

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

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IN THE MATTER OF APPLICATION NUMBER 4379 OF N. S. BOOTH TO
APPROPRIATE WATER FROM HARBIN CREEK A TRIBUTARY OF PUTAH
CREEK IN LAKE COUNTY FOR IRRIGATION AND STOCKWATERING PURPOSES

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DECISION No. 4379. D 94

Decided March 1, 1926

APPEARANCES AT HEARING HELD December 1, 1925.

For Applicant: Theodore W. Chester, Atty.,
Capital National Bank Bldg., Sacramento.

For Protestant: Paul and Emily Stuparich in propriae personae
Middletown, Lake County, California

Examiner: Everett W. Bryan, Deputy Chief of Division of Water Rights

N.B. Protestant's protest and brief were submitted by W. A. Richardson,
Atty., 68 Post Street, San Francisco, California

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O P I N I O N

On December 16, 1924, Mr. N. S. Booth filed his application Number 4379 to appropriate a total of 0.14 cubic foot per second to be diverted at two points on Harbin Creek, a tributary of Putah Creek for irrigation and stockwatering purposes on 11 acres of land owned by him which is adjacent to the source. Thereafter a protest against the proposed appropriation was filed by Paul J. and Emily Stuparich.

The application was 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, was set for a public hearing in Room 707 Forum Building, Sacramento at 10:00 o'clock, a.m. on December 1, 1925. Of this hearing applicant and protestant were duly notified and appearances thereat were made on behalf of both.

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Mr. Stuparich owns the "Hicknott" place on or near Harbin Creek some 3 miles above Booth's proposed point of diversion and on this property is situated a spring whose flow is one of the principal sources of Harbin Creek. It appears that for about 35 years water from this spring has been used for domestic purposes only at a house on the Hicknott place, being conveyed thereto through a two inch pipe. It seems improbable that the total flow from the spring is used in this way, same being controlled through faucets but even if it were it is only one of a number of the sources of Harbin Creek. At the hearing a preponderance of evidence indicated that the flow of Harbin Creek throughout the summer considerably exceeds the capacity of a two inch pipe. Furthermore applicant stated that Harbin Creek had lately been stocked with fish by a game warden and it appears improbable that fish would be thus planted in any stream whose flow throughout the year is insufficient to keep fish alive. It is therefore apparent that there is water in the stream over and above that heretofore used on the Hicknott place.

Stuparich claims the right to the entire flow of the spring by virtue of ownership of the land on which same is situated and has shown his intention to divert this flow to a resort he maintains in the watershed of Stuparich Creek another small creek. He foresees that approval of Booth's application will result in Booth's interfering with his claimed right to so change the place of use. The Division of Water Rights has no jurisdiction over this phase of the controversy and having found that there is surplus water flowing in Harbin Creek further finds same to be subject to appropriation by Booth. The fact that Booth's diversion is some three miles downstream from Stuparich's spring makes it manifest that there can be no physical interference through consummation of the application with any right Stuparich may have to use water from the spring.

ORDER

Application Number 4379 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held and thereafter briefs having been submitted and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Application Number 4379 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 1st day of March, 1926.



(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS

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