

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

In the Matter of Applications 9328, 9329 and 9330 of C. F. Proctor,
C. H. Smith and J. M. Inman, respectively, to appropriate from
an Unnamed Stream Tributary to South Fork of American River
in Eldorado County for Domestic Purposes Including
Swimming Pools

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Decision A 9328, 9329, 9330 D 432

Decided *October 8, 1938*

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APPEARANCES AT HEARING HELD AUGUST 31, 1938, AT SACRAMENTO, CALIFORNIA

For Applicants

C. F. Proctor)
C. H. Smith)
J. M. Inman)

J. M. Inman

For Protestant

Henry Lehiff

J. W. Gross

EXAMINER: 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

Applications 9328, 9329 and 9330 by C. F. Proctor, C. H. Smith and
J. M. Inman, respectively, are each to appropriate 650 gallons per day from an
unnamed stream, tributary to South Fork of American River, the diversion in
each case to be made in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, T 11 N, R 15 E, M.D.B.M. and
use in each case to be made in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of the same section. The intended
use is for domestic purposes, including swimming pools, at the summer homes of
the respective applicants.

The applications are protested by Henry Lehiff who is the owner of the

subdivision out of which were carved the several homesites of the applicants. It is protestant's position that he has rights in this source based both upon riparian ownership and prior appropriation and that the proposed use by applicants would deprive him of a suitable domestic supply for the future full development of his subdivision.

Applications 9328, 9329 and 9330 were completed as required by the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were scheduled for hearing in accordance with Section 1a of the Water Commission Act on August 31, 1938, in Room 401 Public Works Building, Sacramento. Of this hearing applicants and protestant received due notice and all were represented at the hearing.

The unnamed stream from which it is sought to appropriate rises on government land in Eldorado National Forest, flows thence into the subdivision of private lands owned by Protestant Lahiff, across a lot in that subdivision now owned by Applicant Smith, again onto the lands of protestant, and discharges into South Fork of American River. Many years ago a ditch, pipe line, flume, etc. were constructed by predecessors in interest of protestant, which conduit takes out on government land several hundred feet above protestant's land and conveys water down the westerly side of the stream onto the subdivision. Apparently several acres were thus irrigated at one time and the water was used to supply a number of cabins and a lodge with domestic water. There is connected into this diversion system, a diversion from Silver Fork of South Fork of American River, which is another tributary to South Fork from the South, and from this we assume comes the name "Silver Fork System" commonly applied to Mr. Lahiff's diversion system.

Applicant Smith formerly obtained the domestic supply for his cabin

from this system but in 1928, under an informal arrangement with protestant, he reconstructed the diversion dam on the unnamed stream which is here involved and laid his own pipe line from that point down the easterly side of the stream to his cabin. Whether or not this line is connected through to the diversion dam at the present time is not clear from the transcript but it does appear probable that there is an inter-connection between this line and the system on the west side of the creek heretofore described, and that Mr. Smith has been and is free to use his own line separately when he chooses.

Applicant Proctor built originally on the Smith lot and for some nine or ten years has been supplied with domestic water by the same means as Mr. Smith. In 1937 an arrangement was made between the two, however, whereby in exchange for the Proctor cabin Mr. Smith purchased, and there were conveyed to Mr. Proctor, one or two adjoining lots on which he has since built. He maintains that it was the understanding between him, Mr. Smith, and Mr. Lahiff that he and Mr. Smith could find their own domestic water supply by diverting from the source here involved across the Lahiff lands as they had done in past years, whereas, as we understand the situation, Mr. Lahiff maintains that the right of all three of these applicants is common with that of other lot owners to share in the service from the so-called Silver Fork System.

