

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

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In the Matter of Application 6926 of Albert P. Kogler to  
Appropriate from Porter Creek, a tributary of  
Mark West Creek and Russian River in  
Sonoma County, for Irrigation and  
Domestic Purposes.

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DECISION A. 6926 D-302

Decided *December 23, 1931*

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APPEARANCES AT HEARING HELD AT SANTA ROSA, SEPTEMBER 21, 1931.

For Applicant

Albert P. Kogler

J. O. Kroyer

For Protestants

Joseph T. Grace

David Sharp

Hjalmar and Olivia Peterson

Geo. Fechter, et al.

F. W. McConnell

R. M. Quackenbush

R. M. Quackenbush

No appearance

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

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OPINION

GENERAL FEATURES OF APPLICATION 6929

*6926*  
Application 6929 was filed by Albert P. Kogler on March 28, 1931.

It proposes an appropriation of 0.050 cubic foot per second or approximately 32,500 gallons per day throughout the entire year from Porter Creek, tributary to Mark West Creek and Russian River in Sonoma County for the irrigation of 5 acres of land and domestic use within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 14, T 8 N, R 7 W, M.D.B. & M. and watering stock in NE $\frac{1}{2}$  of NW $\frac{1}{4}$ , NW $\frac{1}{4}$  of NE $\frac{1}{4}$ , SE $\frac{1}{4}$  of NW $\frac{1}{4}$ , SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , NW $\frac{1}{4}$  of SE $\frac{1}{4}$  and NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of said Section 14. The proposed

point of diversion is within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 14, T 8 N, R 7 W, M.D.B. & M. The application was protested by Joseph T. Grace, David Sharp, Hjalmar and Olivia Peterson and George Fechter and 14 others.

#### PROTESTS

Joseph T. Grace claims a right to the use of water from Mark West Creek by virtue of Application 1205, Permit 563, License 86 and alleges in effect that any diversion from Porter Creek which is tributary to Mark West Creek would result in depriving him of the water to which he is entitled under License 86.

David Sharp claims a right based upon use of water from Porter Creek for the 25 years last past and alleges in effect that any diversion from Porter Creek as proposed would deprive him of his water supply which is used for irrigation, domestic and stock watering purposes.

Hjalmar and Olivia Peterson claim a right to the waters of Porter Creek by virtue of use thereof since 1909 for household, stock and irrigation purposes and allege in effect that the diversion of water as proposed by applicant would deprive them of the water to which they are entitled.

George Fechter, et al. claim a right to the waters of Porter Creek by virtue of use thereof since 1903, that the water has been used more or less all the year around for irrigation, domestic and stock watering purposes except during the middle of the summer when the flow in Porter Creek is so low that there is only enough water for domestic and stock watering purposes and that the diversion as proposed by applicant would result in depriving them of this water.

#### HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 6926 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources

and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on September 21, 1931, at 10:00 o'clock A.M. in Supervisors Room, Courthouse, Santa Rosa, California. Of this hearing applicant and protestants were duly notified.

#### GENERAL DISCUSSION

Porter Creek, the source of the proposed appropriation rises in the Mayacamas Mountains about 3 miles southwesterly of Calistoga, flows northwesterly a distance of about three miles and thence westerly five or six miles to its junction with Mark West Creek in the vicinity of Mark West Springs.

Albert P. Kogler, the applicant, owns 480 acres of land located on the headwaters of Porter Creek. On the property is a house and about an acre of fruit trees interplanted with alfalfa. There are about 2½ acres on the property which may be cultivated and applicant has about five hundred turkeys and one pig.

On one of the small forks of Porter Creek applicant has placed a diversion dam and diverts water through a pipe varying in diameter from one to two inches. The water supply is so small during the summer months that water is collected during the night for use during the day. During the winter the water is used for household purposes and a drinking supply for the turkeys only.

Mrs. Kogler testified that very little water passed her diversion point during the summer months, that what little water passed was stagnant and unfit for household use but if the water continued to run during the night it would keep on running in spite of the pools. At times however there is little or no flow during the night. Mrs. Kogler further testified that in June of this year after her dam had been constructed she noticed

some water flowing between the properties of Mr. Peterson and Mr. Sharp but also noticed that "there was a dry place and some pools" (page 14 transcript).

