

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

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In the Matter of Application 6167 of Ida M. McArthur,
et al. to appropriate from Stevens Creek in Santa
Clara County for Irrigation Purposes.

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DECISION A 6167 D - 252

Decided *March 5, 1930*

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APPEARANCES AT HEARING HELD IN SAN JOSE, NOVEMBER 26, 1929

For Applicants

Ida McArthur, et al.

Harry E. Smith

For Protestants

Vivian Losse Blair, et al.

R. C. Leib

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.

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O P I N I O N

Under Application 6167 it is proposed to appropriate 3 cubic feet
per second of the waters of Stevens Creek, tributary to San Francisco Bay
in Santa Clara County for irrigation purposes on 144.9 acres of land within
Sections 10 and 11, T 7 S, R 2 W, M.D.M. The season of diversion proposed
is from September 1st to June 1st. The point of diversion is within the
SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 10, T 7 S, R 2 W, M.D.M. The application was protested
by Vivian Losse Blair, et al.

PROTEST

The protestants claim the right to divert all of the water in Stevens Creek at the "Losse" dam by virtue of riparian ownership and appropriative rights initiated prior to the effective date of the Water Commission Act and allege in effect that there are no unappropriated waters in Stevens Creek above their point of diversion.

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

Application 6167 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on November 26, 1929, at 10:00 o'clock A.M. in the upper council chamber of the City Hall, San Jose, California. Of this hearing applicants and protestants were duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

Stevens Creek, the source of the proposed appropriation, rises in the Coast Range Mountains at a point about fifteen miles due west of San Jose and flows southeasterly along the southerly slope of Monte Bello Ridge for a distance of about seven miles; it then turns northwesterly and northerly and flows a distance of about five miles to the mouth of its canyon. The stream then continues almost due north through the Santa Clara Valley for ten or eleven miles and empties into San Francisco Bay.

Bulletin 5 of the Division of Engineering and Irrigation published in 1923 includes Stevens Creek in the Los Gatos Group comprising five other creeks and having a total drainage area of 121 square miles above the main agricultural area with a mean seasonal runoff of 566 acre feet per square mile. (See page 256 of Bulletin #5)

By applying the runoff in acre feet per square mile of the Los Gatos Group to the drainage area of Stevens Creek which is approximately 19.3 square miles the mean annual runoff of Stevens Creek may be estimated as 10,900 acre feet per annum.

According to Bulletin 5, 98.2 percent of the runoff occurs during the applicants' proposed season of diversion and $82\frac{1}{2}$ percent occurs during the months of January, February and March of each year.

THERE ARE OCCASIONAL UNAPPROPRIATED WATERS
IN STEVENS CREEK

Testimony presented at the hearing indicated that at times there was water passing the Losse dam which found its way to San Francisco Bay. Mr. Meyerholtz an engineer, testified that he had seen water passing the dam of the protestants many times during the last twenty years but only once during the last five years. He stated that he had observed water in Stevens Creek a number of times at the point where it is crossed by the Southern Pacific Railroad, which point is about three miles below the Losse dam and in 1920 a flow of 225 second feet was observed at this point at a time when no water was being diverted at the Losse dam.

Records were submitted by the protestants at the hearing both of rainfall and of the period during which water was diverted by them. These records indicated that there were times when precipitation occurred without any diversion being subsequently made. This fact may have been due to the water being absorbed by the soil without appreciable runoff and may have been due to an error in keeping the diversion records because protestants were most emphatic in stating that water was diverted by them to the capacity of their ditch whenever it was available.

The records for the last five years indicate that the rainfall in that vicinity has been below normal with the exception of the year 1926, and has been below normal for the last ten years with the exceptions of the years 1922 and 1926, but even with this existing condition protestants admitted that on several occasions during the last five years water had passed over the dam, although in general the protestants divert all of the water at the Losse dam except the first floods which are allowed to pass on down in order to clear the stream of debris.

PRIOR RIGHTS BELOW APPLICANTS

Without attempting to adjudicate in any way the prior rights on the stream below the point of diversion proposed by the applicants, it may be said that the applicants stipulated at the hearing that the protestants were entitled to divert water at the Losse dam to the capacity of the ditch which apparently is from 70 to 80 cubic feet per second. In addition to this amount there are one or two diverters between the Losse dam and applicants' proposed point of diversion. The amount which they divert is not known definitely but according to testimony introduced at the hearing it is probably less than ten second feet. About one-half mile below the Losse dam E. H. Smith has lately installed a pumping unit having a capacity of 6.7 cubic feet per second to replace one having a capacity of 1.6 cubic feet per second. The uncontroverted testimony indicates therefore that the right below the proposed point of diversion of applicants is from 90 to 95 cubic feet per second, or allowing for losses, etc., in round numbers 100 cubic feet per second.

CONCLUSION

From the above it may be concluded that occasionally there is unappropriated water in Stevens Creek. The fact that the flood flows are very intermittent is recognized by the applicants but nevertheless they wish to benefit thereby even though these may occur "only ten days in a season", as stated by applicants.

The use is a beneficial one and it is our opinion that Application 6167 should be approved.

O R D E R

Application 6167 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 the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 6167 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 5th day of March, 1930.

EDWARD HYATT, State Engineer

BY Harold Conkling
Deputy

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