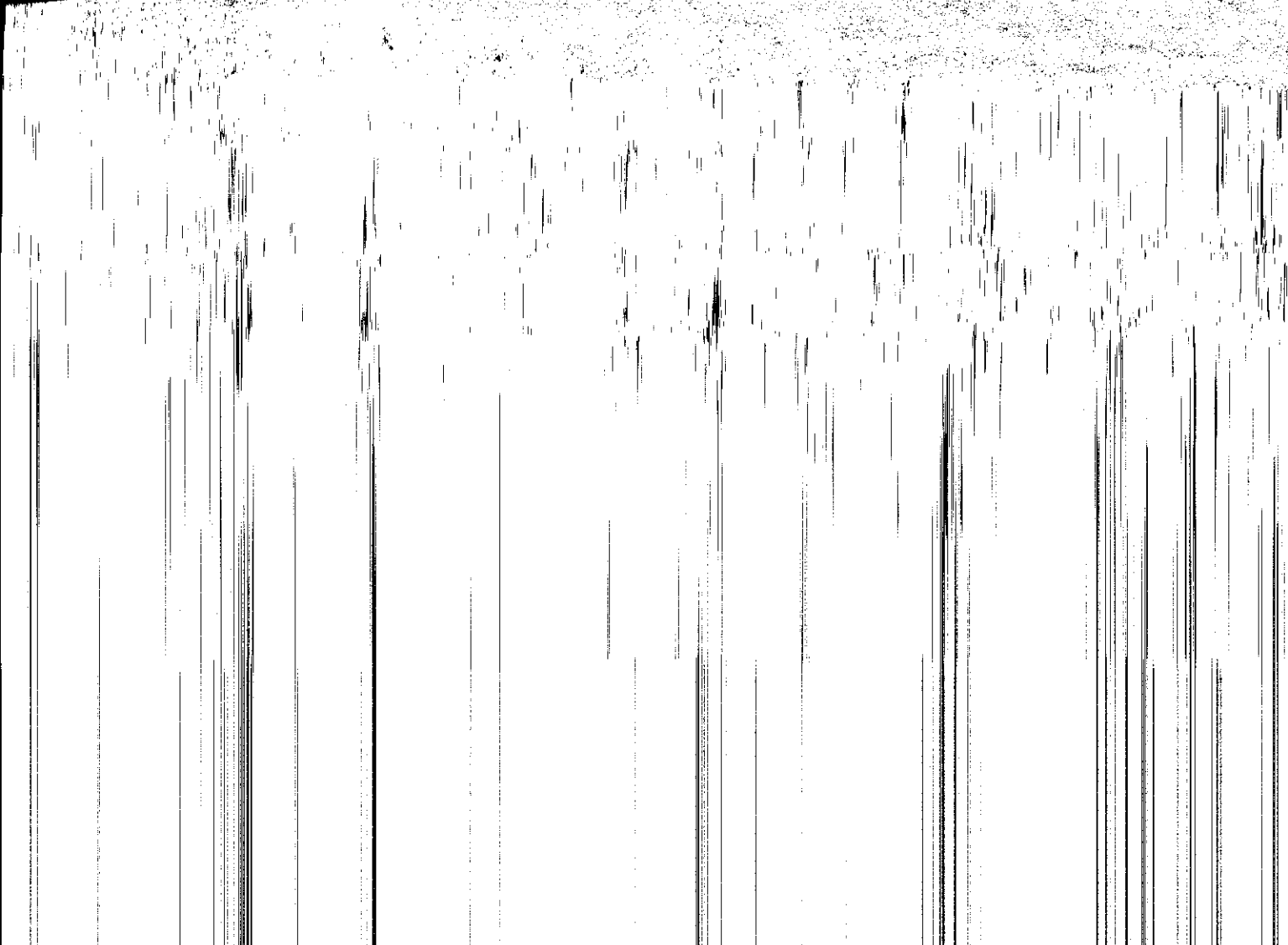
Temporarily the predecessor in interest of Applicant Inman was supplied with domestic water from the Smith pipe line when it was first laid, but since that time he has been supplied from the system operated by Mr. Lahiff west of the creek by a branch line to his cabin. The Smith pipe line passes directly beneath the Inman cabin and Mr. Smith has indicated his willingness that Mr. Inman should share in the use of this line with himself and Mr. Proctor.

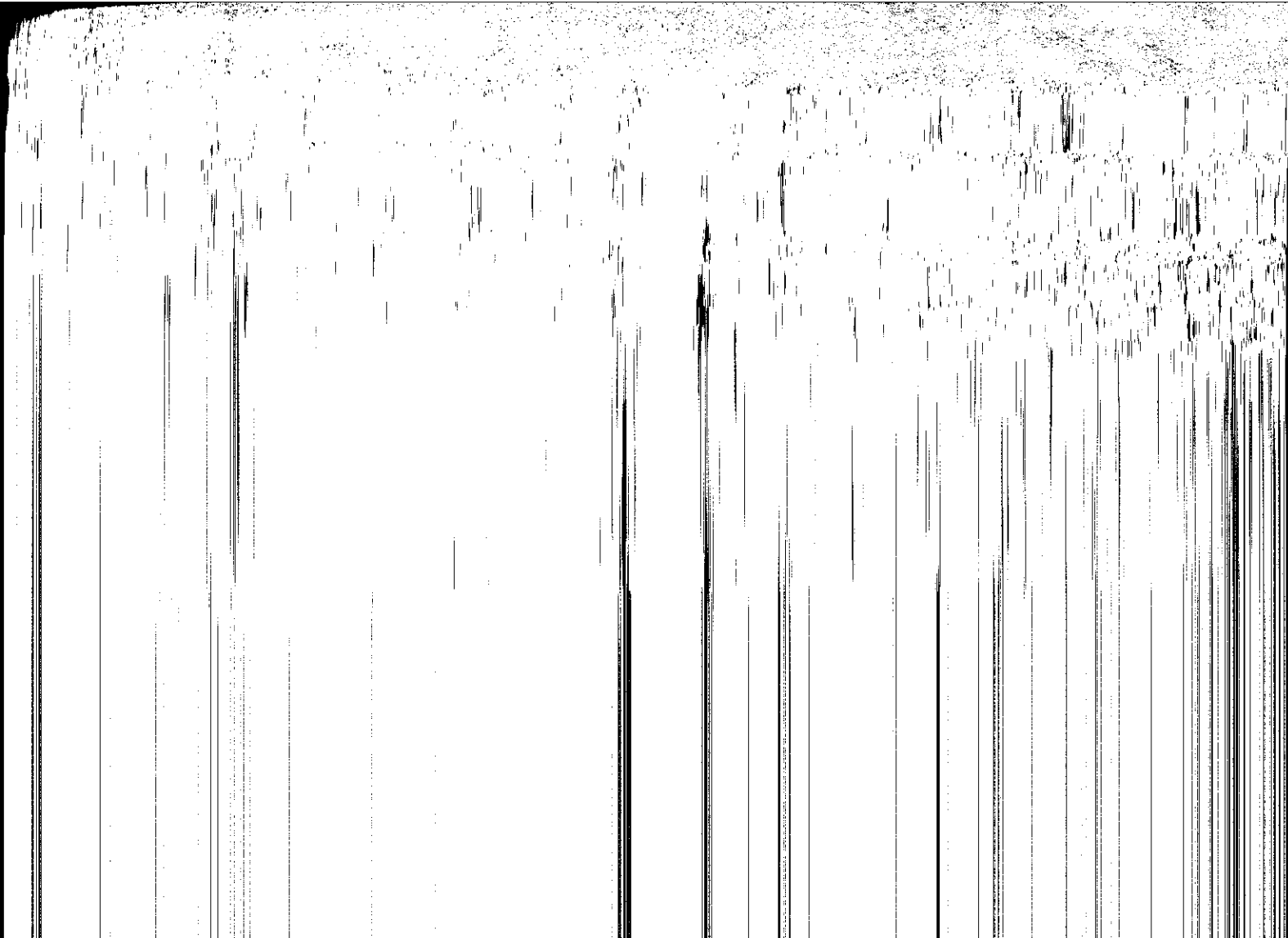
Under Applications 9328, 9329 and 9330 these applicants propose to di-

