

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 14317 by Margaret Bennett, Application 14323 by Mary and Joe Correia, Application 14383 by M. G. and Irene E. Emminger and Application 14411 by Harry F. and Diana B. Salyer to Appropriate Water from Bonanza Spring in Santa Cruz County for Domestic Purposes.

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Decision A. 14317, 14323, 14383, 14411 D. 774
Decided February 27, 1953

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In Attendance during Investigation Conducted by the Division of Water Resources on June 19 and September 4, 1952:

Margaret Bennett	Applicant
M. G. Emminger	Applicant; also representing the Applicants Salyer
Joe Correia	Applicant
Mary Correia	Applicant
Lucille Manley	Protestant
Charles O. Murray	Protestant
Hubert C. Jones	Protestant Service Committee's Attorney
Leon A. Carley	Protestant Seminar Foundation's Attorney
A. S. Wheeler	Senior Hydraulic Engineer, Division of Water Resources Department of Public Works, Representing the State Engineer

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OPINION

General Description of the Projects

The four projects are to be served by a single pumping plant, 16.66 gallons per minute in capacity, a 1000 gallon regulatory reservoir and a 1½" pipeline, 1100 feet in total length. Under each application it is sought to appropriate 2500 gallons per day, year-round, for domestic purposes and for the irrigation of a 1/2 acre garden. The described places of use all lie within the NE¼ NE¼ of Section 6, T 10 S, R 2 W, MDB&M.

Protests

Lucille Manley protests that the proposed appropriations will injure her because, allegedly, they will reduce the flow of Marshall Creek which she requires for domestic and irrigation use on her property. She claims appropriative, prescriptive and riparian rights, asserting that water has been used for domestic purposes and for the irrigation of about 3 acres of orchard and garden, for over 45 years. She describes her diversion points as being located within the SW¼ NW¼ of Section 5 and within the SW¼ NE¼ of Section 6, T 10 S, R 2 W, MDB&M. She mentions no terms under which her protest may be disregarded and dismissed.

American Friends Service Committee protests that the proposed appropriation "will reduce and cut off water flowing into Marshall Creek and wrongfully divert such water" from its riparian lands. Besides riparian rights it claims appropriative and prescriptive rights. It

describes its diversion as heading within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T 10 S, R 2 W, MDB&M. With regard to present and past use it states:

"This protestant owns approximately 52 acres of land on which is located a chapel or conference hall, a dining room and kitchen, camp grounds for boys' camps and girls' camps, as well as two private dwellings, . . . together with some 2 or 3 acres of orchard and garden. . . . During the summer months these conferences and camps are attended by as many as 40 or 50 people. This protestant and its predecessors in interest have used the waters of Marshall Creek and its tributaries for approximately 50 years."

No terms are stated under which the protest may be disregarded and dismissed.

Sequoia Seminar Foundation protests that as a result of the proposed appropriations, "the natural flow . . . will be diminished to the point where, in dry seasons, there will be insufficient water to supply" its needs and uses. It asserts appropriative, riparian and prescriptive rights, describes its diversion point as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T 10 S, R 2 W, MDB&M, and states with respect to its present and past use of water:

"Continuous year around use was first made on or before October 4, 1914 and has continued to date. The use was originally for the domestic and garden requirements of two families. Recently the use has been for two persons continuously in the winter with larger numbers on week-ends and during school holiday periods and for fifteen to twenty-five persons continuously . . . from the middle of June to the end of September."

This protestant states that its protest may be disregarded and dismissed:

"If any permit . . . issued . . . is expressly limited to the appropriation of water not needed for the current requirements of users . . . and if such permit . . . is restricted to the amount now used by the applicants."

Charles O. Murray protests that the proposed appropriations will so diminish the flow of the stream that supplies him, that in dry seasons supply will no longer meet his requirements. He asserts appropriate, riparian and prescriptive rights, states that he diverts at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T 10 S, R 2 W, MDB&M, and states with respect to present and past use of water:

"Continuous year around use was first made on or before October 4, 1914 and has continued to date. The use was originally for the domestic & garden requirements of one family. Recently the use has been for three persons at intervals during the winter with larger numbers during the weekends and almost continuously throughout the summer from May to September or October."

He states, as did Sequoia Seminar Foundation that his protest may be disregarded and dismissed if such permit as may be issued is expressly limited to water not needed for the current requirements of present users and is restricted to the amount now used by the applicants.

Answers

The applicants jointly answer all protests against their several applications as follows:

"In order to protect ourselves and our families, we recently filed applications to secure rights to the water which we have been using from Bonanza Spring. It is essential to our welfare that we be given a right to the water because without it our lands are worthless and our homes uninhabitable.

