONTH	DISTRIBUTION OF SEASONAL RUN-OFF BY MONTHS	RUN-OFF ABOVE DIVERSION POINT NAMED IN APPLICA- TION NUMBER 4170		RUN-OFF ABOVE DIVERSION POINT NAMED IN APPLICA- TION NUMBER 3832	
		<u>Ac. Ft.</u>	<u>Sec. Ft.</u>	<u>Ac. Ft.</u>	<u>Sec. Ft.</u>
Jan	28.9	2790	45.	8010	129.
Feb	17.7	1710	29.5	4910	85.
Mar	35.9	3470	56.	9960	161.
Apr	8.5	820	14.2	2360	39.4
May	2.2	210	3.4	610	9.8
Jun	1.0	97	1.6	280	4.7
Jul	.5	48	.8	140	2.3
Aug	.3	30	.5	80	1.3
Sep	.3	30	.5	80	1.3
Oct	.2	19	.3	50	.8
Nov	.3	30	.5	80	1.3
Dec	4.2	<u>406</u>	6.6	<u>1160</u>	18.7
Total seasonal run-off		9660 Ac. Ft.		27720 Ac. Ft.	

The following Table II shows the filings now before this office for diversions from Walnut Creek and its tributaries which including Applications Numbers 3832 and 4170 amount to 2.595 cubic feet per second and 121 acre feet per annum:

T A B L E I I

APPLICATIONS FILED WITH DIVISION OF WATER
RIGHTS FOR APPROPRIATION FROM WALNUT CREEK
AND ITS TRIBUTARIES

APPL NO	PERMIT NO	LICENSE NO	NAME OF APPROPRIATOR	SOURCE	AMOUNT	SEASON
411	177	138	Oscar H. Hirshey	2 springs & flood waters tributary to San Ramon Creek	.055c.f.s.	Apr 1 -Nov 30
412	178	139	Katherine B. Hirshey	A spring & flood waters tributary to San Ramon Creek	1.0 ac. ft per annum	Apr 1 -Nov 30
1926	841		Florence Thayer	San Ramon Creek	0.19c.f.s.	May 1 -Nov 30
2081	1039		N. P. Mitchell	Walnut Creek	0.71 "	Dec 1 -Jul 31
2085	1088	285	William H. Gelbke	Walnut Creek	0.30 "	Dec 1 -Jul 31
2827	1142		Mt. Diablo Country Club	Green Valley Creek, Trib. to San Ramon Creek	120 Ac Ft per annum	Oct 1 -May 1
3409	1623		Louise and W. A. Titcomb	Walnut Creek	0.64 c.f.s.	Dec 1 -May 31
3832			E. B. Anderson	Walnut Creek	0.20	Nov 1 -Jun 30
4170			E. W. Newell	Walnut Creek	0.50	Nov 15 -Jul 1

In addition to those named in the above table there are claimants of prior rights on Walnut Creek; by virtue of prior vested rights; protestants, Bancroft Estate and the Port Costa Water Company probably being the two largest appropriators.

From evidence presented at the hearing it appears that the Bancrofts irrigate by a somewhat different method than others in the valley, their lands being irrigated throughout the winter whenever water was available in order to build up a reserve in the ground by keeping it saturated. The area irrigated consists of 229 acres of land which at the maximum allowance for ordinary crops would require one second foot continuous flow to each eighty acres of land or 2.86 cubic feet per second. The amount of water to which the Bancrofts claim a right is 2000 gallons per minute or 4.45 cubic feet per second whenever this amount is available.

At the hearing the attorney representing the Port Costa Water Company stated he believed that the various permits that are being applied for were steadily encroaching upon the company's supply and that it was its duty to itself and to the public which it served to protest against the granting of same, because a point was apparently being reached where the supply was becoming less and the demands greater and that it could not let the applications go by without protest and directing the attention of the Division to these facts, both to maintain its legal position and to fulfil the obligation that it owed the public.

The attorney further stated that he could not say that either of these applications was going to materially affect the wells of the company, but every application granted presents a precedent for the

granting of other applications and that either now or in the near future the time would come when the supply would be seriously jeopardized and therefore it was felt that so far as any applications are concerned, protests must be made and the time has come when the company cannot consent to any more diversions.

The underground reservoir in Ignacio Valley from which the Port Costa Water Company obtains a portion of its supply by means of wells is apparently fed by the flood waters of Walnut Creek, Pine Creek and the run-off from the northwestern slopes of Mt. Diablo.

At certain times of the year the flood waters from Walnut Creek spread over the low lands between Pacheco and Concord and a certain amount of this water replenishes the underground supply, but this does not occur until there is considerable flow in the Creek and a great deal of water finds its way to Suisun Bay and is wasted therein.

While it is no doubt true, as claimed by the Company at the hearing, that during this high stage of the creek there is a certain amount of water that finds its way to the underground reservoir by lateral seepage through the banks of the creek, yet the benefit derived in this way is probably small and a considerable loss into the bay at the expense of the development of the agricultural lands above, would not serve the best interests of the valley.

The fact that the general water table has been lowering in the vicinity of the wells during the last few years is no doubt due

to the fact that there has been a succession of years during which the run-off from the contributing watersheds has been less than normal.

From an inspection of Tables I and II supported by evidence presented at the hearing it is apparent that during a normal year there is unappropriated water in Walnut Creek and its tributaries which is available for appropriation between December first and April thirtieth.

Evidence was presented at the hearing that during this time, however, there may be times due to the flashy run-off of the streams, that the flow diminishes to such an extent that additional diversion may be injurious to those who have prior vested rights on the streams, but any application that may be approved is approved subject to prior vested rights. No diversions should be made with which are likely to interfere with those rights.

It was stated by both applicants that it was their intention to divert during such times only as there was an adequate supply in the creek from which they could divert without interfering with the rights of the lower appropriator, and Mr. Anderson stated that he believed that he could get all the water he would want during December, January and February of any year.

In the consideration of the approval or rejection of an application, the Division of Water Rights must of necessity base its action on the amount of unappropriated water and the season during which it exists, for an average year, and from the testimony present at the hearing, verified by sources of information to which this office has access, it appears that from December first to April thirtieth of an average year there is at intermittent periods an

amount of unappropriated water which flows to waste, and therefore the applications should be approved for diversion during this period, subject to prior vested rights.

O R D E R

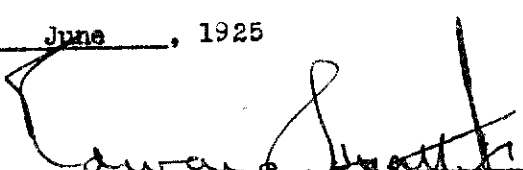
Applications Numbers 3832 and 4170 for permits to appropriate water having been filed with the Division of Water Rights, as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises,

IT IS HEREBY ORDERED that the said Application Number 3832 be approved, subject to the usual terms and conditions except that the diversion season be limited to the period from about December first to about April thirtieth of each season.

That the said Application Number 4170 be approved, subject to the usual terms and conditions except that the diversion season be limited from about December first to about April thirtieth of each season.

Dated at Sacramento, California, this second day of

June, 1925



CHIEF OF DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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