

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

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In the Matter of Application 8869 of G. L. and Irene B. Martell  
to Appropriate Water from Miller Canyon Creek, Tributary to  
Putah Creek via Pleasant Creek in Solano County for  
Irrigation and Domestic Purposes.

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DECISION A 8869 D 424

DECIDED August 25, 1938

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Appearances at hearing held at Sacramento July 15, 1938.

For Applicants

G. L. and Irene B. Martell

In propria persona

For Protestants

Henry Brinck Estate

Herbert Laycock

E. R. Thurber

H. R. Brinck

No appearance

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

General Description of Project.

Under Application 8869, applicants propose to divert water from Miller  
Canyon Creek at a point within the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 22, T 7 N, R 2 W,  
M.D.B. & M., for irrigation and incidental domestic purposes throughout the  
entire year on 101.44 acres of land within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 14, NE $\frac{1}{4}$  of  
NE $\frac{1}{4}$  of Section 22 and NW $\frac{1}{4}$  of Section 23, T 17 N, R 2 W, M.D.B. & M.

PROTESTS

Prior to the hearing, Application 8869 was protested by the Henry  
Brinck Estate and by Herbert Laycock. E. R. Thurber entered a verbal protest  
at the hearing.

The Henry Brinck Estate claims a right to appropriate from Pleasants Creek which right is based upon its Application 8867 filed with the Division of Water Resources on January 2, 1937, and approved by the issuance of Permit 4801 for an amount of water not to exceed 0.37 of a cubic foot per second to be diverted from about April 1 to about November 1 of each season for the irrigation of 20 acres of land within the  $N\frac{1}{2}$  of Section 12, T 7 N, R 2 W, M.D.B. & M. Protestant may divert at any point between a point within the  $W\frac{1}{2}$  of  $NE\frac{1}{4}$  and a point within the  $S\frac{1}{2}$  of  $NW\frac{1}{4}$  of Section 12, which points are from about  $2\frac{1}{2}$  to 3 miles below the proposed point of diversion of applicant. The lands of the Estate are apparently riparian to the stream. Protestant alleges in effect that should Application 8869 be approved, it would result in depriving it of water to which it is entitled under the prior Application 8867 for in years of normal run-off the flow in Miller Canyon Creek does not exceed 1 cubic foot per second after April 15. Protestant states that prior to April 1 applicant may divert 2 cubic feet per second without interfering with the rights of others.

Protestant Herbert Laycock claims a right to appropriate water from Pleasants Creek which right is based upon Application 6444 filed with the Division on September 24, 1929, and approved by the issuance of Permit 3417 for an amount of water not to exceed 0.37 of a cubic foot per second to be diverted from about November 1 to about June 15 of each season for the irrigation of 20 acres within the  $SE\frac{1}{4}$  of Section 1 and 10 acres within the  $NW\frac{1}{4}$  of  $NE\frac{1}{4}$  of Section 12, T 7 N, R 2 W, M.D.B. & M. Protestant may divert at any point between a point within the  $W\frac{1}{2}$  of  $SE\frac{1}{4}$  of Section 1 and a point within the  $NW\frac{1}{4}$  of  $NE\frac{1}{4}$  of Section 12, T 7 N, R 2 W, M.D.B. & M., which points are from about  $1/9$  to about  $3/4$  of a mile below the lowest diversion point of protestant Henry Brinck Estate. Protestant Laycock alleges in effect that should Application 8869 be approved it would result in depriving him of water to which he is entitled under his prior Application 6444. He states that since he has been using the water he has had to stop pumping in

May or June due to the scarcity of water in the Creek.

E. R. Thurber claims a right to the waters of Miller Canyon Creek which right is based upon riparian ownership and intermittent use for some seven years. His point of diversion is located approximately 3/8 of a mile below the proposed diversion point of applicant. He is concerned lest the proposed appropriation by applicant would result in interference with his right as a riparian owner.

#### HEARING SET

Application 8869 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 public hearing on Friday, July 16, 1938, at 10:00 o'clock A.M. in Room 401, Public Works Building, Sacramento, California. Of this hearing applicant and record protestants were duly notified.

#### GENERAL DISCUSSION

Miller Canyon Creek rises in Solano County, in the southwestern part of T. 7 N, R 2 W. M.D.B. & M., on the eastern slope of Vaca Mountains at an altitude of about 2000 feet above sea level; flows somewhat north of east three miles to its junction with Pleasants Creek (tributary through Putah Creek to Yolo Basin).

Pleasants Creek rises in Solano County in the southeastern part of T. 7 N, R 2 W, M.D.B. & M. at an altitude of about 425 feet above sea level; flows somewhat east of north about 5 miles into Putah Creek.

