

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

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In the Matter of Applications 5020 and 5148 of the Felton Water Company to appropriate from Limestone Brook, Tributary of San Lorenzo River via Gold Gulch in Santa Cruz County for Municipal, Domestic and Irrigation Purposes, respectively, Applications 5149 and 5150 of the Felton Water Company to appropriate from Limestone Brook and Scott Creek, Tributaries of San Lorenzo River in Santa Cruz County for Municipal and Domestic Purposes, respectively, and Applications 5297, 5298 and 5299 of the Felton Water Company to appropriate from Bennett Creek and Shingle Hill Creek, Tributaries of Fall Creek and San Lorenzo River in Santa Cruz County for Domestic, Irrigation and Municipal Purposes, respectively.

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DECISION A. 5020, 5148, 5149, 5150, 5297, 5298, 5299 D-272

Decided - *October 27, 1930*

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APPEARANCES AT HEARING HELD AT SANTA CRUZ, August 10, 1930

For Applicant

Felton Water Company

A. M. Anthony

For Protestants

Forest Lakes Mutual Water Company and

Seminary Avenue Land Company

F. M. Parcelis

R. L. Young, Miss F. H. Glover,

E. J. Anderson and J. Many

R. L. Young

E. H. Hirsch, C. E. Morris, et al.

E. H. Hirsch

Fred S. Moore

In propria persona

C. F. Orra

In propria persona

Frank Fulmer

No appearance

Big Trees Land and Development Company

No appearance

Charles P. Bagg

No appearance

EXAMINER: Everett M. Bryan, Hydraulic Engineer, Division of Water Resources,
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATIONS

Application 5020 was filed on May 16, 1926. It proposes an appropriation of 0.12 cubic foot per second throughout the entire year from Limestone Brook tributary to San Lorenzo River via Gold Gulch for municipal and domestic purposes within the unincorporated town of Felton and Felton Acres. The points of diversion lie within the Rancho Canada del Rincon and are described as follows:

- (1) Within SE $\frac{1}{4}$ NE $\frac{1}{4}$ projected Section 29, T 10 S, R 2 W, M.D.B. & M.
- (2) " NE $\frac{1}{4}$ NE $\frac{1}{4}$ " " " " "
- (3) " NW $\frac{1}{4}$ NE $\frac{1}{4}$ " " " " "
- (4) " SE $\frac{1}{4}$ SW $\frac{1}{4}$ " Section 20, " " "

Application 5148 was filed on August 10, 1926. It proposes a total appropriation of 0.263 cubic foot per second for irrigation purposes throughout the entire year as follows:

<u>Source</u>	<u>Amount</u>	<u>Point of Diversion</u>
Limestone Brook	0.039 c.f.s.	SE $\frac{1}{4}$ NE $\frac{1}{4}$ projected Sec. 29, T 10 S, R 2 W, M.D.B. & M.
" "	0.123 "	NE $\frac{1}{4}$ NE $\frac{1}{4}$ " " " " "
" "	0.041 "	NW $\frac{1}{4}$ NE $\frac{1}{4}$ " " " " "
" "	0.051 "	SE $\frac{1}{4}$ SW $\frac{1}{4}$ " Sec. 20, " " "
Scott Creek	0.012 "	NW $\frac{1}{4}$ NW $\frac{1}{4}$ " Sec. 28, " " "
" "	0.013 "	SW $\frac{1}{4}$ NW $\frac{1}{4}$ " " " " "

The water is to be used upon 700 acres of land within Sections 20 and 21, T 10 S, R 2 W, M.D.B. & M., Rancho del Rincon and Rancho Zayante.

Application 5149 was filed August 10, 1926. It is similar to Application 5148 except that it proposes to use the water for municipal purposes within the town of Felton and Felton Acres and vicinity.

Application 5150 was filed August 10, 1926. It is also similar to Application 5148 except that it is proposed to use the water for domestic purposes on 1600 lots within Sections 20 and 21, T 10 S, R 2 W, M.D.B. & M. and also Rancho Canada de Rincon and Rancho Zayante.

Application 5297 was filed December 6, 1926. It proposes an appropriation of 0.1547 cubic foot per second from Bennett Creek and 0.0773 cubic foot per second from Shingle Mill Creek, tributary of Fall Creek and San Lorenzo River, throughout the entire year for domestic purposes on 283.4 acres of land within Sections 15, 21 and 22, T 10 S, R 2 W, M.D.B. & M. The point of diversion from Bennett Creek is located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T 10 S, R 2 W, M.D.B. & M. and the point of diversion from Shingle Mill Creek is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T 10 S, R 2 W, M.D.B. & M.

