

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

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In the Matter of Application 9132 of U. S. Shasta National  
Forest to Appropriate from Hemlock Spring in  
Siskiyou County for Domestic Purposes

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DECISION A 9132 D 439

Decided *February 27, 1939*

APPEARANCES AT HEARING HELD IN SACRAMENTO ON FEBRUARY 14, 1939.

For Applicant

M. H. Davis, Supervisor, Shasta Nat'l Forest

For Protestant

George E. Cryer, Attorney at Law

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

O P I N I O N

Application 9132 by U. S. Shasta National Forest is to appropriate from  
Hemlock Spring, a tributary of Medicine Lake, in Section 15, T 43 N, R 3 E,  
M.D.B. & M., for domestic uses at a summer home subdivision, a camp ground and  
a guard station of the U. S. Forest Service, on the shores of Medicine Lake some  
40 miles northeast of Mt. Shasta.

The application was protested by one D. D. Brownell who owns land  
likewise bordering on Medicine Lake which he has heretofore used for his own  
private recreational purposes and which has been subdivided for the purpose of  
sale. He owns either singly or jointly with one Lettunich, a total of some 90  
acres thus situated. The application having been protested was scheduled for  
hearing at Sacramento on February 14, 1939, with due notice to the parties in  
interest, and both parties being present on that occasion, testimony was taken

as to the probable effect, if any, of the proposed appropriation upon rightful uses heretofore being made by protestant.

Hemlock Spring from which it is sought to appropriate under this application rises some 500 feet from the Brownell property upon U. S. Forest Service land. It is at same elevation above both the Brownell land and the area proposed for development by Shasta National Forest and is desirable to both parties as a source for a domestic water supply, not only because of the quality of its water, but because the water will flow thence to the place of use by gravity through a pipe line and under pressure.

The waters of Hemlock Spring join with the waters of Crystal Spring situated 200-300 feet to the northeast and other natural drainage of the same watershed to flow in a defined channel a distance of some 1200-1300 feet through the Brownell land to Medicine Lake. Some 4 to 6 acres of meadow land are sub-irrigated en route upon the Brownell property. Testimony as to whether the diversion proposed under Application 9132 would interfere with this subirrigation was inconclusive. Ranger Sullaway of the U. S. Forest Service expressed the opinion drainage would help the meadow.

To the north and slightly west at a distance of 3/4 mile is another spring sometimes designated as the Ranger Station Spring, situated upon land owned jointly by Brownell and Lettunich. This spring is said to have a good flow of excellent quality and to be used quite generally by the public. Its waters have no connection with the flow of Hemlock Spring until they reach Medicine Lake.

Testimony presented by Mr. Brownell indicates that he diverts from the stream flowing from Hemlock Spring at a point opposite his cabin for domestic use, the water being delivered by a ran into a 200 gallon tank. It is piped into the house to a sink and into an adjacent shed or out-building where there is a shower and laundry facilities. Mr. Brownell uses the house supply for

cooking, bathing and washing but not for drinking as he considers it more or less polluted by the grazing of deer and stock in the meadow. He carries his water for drinking purposes from the so-called Ranger Station Spring referred to above, and has no flush toilet.

It appears that during a week of maximum use some 4 persons may occupy the Brownell cabin. With such facilities as are installed and a use such as that described, one would hardly anticipate a domestic use of more than 100 to 200 gallons per day. Testimony indicated delivery of a considerably larger amount by the ram and the surplus overflows from the tank to irrigate approximately 5000 square feet of natural grasses according to Mr. Brownell. For this purpose certainly not more than 500-1000 gallons per day can be said to have been beneficially used and there is some doubt, as indicated above, that any irrigation is necessary.