"All but one of the . . . applicants live on the land the year around and all have made continuous use of the water . . . from three to five years - several of those years having been dry ones. It is therefore felt that our continued use of the water will have little effect on the reasonable water needs of the protestants because:

- '1. Past use by applicants has not shorted them.
- '2. The Water Commissioners, who are concerned with the use of all water here in the valley, considered our applications . . . and took no action because they felt that our use of the water would not affect the volume of water in Marshall Creek.
- '3. The volume of water in Bonanza Creek has been checked at the various points it reappears at and it has been found that instead of being decreased at each new appearance of the water, it is considerably augmented in volume.
- '4. At one point where one of the protestants with a prior claim takes water the volume of water is almost doubled.
- '5. Marshall Creek is a large creek with many tributaries and only a small portion of its water is actually being used.'

"We have also checked the County Assessor's maps and find that Bonanza Creek does not cross or border any of the lands of the protestants.

"One of the protestants mentioned a prior claim and no doubt was awarded certain gallonage. This protestant has built several water tanks, one of which holds 15,000 gallons. This tank alone would indicate the amount of water available to them, and it is our understanding that the protestant plans building additional tanks. We do not know whether it is necessary for them to secure permission from the State in planning to so greatly increase their use of the water, but we do feel that they should not be able to corner all of the water primarily for their seasonal use by protesting the small amounts needed for our year-around use."

Field Investigation

The interested parties with the approval of the Department having stipulated to the submittal of the applications and protests upon the official records of the Department, a field investigation

was conducted on June 19, 1952 and a supplemental investigation was conducted on September 4, 1952, by an engineer of the Division. The applicants and the protestants were all present or represented at those investigations.

Records Relied Upon

Applications 11922, 11923, 14317, 14323, 14383 and 14411 and all data and information on file therewith.

Information Secured by Field Investigation

Extracts from the report by the engineer charged with conducting the field investigations of June 19 and September 4, 1952, setting forth information collected during and in connection with those investigations, are as follows:

"Bonanza Spring . . . is located at the head of Hubbard Gulch . . . and the waters therefrom flow easterly, via the gulch and Marshall Creek, to the San Lorenzo River.

"The spring is located within a heavily wooded watershed having an average annual precipitation, according to U. S. Weather Bureau records at Ben Lomond, of about 63 inches. Precipitation for the 1951-52 season was about 160% of normal.

"At the time of the June 19 investigation flow in the sources involved was considerably in excess of applicants' and protestants' requirements and for this reason they requested that a full investigation of the situation be delayed until September. All present were in agreement that normally there was no . . . shortage until after August 1.

"Mrs. Manley and Messrs. Jones and Carley stated that the flow in Hubbard Gulch was so low in some years, notably in 1917, 1939 and 1940, that users from the gulch had to pack water by bucket from Marshall Creek. They also said that there was no shortage in 1950 and 1951."

* * *

"On September 4 the writer made estimates and measurements of flow and Messrs. Jones and Carley submitted affidavits covering flow measurements made in September, 1951."

* * *

"All persons in attendance were in agreement that the amount of water available was a little above normal. The channel of Hubbard Gulch between the spring and protestants' diversion was examined and it appeared that at one point there was some small accretion from hillside seepage.

"In view of the information on file with the Division and that obtained at the time of this investigation, it appeared to the writer that the normal low yield of Bonanza Spring is about 11500 gpd and that during the low yield period little or no spring water contributes to the flow in Marshall Creek."

As to the flow of Bonanza Spring the investigating engineer reported that the three trenches leading from that source to the applicants' collecting box, on September 4, 1952, were carrying an aggregate of 7.07 gallons per minute (about 10,200 gallons per day) and that it was obvious and admitted by all present that the trenches did not intercept all of the flow from the spring. His report states also that on the same date Hubbard Gulch at the protestants' diversion was carrying 12.55 gallons per minute (equivalent to 18072 gallons per day) and Marshall Creek at the Manley diversion about 1 cubic foot per second.

As to the protestants' projects the report of field investigation states:

"Manley . . . requires water for 2 people . . . from January 1 to December 31 and for irrigation purposes on about 2 acres from about July 1 to November 1. Protestant diverts by means of a hydraulic ram from Marshall Creek . . . Her household and 1/4 acre garden is supplied from Hubbard Gulch and she also obtains some water for these purposes from a small spring on her land.

"Murray . . . diverts by means of a pipe line and requires water from January 1 to December 31 for a maximum of 6 people . . . and for the irrigation of about 0.25 acre of gardens from May 1 to November 1.