Application 5298 was filed December 6, 1926. It is similar to Application 5297 except that irrigation use is proposed.

Application 5299 was filed December 6, 1926. It is also similar to Application 5297 except that it is proposed to use the water for municipal purposes within the unincorporated town of Felton.

Applications 5020, 5148, 5149 and 5150 were protested by the Forest Lakes Mutual Water Company and Seminary Avenue Land Company. Application 5297 was protested by Fred S. Moore, Frank Fulmer, Big Trees Land and Development Company, Miss W. E. Glover, Charles P. Bagg and E. H. Hirsch, et al. Applications 5298 and 5299 were protested by Frank Fulmer, Big Trees Land and Development Company, Charles P. Bagg and E. H. Hirsch, et al.

PROTESTS

The Forest Lakes Mutual Water Company and Seminary Avenue Land Company claim prior rights by virtue of riparian ownership and past use and inchoate rights under Application 4842, Permit 3444 and allege in effect that there is no unappropriated water in Cold Gulch and its tributaries and that no diversion could be made under Applications 5020, 5148, 5149 and 5150 without interfering with their rights.

The protests against the approval of Applications 5297, 5298 and 5299 are really directed against the proposed diversion from Spangle Hill Creek rather than from Bennett Creek. Fred S. Moore, Frank Palmer, Big Trees Land and Development Company; E. E. Hirsch and eleven others claim rights by virtue of riparian ownership and past use; Charles P. Egg claims riparian rights but no use, and Miss F. H. Glover claims an appropriative right initiated May 6, 1913, and use thereafter. All of the protestants allege in effect that there is no unappropriated water available and that any further appropriation would deprive them of water to which they are entitled.

GENERAL DISCUSSION

Gold Gulch is a small stream tributary to the San Lorenzo River at a point about one mile south of the town of Felton in Santa Cruz County. The upper portion of the Gulch is sometimes designated as Limestone Brook. Scott Creek one of the largest tributaries of Gold Gulch enters the main stream within the property of the Seminary Avenue Land Company. Very few measurements of the flow in either Gold Gulch or Scott Creek are of record. Testimony presented at the hearing indicated that the maximum flow which had been found in Gold Gulch by actual measurement was 203,000 gallons per day or 0.314 cubic foot per second. The measurement was made on June 17, 1927, at a point about 1,000 feet above the northerly property line of the Seminary Avenue Land Company. On August 18, 1930, a measurement made on Scott Creek indicated that the flow therein was 850 gallons per day which amount was intercepted by the Felton Water Company before reaching Gold Gulch.

Under Application 4342, Permit 3444 the Forest Lakes Mutual Water Company, a subsidiary of the Seminary Avenue Land Company, has acquired the privilege of diverting 0.80 cubic foot per second throughout the entire year

from Gold Gulch and two unnamed tributaries and 100 acre feet per annum from Gold Gulch to be diverted to storage from about November 1st to about May 31st of each season. In addition to this privilege the Forest Lakes Mutual Water Company and the Seminary Avenue Land Company claim rights to the waters of Gold Gulch and Scott Creek by virtue of riparian ownership and past use.

As a result of litigation between the Seminary Avenue Land Company and Forest Lakes Mutual Water Company on the one hand, and the Felton Water Company, et al., on the other, a judgment was handed down by the Superior Court of Santa Cruz County in September 1926 which in effect decreed that the Seminary Avenue Land Company and Forest Lakes Mutual Water Company were entitled to all of the waters flowing through Gold Gulch above the lands of the Seminary Avenue Land Company and within the boundaries of the lands of the Felton Water Company, et al.

At the hearing the Felton Water Company withdrew its Applications 5020 and 5148 and those features of Applications 5149 and 5150 insofar as they related to appropriation of water from Limestone Brook but maintained that there were unappropriated waters in Scott Creek which were unaffected by the decree of the Court.

In view of the fact that Scott Creek is tributary to Gold Gulch above several of the points of diversion designated in Application 4842, Permit 3444 and testimony presented by the Forest Lakes Mutual Water Company that all available water had been diverted below the junction under its alleged riparian rights, no testimony being entered to the contrary it is the opinion of this office that there is insufficient unappropriated water in Gold Gulch and its tributary Scott Creek to justify the approval of Applications 5149 and 5150.

