

Before the Division of Water Resources  
Department of Public Works  
State of California

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In the Matter of Application 9774 of Jack I. Branstetter and  
Application 9775 of Charles Hartman to Appropriate From  
an Unnamed Spring Tributary to St. Elmo Creek in  
Sonoma County for Domestic Purposes.

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Decision No. 9774, D. 461

Decided *September 30, 1940*

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APPEARANCES AT HEARING HELD IN SACRAMENTO AUGUST 20, 1940.

For Applicants

Jack I. Branstetter )  
Charles Hartman )

Otto Rehner

For Protestants

Russell McDaniel

In propria persona

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

Under Applications 9774 and 9775, Jack I. Branstetter and Charles  
Hartman each propose to appropriate 200 gallons per day throughout the year  
from an unnamed spring tributary to St. Elmo Creek in the Russian River water-  
shed for domestic purposes. The point of diversion which is common to both  
applications is located within Lot 43, Block 3, Flat "P" of Casadero Redwoods  
Subdivision being within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 30, T 3 N, R 11 W, M.D.B.M.  
According to Application 9774 as presented at the hearing Mr. Branstetter pro-  
posed to use water within a tract of land consisting of Lots 8, 9 and 10 of  
Block 12 and Lots 9, 10, 11 and 12 of Block 11 of Flat "1", Casadero Redwoods  
Subdivision, but at the hearing the place of use was designated as being a  
tract of land consisting of Lots 8, 9 and 10 of Block 12, and Lots 9, 10

and 11 of Block 11 of said Flat "I" and the application has been amended accordingly.

Under Application 9775 Mr. Hartman proposes to use water for domestic purposes on a tract of land consisting of Lots 11, 12, 13 and 14, Block 5, Flat "I" of Casadero Redwoods Subdivision.

Both the above described tracts of land are located within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 30, T 5 N, R 11 W, M.D.B.M.

Protest

Russell McDaniel claims the ownership of 36.5 acres of land within Sections 20 and 29, T 5 N, R 11 W, M.D.B.M. traversed by St. Elmo Creek to which the unnamed spring named as the source of the proposed appropriation in Applications 9774 and 9775 is tributary. Upon this tract of land protestant has constructed a six room dwelling equipped with bath, toilet and kitchen sink and has also constructed a two room cabin. Besides using water for domestic purposes he claims to irrigate two acres of clover and waters approximately 46 head of stock.

Protestant alleges in effect that the amounts of water applied for are far in excess of their actual needs and should Applications 9774 and 9775 be approved he would be deprived of water to which he is legally entitled and that during the summer months he would not have sufficient water to satisfy his domestic requirements.

Hearing Held Under Section 1a  
of the Water Commission Act

Applications 9774 and 9775 were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested were set for public hearing

In accordance with Section 1a of the Water Commission Act on Tuesday, August 20, 1940, at 10:00 o'clock A.M. in Room 401, Public Works Building, Sacramento, California. Of this hearing applicants and protestant were duly notified.

#### General Discussion

During the summer months, St. Elmo Creek, upon which protestant's property is located, has two main sources of supply--(1) St. Elmo Spring, which is designated as the "unnamed spring" in Applications 8774 and 9778 and is located on the head-waters of St. Elmo Creek, and (2) Johnson Spring which is located on the head-waters of Johnson Creek, a tributary of St. Elmo Creek entering St. Elmo Creek a short distance above protestant's property.

St. Elmo Spring covers an area of about 400 square feet. The waters of the spring flow through a gravelly formation and during periods of low flow disappear entirely in the gravels of the creek bed a short distance from the spring. At intervals downstream however the water is brought to the surface by bed rock. Similarly, the waters of Johnson Spring also enter the gravels of Johnson Creek and according to Mr. McDaniel during the summer months the channel of Johnson Creek becomes entirely dry on the surface.

Mr. Branstetter was of the opinion that if the flow from the springs was properly conserved there would be more than ample water to supply the needs of both applicants and protestant.

The properties owned by both applicants and protestant as well as the property upon which the springs are located are portions of what was originally known as the "Knoll Ranch", title to which was acquired from the United States Government in 1879. In 1910 the "Knoll Ranch" was subdivided into about 1700 lots and a forty acre tract upon which protestant's property is located was set aside for park purposes. The title to the lots is apparently in question but the title to the park area was cleared by Mr. McDaniel and the property purchased by him in 1933.

In 1938 Russell McDaniel constructed a dam in St. Elmo Creek at a point just below the junction of Johnson Creek and St. Elmo Creek and installed a pipe line to his property which now consists of 35.5 acres of which approximately 7 acres are susceptible of irrigation. This property is traversed by St. Elmo Creek. Each year subsequent to the installation of the diversion works protestant has irrigated approximately two acres of garden crops with the exception of this year when the two acres were planted to clover and rye grass.