Hemlock Spring apparently discharges 15,000-16,000 gallons per day at the minimum. During the spring and winter months the flow from this spring commingles with that of Crystal Spring and other natural drainage of the watershed to form a continuous stream across the Brownell land with waste into Medicine Lake. During the summer and fall months of dry years, this flow does not form a continuous stream across the Brownell land but disappears shortly after crossing his upper line and at times there is no surface discharge into the Lake. Without treatment it is doubtful this surface flow would or could be used by Mr. Brownell. In fact, he indicated he would prefer the Lake water because of less fear of contamination. His protest is to prevent the applicant from taking Hemlock Spring water under Application S132 because of his desire and intention later to connect a pipe line directly to the spring itself, thereby avoiding contamination and obtaining a gravity supply for himself.

The meadow upon the Brownell land adjacent to the small stream into which Hemlock Spring flows has been pastured from time to time in years past by a few sheep owned by Mr. Brownell and by pack animals owned by others who were allowed this pasturage in exchange for services rendered. The testimony did not show how constantly the meadow was pastured or definitely that any injury would result to this pasturage by diversion of 15,000 gallons per day from Hemlock Spring as proposed in Application 9132.

Summarized briefly, therefore, the situation is this:

Shasta National Forest seeks to appropriate 15,000 gallons per day from Hemlock Spring, a tributary of Medicine Lake, for the domestic service of a summer home subdivision, camp ground and ranger station on U. S. Forest Service land bordering Medicine Lake. The amount sought to be appropriated probably approximates the normal flow of this spring during summer and fall months. The waters of Hemlock Spring join with the waters of Crystal Spring near by and other natural drainage of the same watershed to form a stream which flows during winter and spring months in a defined channel across the lands of D. D. Brownell who protests the application as a riparian owner. During the winter and spring months there is normally waste into Medicine Lake. At times during summer and fall months the surface flow in the aforesaid stream ceases a short distance below the upper line of the Brownell property and on occasion there is no waste into Medicine Lake. Brownell diverts by means of a ram for household uses at a cabin on his land and the surplus or waste from this diversion overflows onto some 5000 square feet of natural grasses for irrigation. The purely household uses would not exceed 100 to 200 gallons per day and at most not more than 500 to 1000 gallons per day could be beneficially used in the irrigation of the 5000 square feet of natural grasses served by the overflow from the Brownell household supply. There are 4 to 6 acres of meadow land upon the Brownell property served by the waters of Hemlock Spring, Crystal Spring and the other natural drainage of this watershed. It was not conclusively shown

that there had been anything more than an intermittent and casual use of this meadow in the past by protestant. Neither was it shown that the diversion of 15,000 gallons per day would appreciably interfere with the natural subirrigation of said meadow. It is sought under Application 9132 to appropriate water for a beneficial use. During some months of every year and probably during all months of some years in the recent past, such a diversion as proposed would not have interfered with any rightful use then being made by protestant Brownell. This application is to appropriate surplus or unappropriated water, subject to prior and existing rights, including whatever riparian right Mr. Brownell may have. He has access not only to this source but to Medicine Lake for the service of his riparian lands. In view of the provisions of Section 3, Article XIV of the State Constitution, it is at best a matter of some doubt whether or not a gravity diversion of 15,000 gallons per day by the applicant at Hemlock Spring should at any time be forbidden in order to assure a surface flow across protestant's land to provide for the limited use he has made or could make of such a flow. In fact, it appears that this is not so much the concern of the protestant as to prevent development and use of Hemlock Spring at this time by applicant in order that it may be reserved and held available to protestant at some later time if and when his land is sold and occupied and he desires to pipe water for a domestic supply directly from the spring to the purchasers of his land. Application 9132 should be approved, thus opening the way for the U. S. Forest Service to make the present development and use which it proposes and should it develop that this use in the future interferes in any way with rightful uses of protestant, there are means readily available to him by which to secure relief.

ORDER

Application 9132 by the U. S. Shasta National Forest having been filed seeking to appropriate from Hemlock Spring, a tributary of Medicine Lake; said

application having been completed and being protested, a hearing upon said protest having been scheduled and held with due notice to the parties in interest; and the Division of Water Resources being now fully advised in the premises,

IT IS HEREBY ORDERED that said application be approved and that a permit be issued, 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 27 day of Feb. 1939.

EDWARD HYATT, State Engineer

By HAROLD COMCLING  
Deputy

(Seal)

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