The drainage areas of the watersheds are as follows:

Miller Canyon and Pleasants Creek above junction with Putah Creek,	17.7 square miles
Miller Canyon and Pleasants Creek above protestant Laycock	16.5 square miles
Miller Canyon and Pleasants Creek above protestant Brinck Estate	15.8 square miles
Miller Canyon Creek above junction of Miller Canyon Creek and Pleasants Cr.	7.5 square miles

Miller Canyon Creek above applicant's point of diversion	7.1 sq. mi.
Pleasants Creek above junction with Miller Canyon Creek	2.3 sq. mi.

Apparently the only one present at the hearing familiar with the conditions of flow in Miller Canyon Creek and Pleasants Creek throughout their entire length was protestant E. R. Thurber and reliance is therefore placed upon his testimony. This was to the following effect:

After debouching from Miller Canyon, the stream enters applicants' property on the west side and flows in a meandering course through it until the early part of June in years of light rainfall, and until about August 1 in years of heavy rainfall. During the other spring and summer months, until the flow ceases altogether, the water flows a distance of only about 1000 feet below applicants' weir where it is lost by evaporation and percolation into the gravels of the stream bed. About one-half mile further downstream the water again rises to the surface on the property of protestant Thurber and flows through his property and the properties of Hathaway and Pleasant below him. The flow through Thurber's property is less, however, than that at the point where it enters applicants' property and is sufficient in quantity only for the watering of stock. Passing on downstream for another half or three-quarters of a mile to the Brinck Estate property the flow in Pleasants Creek increases somewhat but not to the extent that it is greater than the flow available to applicant. Below the Brinck Estate property pools are formed in the streambed through which there is a slight flow and from the Laycock property to the E. W. Thurber property, which is at the junction of Pleasants Creek and Putah Creek, the water disappears altogether early in April.

At the hearing, rainfall records were introduced by H. R. Brinck. These records were obtained by Mr. Brinck on the Estate property and are as follows:

<u>Year</u>	<u>Rainfall (inches)</u>	<u>Year</u>	<u>Rainfall (inches)</u>
1916	35.75	1928	24.51
1917	14.76	1929	19.28
1918	21.59	1930	22.79
1919	27.60	1931	16.56
1920	12.71	1932	29.57
1921	24.26	1933	18.48
1922	26.94	1934	24.02
1923	21.58	1935	30.65
1924	24.54	1936	33.78
1925	22.50	1937	28.28
1926	26.15	1938	42.66
1927	13.19		

23 year mean, 1916 to 1938 incl.                      24.59

It would appear from the testimony of Mr. Brinck that when the rainfall during the year was from 16 to 22 inches the flow in the creek at his property would cease about June 1; that when the rainfall was from 22 to 30 inches the flow on June 1 would be approximately 0.5 of a cubic foot per second and would cease altogether between the 15th and 20th of July. It appears that although Mr. Brinck did not irrigate during the year 1938 (which was one of unusual rainfall) on account of the pear blight, he would not have been able to irrigate during the time that he would have needed the water, i.e., from June 14 to June 25 as there was none flowing in the creek at his place during this period, a fact that was attributed by him to diversions above by Mr. Martell, a conclusion which was not denied by applicant.

While there is approximately 15.8 square miles of drainage area above protestant Brinck Estate's point of diversion as against 7.1 square miles of drainage area above applicants', the average elevation of the watershed is much lower and reliance has to be placed on the upper watershed for the irrigation supply during the summer months, the testimony presented at the hearing indicating that although Pleasants Creek is an increasing stream at its lower end during and immediately following a rainfall, the water ceases to flow in the lower tributaries about ten days thereafter.

Protestant Laycock was not present at the hearing and therefore no testimony was presented as to the flow of the Creek through his property or use of water made by him. However, on May 2, 1933 the project under his Application 6444, Permit 3417 was visited by an engineer of this office who reported that on that day there was an estimated flow of 2.0 cubic feet per second in Pleasants Creek. The rainfall during this year according to the records of Mr. Brinck was 18.48 inches or approximately 76% of the 23 year normal. According to Mr. Brinck the water would have ceased to flow at his point of diversion during this year about June 1.

Further testimony presented by Mr. Brinck indicated that water ceased to flow at his place about June 25, 1937, during which year the rainfall was 28.28 inches or 116% of normal and that early in May of that year the flow was 2.0 cubic feet per second. The flow during the month of May, however, depends upon the temperature during the month, it varying at times as much as 30%.

From the above it would appear that during the month of May during a year of normal runoff there is water in the creek in excess of the amount which protestants have a right to appropriate under applications before this office the use under which is still incomplete. The amount of water which may be available for the use of applicant during this month will depend largely upon the temperature and at times applicant may be forced to discontinue diversion earlier than at others. We believe, however, that no diversion may be made from about June 1 to about November 1 without seriously interfering with the prior rights below and therefore Application 8869 should be approved for diversion from about November 1st to about May 31st of each season only.

#### ORDER

Application 8869 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 8869 be approved for an amount of water not to exceed 2.0 cubic feet per second to be diverted from about November 1 to about May 31 of each season 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 25 day of Aug 1938.

EDWARD HYATT, STATE ENGINEER

By HAROLD CONKLING

Deputy

(Seal)  
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