The property of Hjalmar and Olivia Peterson containing some 160 acres of land is adjacent to and downstream from the Kogler property. Hjalmar Peterson purchased his property in 1907 and resided there from 1909 to 1911 and from 1919 continuously to date. In 1919 he had a small prune orchard which produced about four tons of prunes. In 1924 he planted some alfalfa but discontinued the crop in 1925 and since that date has used the water only for domestic, garden, irrigation and stockwatering purposes (1 horse and 1 dog).

Mr. Peterson testified that from 1919 to 1929 there had been sufficient water for his purposes even during the summer months and that prior to the time when a dam was placed in the stream by the applicant there had always been water running through his property with the exception perhaps of a few days at a time.

It appears that at one time water had been diverted by means of a pipe line and hand pump for irrigation purposes but this use was discontinued and his present supply is obtained by dipping water out of Porter Creek by means of a bucket.

David Sharp owns a 240 acre tract of land adjacent to and downstream from the Peterson property. Testimony presented at the hearing indicated that use of water from Porter Creek was commenced by David Sharp in 1906 and by his predecessors in interest in the early sixties. Mr. Sharp diverts water by means of a ditch and pipe line and when available water is used throughout the year for domestic and stock watering purposes and for the irrigation of fruit trees, alfalfa and garden crops. In order to supplement the supply from Porter Creek a well has been sunk about 100 yards

from the creek which is about 12 feet deep and water has been pumped therefrom during the summer months for the last 4 or 5 years. The bottom of this well is about the same elevation as the creek bottom and Mr. Sharp claims that it is fed from the underflow of the creek.

In September of last year Mr. Sharp, being short of water, went up the creek to the Kogler property and found about 12 rock and brush dams, four of which he demolished and enough water flowed down to him for his domestic use. Since June of this year he has had no water from Porter Creek but on account of the fact that his life was threatened should he repeat his investigation of last year, no examination of the creek bed has been made.

Testimony presented at the hearing indicated that after about June 1st of each year Mr. Sharp takes practically the entire flow of Porter Creek except what little may seep through his rock diversion dam and is dissipated before reaching the protestants further downstream and that such use continues until the rains come, which is about October 1st.

No testimony was presented on behalf of Geo. Fechter, et al. and the testimony presented by Mrs. Kogler to the effect that Mr. Fechter diverts no water from Porter Creek remains unrefuted.

Mr. Joseph T. Grace owns a parcel of land containing some 90 acres on Mark West Creek about 6 or 7 miles below its junction with Porter Creek. Under Application 1205, Permit 563, License 86 he has the right to divert 1 1/8 cubic feet per second from Mark West Creek from about May 1st to about October 1st of each season for agricultural purposes. He usually begins to irrigate on May 1st and continues until about July 1st but stated at the hearing that for several years there had been such a deficiency in supply that he was unable to complete his irrigation. He stated that from about October 1st to about May 1st there was plenty of water in the stream for everybody.

From the testimony submitted it appears that from about May 1st until the rains come the waters of Porter Creek are entirely appropriated and that no water is available for appropriation by applicant for irrigation purposes. During the period from about October 1st to about May 1st there appears to be unappropriated water in Porter Creek which may be appropriated by applicant without interfering with prior vested rights but applicant is not seeking to appropriate for irrigation purposes during this period. It is believed therefore that the use of applicant should be confined to domestic and stock watering purposes as apparently there is no need of irrigation during the months when water is available over and above the present needs of the protestants.

For domestic use at permanent places of residence where there is stock or garden irrigation up to one half an acre, the maximum customary allowance is 0.025 cubic foot per second or approximately 16,000 gallons per day. This amount should be ample to take care of the domestic and stock watering needs of the applicant.

#### CONCLUSION

The domestic and stock watering uses proposed by the applicant are beneficial and it is the opinion of this office that Application 6926 should be approved for an amount not to exceed 0.025 cubic foot per second to be diverted from about October 1st to about May 1st for domestic and stock watering purposes only.

#### ORDER

Application 6926 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 6926 be approved for an amount of water not to exceed 0.025 cubic foot per second to be diverted from about October 1st to about May 1st for domestic and stock watering purposes and that a permit be granted 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 *23d* day of *December*, 1931.

EDWARD HYATT, State Engineer

BY *Harold Conkling*  
Deputy

WES:MP