Until the summer of 1939 water was diverted by the protestant at the above described dam when the flow suddenly ceased except for a small amount during the nights and on September 9, 1939 Mr. McDaniel investigated the water supply on the upper reaches of the stream. As a result of the investigation he found appreciable flows at both the St. Elmo Spring and the Johnson Spring which were soon dissipated in the gravels below and he conceived the idea of installing pipe lines from each of the springs through which the water would be conveyed to a point in St. Elmo Creek just above his dam. At the time of the hearing all but 8 lengths of the pipe line had been installed.

Mr. Branstetter has been obtaining what little water he has used from St. Elmo Creek by inserting two lengths of pipe into the bank of St. Elmo Creek at a point about 50 feet from his cabin and on September 29, 1939, Mr. McDaniel installed a "cut out" just above Mr. Branstetter's point of diversion by which he has endeavored without intending to be arbitrary, to limit the use of water by Mr. Branstetter to the amount which he has used in the past. There is apparently enough seepage remaining in the creek bed to supply Mr. Branstetter with water which he collects in a bucket and carries to his cabin.

Mr. McDaniel testified that during 6 or 10 months of the year there are surplus waters flowing in St. Elmo Creek which are available for appropriation. He is not claiming a right to the use of water over and above the

amount which he has used in the past (Transcript, page 45) and was of the opinion that if the applicants would confine themselves to a reasonable use such as has been made in the past an agreeable understanding might be reached.

The applicants propose to install a concrete box or catch-basin at St. Elmo Spring into which water will be collected and from which it will be diverted into a pipe line having two branches, one branch leading to Mr. Branstetter's property and the other branch leading to Mr. Hartman's property. No water is to be diverted from Johnson Spring which apparently supplies more water than does St. Elmo Spring. The use of water from St. Elmo Spring for domestic purposes will be very small. Any surplus water will by-pass the intake and flow down St. Elmo Creek as it has in the past.

At the time Mr. Branstetter prepared Applications 9774 and 9775 for himself and Mr. Hartman he had no idea how much water to apply for and consequently asked for 200 gallons per day for each application as this amount is the customary allowance per lot for purely domestic use at homesteads within forest reserves and in other similar situations.

It appears however that 200 gallons per day is far in excess of the actual requirements of each of the applicants. Mr. Branstetter expects to visit his cabin on an average of about once a month staying over Saturday night and leaving Sunday afternoon. He admitted at the hearing that his actual water requirement will not be more than an average of 2 gallons per day or 60 gallons for a period of 30 days. The use proposed by Mr. Hartman who intends to reside on the property the year around is somewhat more but he wishes to use the water for domestic purposes only. He has purchased a one-thousand gallon tank equipped with a floating valve so that when the tank is full the water will return to the stream and be made available for use below.

Mr. Hartman asked at the hearing, "How in the world am I going to use two hundred, one hundred, or even fifty gallons a day, tell me, for what?" Apparently the use proposed by Mr. Hartman who is unmarried will not exceed 50 gallons per day and he stated at the hearing that he would be willing to accept a Permit for this amount.

It would appear that Mr. McDaniel as a riparian owner has the right to share reasonably the waters of St. Elmo Creek with other riparian owners on the stream but he is limited to the diversion of only such water as in a state of nature would reach his lands. No claim as an appropriator was established. As a riparian owner he is not in a position to increase the amount of water at his dam by installing pipe lines from the two springs and conducting the water past or through the property of other riparian owners. Even should he obtain the consent of the intervening property owners, which apparently he has not done, he would not be entitled to an amount of water in excess of the amount which in a state of nature would reach his lands. The record clearly indicates that by the installation of the pipe line from the springs to the dam he has made water available for diversion at the lower dam which apparently otherwise would not have been available and we must necessarily conclude that there is water in St. Elmo Spring which may be appropriated by both applicants without interfering materially with the riparian rights of the protestant.

As stated above the amounts which the applicants are seeking to appropriate are admittedly in excess of their actual needs and it is the opinion of the Division that they should be reduced from 200 gallons per day to 50 gallons per day each. These amounts may be still further reduced at time of license action if investigation of the uses so warrants.

ORDER

Applications 9774 and 9775 for permits having been filed with the Division of Water Resources as above stated, said applications having been protested, a public hearing having been held and the Division now being fully informed in the premises,

IT IS HEREBY ORDERED that Application 9774 be approved for an amount of water not to exceed 50 gallons per day only subject to such of the usual terms and conditions as may be appropriate and,

IT IS HEREBY FURTHER ORDERED that Application 9775 be approved for an amount of water not to exceed 50 gallons per day only 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 30 day of *Sept* 1940.

EDWARD HEATT, State Engineer

HAROLD CONKLING

By  
Deputy

(Seal)