

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

oOo

In the Matter of Application 5990 of Anna M. Werner  
to appropriate from Bean Creek a Tributary of  
San Lorenzo River in Santa Cruz County for  
Irrigation and Domestic  
Purposes.

oOo

DECISION A 5990 D - 251

Decided *March 3, 1930*

oOo

APPEARANCES AT HEARING HELD IN SANTA CRUZ, NOVEMBER 25, 1929.

For Applicant

Anna M. Werner

Richard J. Werner

For Protestants

Barton Trobock, et al.

James P. Sweeney

D. E. Mocker

J. L. Johnston

No appearance

No appearance

EXAMINER: Everett N. Bryan, Hydraulic Engineer for Harold Conkling,  
Deputy in Charge of Water Rights, Division of Water Resources,  
Department of Public Works, State of California.

oOo

O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Application 5990 was filed by Anna M. Werner on July 20, 1928.

It proposes an appropriation of 0.06 cubic foot per second throughout the entire year for irrigation and domestic purposes, the season for irrigation being from about May 1st to about September 1st. The point of diversion and place of use is described as being within the NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 13, T 10 S, R 2 W, M.D.B. & M. The application was protested by Barton Trobock and seven others, James P. Sweeney and D. E. Mocker.

### PROTESTS

Barton Trobock, et al. claim riparian rights and allege in effect that if the application is approved it would result in depriving them of water for domestic and power purposes during certain periods of the year and would be an incentive for others to apply for water thereby rendering useless the dams and reservoirs which they have constructed.

James P. Sweeney claims rights initiated by prior applications, 5603 and 5604, to appropriate from San Lorenzo River and option on riparian lands and alleges in effect that except during the winter months there is not enough water in San Lorenzo River to satisfy the amount asked for in Applications 5603 and 5604 which is 50 cubic feet per second.

D. E. Mocker alleges in effect that should Application 5990 be approved there would not be sufficient water in Bean Creek to supply the normal demands of the riparian owner.

### HEARING HELD IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 5990 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 accordance with Section 1a of the Water Commission Act on November 25, 1929, at 10:00 o'clock A.M. in the Supervisors Room, Courthouse, Santa Cruz, California. Of this hearing applicant and protestants were duly notified.

### GENERAL DISCUSSION

From the testimony presented at the hearing it appears that protestant Barton Trobock owns 22.11 acres of land situated on Bean Creek about one-half mile below the property of the applicant. Trobock has resided

upon this property for the last ten years and has used water from Bean Creek under alleged riparian claims for domestic purposes and possibly some irrigation of shrubs and ornamental trees. No commercial irrigation has been practiced.

A dam 25 feet high has been constructed across Bean Creek just below the lower property line of Trobock and another 12 feet in height is located just above this property line. At the lower dam a water wheel has been installed which is used to pump water to a 2000 gallon tank at an elevation of 210 feet from which Trobock supplies water to one of his neighbors. The amount so supplied is unknown. The water wheel and pump have been in operation since 1927.

Trobock now proposes to enlarge the upper dam and to install generators for the development of electrical energy for electric lighting purposes and for pumping water to an elevation of 70 feet where it will be distributed for irrigation purposes upon that portion of Trobock's property lying south of Bean Creek containing 4.85 acres and upon a portion of the property lying north of Bean Creek should there be any surplus.

G. A. Zeitler who is one of several others who entered a common protest with Trobock, owns  $3\frac{1}{2}$  acres of land on Bean Creek just above Trobock's 4.85 acre tract. It appears that Zeitler is constructing the water wheel which Trobock proposes to install at the upper dam and for compensation therefor Trobock has promised him that he may use as much water from Bean Creek as may be necessary for domestic and irrigation purposes on the  $3\frac{1}{2}$  acre tract.

E. C. Kramer another co-protestant also appears to have been granted the privilege of diverting water from Bean Creek by Trobock.

Trobock stated at the hearing that as the water wheel is of the undershot type and there are times when there is a scarcity of runoff it is necessary to store water behind the dams.