vert from the same stream some 400 feet above the existing dam at which both the Lahiff ditch and the Smith pipe line now divert. They have obtained a special use permit from the U. S. Forest Service and propose to construct an extension of the present Smith pipe line upon U. S. Forest lands to the new diversion point. If unable to secure other easement or easements, upon the Lahiff lands they propose to use the existing Smith pipe line.

We shall not undertake a discussion of their right to thus use the existing Smith pipe line. It is not within the jurisdiction of this office to determine issues of such nature. Suffice it to say that in our judgment if the allegations of right made by applicants were supported by proof they would be entitled to use the Smith pipe line and we must leave this issue for determination by the courts if the parties in interest are unable to adjust the matter between themselves. If decision were unfavorable to applicants it would appear they might lay their pipe line along the roadway which is shown upon the plat of the subdivision to lead from the U. S. Forest lands to their respective cabins.

While there was probably a rather extensive use of water formerly from the stream through the Silver Fork system it would appear in recent years there has been only a very limited use. Mr. Lahiff formerly had 15 cabins which were supplied with domestic water but all except three of these were destroyed by fire and none were occupied this last year. There appears to have been some domestic use the past year at Silver Fork Station and at the Pugh and Morgan cabins, in addition to that by these applicants, but there is no evidence of any use for irrigation, and the evidence fails to support protestant's claim of beneficial use for fishpond purposes.





The flow opposite the Smith property ceased in 1938 about the middle of August but on August 30th a flow of 55 gallons per minute was measured at a point between the present intake and that proposed by these applicants. It would appear that while there may be little or no flow in the stream during the late summer months upon the Lehigh lands and opposite these applicants there is normally a considerable flow at the proposed new intake. This flow is at present lost during the summer months by percolation into the stream bed and by transpiration and evaporation, or it is diverted into the pipe lines and ditches at the existing dam. It appears clear that there is a considerable waste both above and below the present dam and that with a more efficient diversion there would normally be abundant water to supply these applicants after supplying all other beneficial uses now cared for by the Silver Fork System. In view of the provisions of Section 3 Article XIV of the State Constitution and the decisions of the Supreme Court interpreting and applying the rule therein announced the Division may not deny these applications because the appropriations proposed would interfere with an extensive program of development of his subdivision as proposed by protestant under claim of riparian right. Applications 9328, 9329 and 9330 should be approved.

O R D E R

Applications 9328, 9329 and 9330 by G. F. Proctor, C. E. Smith and J. M. Inman respectively having been completed and duly noticed, said applications being protested and a hearing upon said protests having been held after due notice to the parties in interest, and the Division of Water Resources being now fully advised in the premises,

...lications to

NOW THEREFORE IT IS HEREBY ORDERED that said applications be approved and that permits be issued subject to such of the usual terms and conditions as may be appropriate.

WITNESSE my hand and the seal of the Department of Public Works of the State of California this *8th* day of October, 1938.

EDWARD HYATT, State Engineer

By MAROLD OGDEN
Deputy

(Seal)

ENB:MP-GG