Bennett Creek, one of the sources of proposed diversion designated in Applications 5297, 5298 and 5299 of the Felton Water Company, is a tributary of Fall Creek which in turn is tributary to the San Lorenzo River just north of the town of Felton. Apparently no controversy exists relative to the proposed diversion from this source.

Shingle Mill Creek another of the sources of proposed diversion designated in Applications 5297, 5298 and 5299 is a small stream tributary to the San Lorenzo River about one-half mile below and south of the town of Felton.

Testimony presented at the hearing indicated that purchasers of lots in Felton Acres among whom were E. H. Hirsch, E. J. Anderson, J. Mary and C. F. Orra, understood that a stream of water would be allowed to flow past their property at all times. However the deeds which they received upon the payment of the full purchase price, a copy of one of which deeds was introduced as an exhibit at the hearing, expressly reserved all water rights to the grantor. In view of this fact it appears that any claim to riparian rights urged by these protestants has been invalidated.

The record indicates that Miss F. H. Glover who owns three and one-half acres on Shingle Mill Creek about 1,000 feet above its junction with San Lorenzo River acquired an appropriative right to 2 miners inches of water about fifteen years ago which right was initiated by the former owner of the property prior to the effective date of the Water Commission Act. Until about five or six years ago Miss Glover used water from Shingle Mill Creek under the appropriative right for domestic purposes and the irrigation of one and one-half or two acres of garden but during recent years has purchased water from the Felton Water Company for domestic purposes due to the fact that the supply which she had been using passed through a

swimming tank located on the stream above her property and her irrigation use had been curtailed to the amount necessary to irrigate a yard containing about one-third of an acre. The reason for this curtailment was not so much the fact that water was not available as it was that she had experienced considerable difficulty in applying the water to profitable irrigation use. The testimony presented clearly indicated that during these years water passed by her point of diversion to the San Lorenzo River although at times the quantity was very small.

Fred S. Moore owns property on the south side of Shingle Mill Creek opposite Felton Acres and about 300 feet above Miss Glover's property. He stated at the hearing that no reservations of water supply were mentioned in his deed. For some time subsequent to the purchase of his property in 1921 he pumped water out of Shingle Mill Creek for irrigation and domestic purposes but at the present time obtains his supply from a well. He testified that ordinarily some water in Shingle Mill Creek flowed by his place and Miss Glover's property to the San Lorenzo River.

From other testimony presented at the hearing it appears that at times the flow in Shingle Mill Creek is very small and often ceases altogether during the daytime in a dry year. In the early mornings and evenings and at night however there always appears to be water in the stream.

George Featherstone, at one time president of the Felton Water Company but who has not been connected with that Company for some time, presented testimony to the effect that the usual summer flow in Shingle Mill Creek was somewhat less than 2500 gallons per day which he estimated was the flow during the summer months of 1950.

Mr. Featherstone owns a portion of Felton Acres and a swimming tank situated on Shingle Mill Creek above the lands of the protestants. This swim-

ning tank he stated has a capacity of about 100,000 gallons and is filled with water from Shingle Mill Creek and other sources. It is refilled once in about two weeks and three or four days are required to fill it after which the water from Shingle Mill Creek is allowed to flow down to the San Lorenzo River. Apparently some of the water of Shingle Mill Creek is used for domestic, irrigation and road sprinkling purposes in Felton Acres by the Felton Water Company but the major portion appears to be used for filling the swimming tank.

From the record it appears entirely clear that in a year of normal runoff there is water in Shingle Mill Creek which flows past the diversion points of the protestants without having been put to any beneficial use as recognized by the Water Commission Act under which this office functions and therefore it is the opinion of this office that Applications 5297, 5298 and 5299 should be approved, subject to whatever prior rights the protestants may have.

This office fully appreciates the fact that the value of the property along Shingle Mill Creek depends to some extent upon the flow therein but to what extent was not shown nor was any other measure of damage due to the proposed appropriation established. In some cases at least it would appear that by virtue of the language of their deeds the owners are foreclosed from establishing any claim of damage. If there is damage in some cases and the owners are entitled to compensation for this damage, or an injunction, it is for the courts rather than this office to grant the relief.

O R D E R

Applications 5020, 5148, 5149, 5150, 5297, 5298 and 5299 for permits 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 said Applications 5020, 5149, 5149 and 5150 be rejected and cancelled upon the records of the Division of Water Resources, and

IT IS FURTHER ORDERED that said Applications 5297, 5298 and 5299 be approved and that permits be issued thereon subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *27th* day of *October*, 1950.

EDWARD HYATT, State Engineer

BY *Harold Corbly*
Deputy