"Sequoia Seminar Foundation and American Friends Service Committee . . . have for the most part a joint project which involves diversion by pipe line from Hubbard Gulch which line conveys water to tanks totaling about 25,000 gallons capacity from which distribution is made. Use is . . . at a mess hall . . . and at a bath house . . . There is also some miscellaneous sprinkling to allay dust and on the seminar grounds about 1/4 acre is irrigated. Most people in the two camps sleep in tents or on cots under trees with a few in 5 small cabins . . . During a week of maximum use there are 27 people at the Seminar Camp and 26 people at the Friends Camp. At the Seminar Camp a maximum of 50 people are sometimes present for a weekend."

As to the applicants' project the report of field investigation states:

"Applicants, together with Aida K. Roy and Preston L. and Ruth Prescott, divert from Bonanza Spring through a common system, which is owned by Mrs. Roy, consisting of a . . . pump . . . which pumps to a distribution tank of about 1700 gallons capacity. Operation of the pump is automatically controlled by a float in the tank and the pump operates against a total head of about 230'.

"Irrigation use is by means of sprinklers."

As to the protestants' use of water the report of field investigation states:

"Based upon the allowances and methods used by the Division for determining the amount for which a license may be issued, the total beneficial use by protestants . . . has been estimated with the following results . . .

8 people at 55 gpd/person	440 gpd
53 people at 35 gpd/person	1855 "
2.5 ac. irr. on 1 to 120 basis	13573 "
Miscellaneous uses	382 "
Total use	<u>16250</u> gpd
From Hubbard Gulch	5392 "
From Marshall Creek	<u>10858</u> "
Total	<u>16250</u> gpd

As to the applicants' use of water the report of field investigation states:

"Applicants' pump was operated in such a manner as to utilize the following KWH in each of the 12 months preceding the September 4 investigation.

September, 1951	84
October	44
November	38
December, 1951	40
January, 1952	48
February	34
March)	76
April)	
May	64
June	216
July	176
August, 1952	234

From the tabulation it will be noted that maximum use was made in August, 1952 during which month use, on a continuous flow basis, was . . . 5422 gpd.

"In connection with the above it should be noted that during 1952 no use was made at the Salyer place."

Closing paragraphs of the report of field investigation are as follows:

"The foregoing indicates an average use of 21672 gpd during the maximum month of use in 1952 of which 10814 gpd were the waters of Hubbard Gulch which waters were almost entirely composed of water from Bonanza Spring.

"Other users, Messrs. F. P. Hart and Mr. Sylvanus, from the source involved did not file protests for the reason that, according to Mr. Emminger, they felt that there was normally sufficient water for all.

"Mr. Jones submitted copies of 'Notices of Appropriation of Water' covering the rights claimed by Mrs. Manley and the American Friends Service Committee. The document containing the copies is appended . . .

"It appeared to the writer that applicants' ultimate proposed use would probably be somewhat less than the amount applied for."

The affidavits submitted by Messrs. Jones and Carley at the time of the field investigation are to the effect that they (Messrs. Jones and Carley), on behalf of American Friends Service Committee and Sequoia Seminar Foundation, on September 2, 1951 traversed Hubbard Gulch from the collection box serving the Westlake, Ritter, Murray and Sylvanus cabins to Bonanza Spring, that no seepage or oozing of water into Hubbard Gulch from its banks, slopes or adjacent hillsides could be found, that on October 13, 1951 Mr. Jones again traversed the same route, this time accompanied by Alexander Saharoff, a civil engineer, and again found the adjacent banks, slopes and hillsides entirely dry, and that on October 13, 1951 the inflow into the diversion box measured 6 gallons per minute.

The "copies of notices of appropriation of water," mentioned in the report of field investigation, indicate the initiation, in 1906, by one A. M. Henry, of two appropriations of waters of the North Fork of Marshall Creek, one in the amount of 4 miner's inches, the other in the amount of 10 miner's inches; and the claim, later in the same year, by the administratrix of A. M. Henry's will, of 3 miner's inches, from Hubbard Gulch.

Other Available Information

Prior to Applications 14317, 14323, 14383 and 14411 and dependent also upon Bonanza Spring as a source of supply are Applications 11922 and 11923, which stand in the names, respectively, of Aida K. Roy and Preston L. and Ruth Prescott. Application 11922 has been licensed in the amount of 1700 gallons per day, year-round. Application 11923 is in the amount of 2500 gallons per day; it has been approved but not yet licensed. In reports covering inspections made of Applications 11922 and 11923 on May 17, 1951 it is stated in effect that the yield of Bonanza Spring varies from about 25000 gallons per day during the winter to about 6000 gallons per day during the hottest part of the summer and that it was about 10000 gallons per day on the date of those inspections.

