

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

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In the Matter of Application 10753 of Ben F. Russell to Appropriate
Water from Rock Creek Tributary to Owens River in Mono County
for Domestic Purposes.

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Decision A. 10753 D. 517

Decided October 4, 1944

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APPEARANCES AT HEARING HELD AT BISHOP ON SEPTEMBER 14, 1944.

For Applicant

Ben F. Russell

In propria persona

For Protestants

Gene G. Crosby
Jess and Mildred F. Chance

Walter R. Evans
" " "

Examiner

Harold Conkling, Deputy State Engineer in Charge of Water Rights, Division
of Water Resources, Department of Public Works, State of California.

O P I N I O N

General Description of Project

Application 10753 was filed by Ben F. Russell on January 21, 1944.

It proposes an appropriation of 200 gallons per day from Rock Creek to be diverted
at a point within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T 4 S, R 30 E, M.D.B.M. through-
out the entire year for domestic purposes on Lot 13 of Lower Rock Creek Special
Use Tract of Inyo National Forest being within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33,
T 4 S, R 30 E, M.D.B. & M.

Protests

Gene G. Crosby claims a riparian right to the use of water from Rock Creek and use of water since 1922 for domestic, irrigation and power purposes on his property at Paradise Camp. His point of diversion is described as being within the $W\frac{1}{2}$ of $SW\frac{1}{4}$ of Section 29, T 5 S, R 31 E, M.D.B.& M. He alleges in effect that there is not enough water in Rock Creek to satisfy the rights of the present users.

Jess and Mildred F. Chance claim a riparian right to the use of water from Rock Creek and use commenced prior to December 19, 1914, the effective date of the Water Commission Act. They take the water from Rock Creek at a point near the intersection of Highway 395 and Rock Creek at Paradise Camp within the $SW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 29, T 5 S, R 31 E, M.D.B.M., and at a point in the vicinity of the intersection of the south line of Section 32, T 5 S, R 31 E, M.D.B.M. with Rock Creek for irrigation purposes from about March 15 to about October 15 of an average year. They claim that during the spring and fall months there is not enough water in Rock Creek to satisfy their rights; that the continued issuance of "surplus water rights" to those above them on the stream and their use during the early spring and late summer causes a shortage of water for irrigation purposes on their ranch and that during this year (1944) it was necessary to dry up the stream below them to the detriment of fish life, in order to obtain sufficient water for irrigation purposes. They allege in effect that although the cabin rights along the stream are small, as they increase in number they will collectively become a nuisance.

Hearing Held in Accordance with Chapter 5
of the Water Code

Application 10753 was completed in accordance with the Water Code and the requirements of the Rules and Regulations of the Division of Water Resources and, being protested, was set for public hearing in accordance with Chapter 5 of the Water Code, on Thursday, September 14, 1944, at 10:00 o'clock A.M. in the Justices Court Room at Bishop, California. Of this hearing applicant and protestants were duly notified.

General Discussion

On September 20, 1938 one R. L. Zink filed Application 9421 with the Division seeking to appropriate 200 gallons per day from Rock Creek for domestic use on Lot 22 of Lower Rock Creek Tract of the Inyo National Forest. The point of diversion was within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 32, T 4 S, R 30 E, M.D.B.M. a short distance above the point of diversion described in Application 10753. At the time of the inspection for license action it was found that Mr. Zink was actually diverting to beneficial use 1500 gallons per day or 1300 gallons per day in excess of the amount which could be diverted under his application 9421 and in order to appropriate this excess amount he filed Application 10548 on October 19, 1942.

Application 10548 was protested by Jess and Mildred F. Chance and both the applicant and the protestants having stipulated to an informal hearing, an investigation was conducted in the field by an engineer of this office on September 22, 1943.

As a result of the field investigation and information already on file with this office including records of runoff of Rock Creek published by the United States Geological Survey, it was the opinion of this office that with reasonable methods of diversion and use there was sufficient

unappropriated water in Rock Creek during a season of normal run-off to justify the approval of Application 10548 and as the amount of water requested by Mr. Russell is only 200 gallons per day, of which amount a relatively large proportion would be returned to the creek, we are of the opinion that Application 10753 may also be approved.

Testimony was presented at the hearing held in connection with Application 10753 to the effect that during the latter part of the irrigation season there is a shortage of water and at times it has been necessary to rotate the use of water with others in order to obtain the necessary head for irrigation purposes. Rotation was practiced this year (1944) when the flow was estimated by Mr. Crosby to be about the same as it was during the year 1931 when the records of the United States Geological Survey indicate that the flow was less than 50% of normal. The testimony indicated however that during the seasons of 1942 and 1943 there was sufficient flow so that it was not necessary to rotate the use.

The hearing on September 14 was concluded at 11:00 o'clock A.M. and following the hearing the parties went to look over the situation in the field. After discussing the situation with the interested parties it appeared that the protestants were alarmed by the fact that the appropriation of 200 gallons per day which was granted to Mr. Zink was increased to 1500 gallons per day by a later appropriation and should the Division adopt the policy of granting a single lot owner not more than 200 gallons per day, save in exceptional circumstances when the amount may be increased to 300 gallons per day, no protests would be necessary.

There appears to be no reason why a lot owner should need more than the above indicated amounts and with the understanding that the above

general policy shall be adopted by this office with reference to future applications to appropriate water from Rock Creek for domestic purposes, it is the opinion of the Division that Application 10753 should be approved subject to the usual terms and conditions.

ORDER

Application 10753 for a permit to appropriate water having been filed with the Division of Water Resources 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 Application 10753 be approved and that a permit be issued 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 *4th* day of *October* 1944.

EDWARD HYATT, State Engineer

By *Harold Conkling*
Deputy State Engineer

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