H. G. Mead, who owns a 120 acre tract of land on Bean Creek below Trobock, testified that the flow in the creek is augmented considerably by water from springs just below Trobock's property. Mead pumps from the creek for mining purposes in connection with which he operates a pump having a capacity of about 1200 gallons per minute. He testified that while pumping the result of his diversion was scarcely perceptible and that during the early part of the summer when Trobock commences to impound the water he had plenty for his use, even though no water was flowing past the dam.

The amount of water flowing at applicant's proposed point of diversion which is at the junction of Lockhart Gulch and Bean Creek was not determinable from testimony presented at the hearing but subsequent thereto weir measurements were made by Mr. Arnold M. Baldwin on November 26, 1929, and submitted as protestants' Exhibit 2. The measurements taken by Mr. Baldwin were as follows:

Lockhart Gulch, 75 feet above junction with Bean Creek	145,000 gallons per day (0.24 c.f.s.)
Bean Creek, 10 feet above junction of Lockhart Gulch,	440,000 gallons per day (0.68 c.f.s.)
Bean Creek, 150 feet below junction of Lockhart Gulch,	613,000 gallons per day (0.95 c.f.s.)

The amount of water which applicant seeks to appropriate is 0.06 cubic foot per second which is approximately 6% of the amount of water in Bean Creek at her point of diversion. The water is to be used for domestic purposes and for the irrigation of alfalfa and clover for poultry feed and a

small fire break which surrounds applicant's house. A pump has already been installed by applicant which has a capacity of about 40 gallons per minute and water has been used by her since January, 1928.

From the facts above stated it appears that Barton Trobock and his associates, under color of riparian ownership, claim the entire flow of Bean Creek as against any future appropriator irrespective of whether or not such water has been applied to beneficial use. Only a portion of the available flow is used beneficially at the present time by these protestants but in view of contemplated improvements the protestants seriously object against any appropriative rights being initiated.

As a matter of fact the lands of the applicant appear to be riparian to Bean Creek as well as those of the protestants and if it is right that protestants should increase their use it should also be proper for the applicant to use such water as may be needed for her purposes.

In view of Section 11 of the Water Commission Act however, it appears that neither applicant nor protestants have a right based upon riparian claim to increase their use over and above the amount used prior to 1924 and it is probably for this reason that applicant applied for an appropriative right. It is further worthy of note in passing that the right to store, as claimed by Trobock on account of riparian ownership, would appear to have no basis either in law or the decisions of the courts.

The fact that protestant Trobock consented to allow Zeitler to use such an amount of water as he might require for domestic and irrigation use on  $3\frac{1}{2}$  acres of land, a privilege which we believe is not vested in protestant Trobock, is in itself evidence that the amount of water necessary for applicant's needs on her 3 acre tract would not seriously interfere

with protestants' present development. Trobock's objection appears to be directed more particularly toward the acquiring of appropriative rights on the stream rather than to the use of the water by the applicant. As to the proposed future development by the protestants it may be said that it is the well established policy of this office not to deny an application for an appropriative right on account of the prospective uses of a riparian owner. The protest of Barton Trobock, et al. may therefore be dismissed.

Applications 5603 and 5604 by James P. Sweeney to appropriate from the San Lorenzo River were cancelled prior to the hearing and this fact together with the fact that no appearance was made on his behalf at the hearing is sufficient grounds upon which to dismiss his protest.

D. E. Mocker made no appearance at the hearing and no testimony was introduced to support his contention. He has therefore failed to support the burden of proof appropriate to a moving party and his protest may therefore be dismissed.

The purpose to which applicant proposes to put the water is a useful and beneficial one and it is the opinion of this office that Application 5990 should be approved subject to the usual terms and conditions.

ORDER

Application 5990 for a permit 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 Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 5990 be approved and that a permit be granted to the applicant subject to such of the usual

terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of  
the State of California this *3rd* day of *March*, 1930.

EDWARD HYATT, State Engineer

BY

*Harold Carlsberg*  
Deputy

WES:MP