Discussion

The evidence indicates clearly that unappropriated water exists during most months but that there are times, notably during hot spells in summer, when demand exceeds supply. Since at the June 19, 1952 investigation the parties agreed that shortages do not ordinarily occur prior to August 1; and since irrigation and garden and lawn watering may be supposed to cease or to greatly diminish by the end of October, water in the amount and in the manner proposed in the four applications at issue could be diverted, without apparent injury to the protestants, from about November 1 to about August 1 at least. During August, September and October shortages without doubt at times occur. Despite that fact however the evidence does not prove that

unappropriated water does not sometimes exist, even during those normally dry months, nor does it show, nor is it probable, that unappropriated water becomes non-existent sharply upon August 1 nor that it always remains non-existent until November 1. Presumably there is a considerable variation between seasons.

The evidence, while in part supporting the protestants' objections, does so in limited degree only. The protestants' situations differ. Protestant Manley's requirements are met mainly by diversion from Marshall Creek, partly by a spring upon her property and, to a small extent only, by diversion from Hubbard Gulch, to which Bonanza Spring is tributary. Protestant Murray appears wholly dependent upon Hubbard Gulch. The protestant Sequoia Foundation and the protestant American Friends Service Committee while dependent upon Hubbard Gulch have a much lesser average than maximum need: the number of people they serve fluctuates and their season reportedly is over well before November 1. The protestants' reasonable requirements from Hubbard Gulch, according to the report of field investigation, total 5392 gallons per day. On September 4, 1952, 12.55 gallons per minute, equivalent to 18072 gallons per day were flowing in that stream above the protestants' diversion. Thus the supply in Hubbard Gulch on that date was some 18,072-5,392 or 12,680 gallons per day in excess of what appears to be the protestants' reasonable needs. That amount exceeds the amount which the applicants seek to appropriate. Since unappropriated water existed on September 4, 1952 it is a reasonable surmise that unappropriated

water exists at other times during low stage as well as high stage periods. That at least two of the protestants (Murray and Sequoia Seminar Foundation) believe that unappropriated water exists at times is evidenced by statements in their protests to the effect that their protests may be disregarded and dismissed if permits if issued are limited to the appropriation of water which they do not currently need and are restricted further to the amounts that the applicants already use. Evidently the times to which the protestants' objections apply are times when supply is acutely sub-normal.

Summary and Conclusion

Bonanza Spring, from which the applicants seek to appropriate an aggregate of 10000 gallons per day, year-round, for domestic purposes, is tributary via Hubbard Gulch and Marshall Creek to San Lorenzo River, in Santa Cruz County. The applications are protested by four water users who depend wholly or in part upon Hubbard Gulch for their supply for domestic purposes and irrigation. The yield of Bonanza Spring is estimated to range from a maximum of 25000 gallons per day in winter to a maximum of 6000 gallons per day in summer. The protestants' reasonable requirements from Hubbard Gulch are estimated to be about 5392 gallons per day. On September 4, 1952 the stream flowing in Hubbard Gulch measured 12.55 gallons per minute, equivalent to 18072 gallons per day. The information at hand indicates that unappropriated water in Bonanza Spring usually exists until August 1 and after November 1 and that it exists at times during August, September and October.

In view of the situation summarized it is the opinion of this office that unappropriated water usually exists in the source from which the applicants seek to appropriate, that such water may be taken and used beneficially in the manner proposed without injury to the protestants and that Applications 14317, 14323, 14383 and 14411 should therefore be approved and permits issued, subject to the usual terms and conditions.

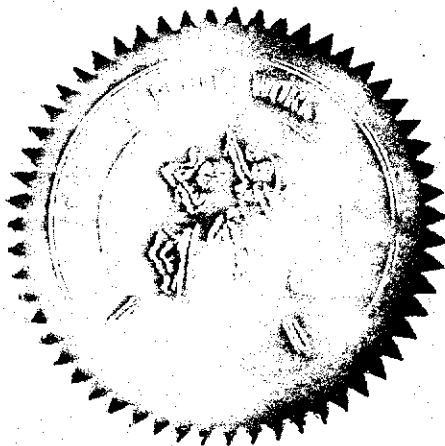
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ORDER

Applications 14317, 14323, 14383 and 14411 having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 14317, 14323, 14383 and 14411 be approved and that permits be issued to the applicants, 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 February 27, 1953.



A. D. Edmonston
A. D. Edmonston
State Engineer