

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

oOo

In the Matter of Application 9678 of Sky L'Onda Mutual
Water Company to appropriate from La Honda Creek,
Tributary to San Gregorio Creek in
San Mateo County for Domestic
and Fire Protection Purposes

oOo

Decision 9678 D. - 477

Decided *May 12, 1941*

oOo

APPEARANCES AT HEARING HELD AT SAN FRANCISCO, MAY 3, 1940

For Applicant

Sky L'Onda Mutual Water Company

U. S. Webb

For Protestants

Helen Hughes

No appearance

La Honda Vista Water Co. No. 1

No appearance

Wm. J. Lebenedetti & Angie Francis

C. C. Boynton

R. W. Krobitzsch

Cyril Williams, Jr.

Ethel St. John

Cyril Williams, Jr. and
Chris R. Peterson, II

Louis E. Zanoni

No appearance

Annie L. Sears

Cyril Williams, Jr. and
Chris R. Peterson II

N. E. Tichenor

No appearance

R. E. Tichenor

No appearance

Carlo Modena

No appearance

T. E. Roe

No appearance

Harry E. Wright	No appearance
J.E. and E.J. Montevaldo	No appearance
Ellen R. Bell	No appearance
J. D. Derry	No appearance
Mauda Evelyn Wright, Executrix of Woodhams Estate	Cyril Williams, Jr.
R. J. Pringle	No appearance
Mrs. W. B. Thompson	No appearance
W. B. Thompson	No appearance
Viola B. Derry	No appearance
Lillian M. Woodhams	No appearance
Archie F. Woodhams	No appearance
Mrs. Charlotte Woodhams	No appearance
Gertrude M. Pringle	No appearance
Manual V. Santos	No appearance
Mosquete Estate	No appearance
Manuel Souza	No appearance
John V. Souza	No appearance
Eric M. Alsford	No appearance
Antone Andrade	No appearance
A. V. Andrade	No appearance
Joseph Silva	No appearance
Serefino Quadros	No appearance
Ralph W. Evans, as Building & Loan Commis- sioner of the State of California in the Liquidation of California Mutual Building and Loan Association	Walter Carrington and Patrick J. Kearns
Frank F. Chapman	Carl W. Anderson

George and Henry W. Rascoe

No appearance

The Questa La Honda Guild, a corp.

Cyril Williams, Jr.

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

OPINION

General Description of Project

Under Application 9878 it is proposed to appropriate 115 gallons per minute (165,600 gallons per day) throughout the year by direct diversion and 30 acre feet per annum by storage from September 15 to July 1 for domestic and fire protection purposes on approximately 620 lots in Sky L'Onda Mutual Water Company District within Sections 25, 26 and 36, T 6 S, R 4 W, M.D.B.M.

At the proposed point of diversion on La Honda Creek applicant proposes to divert water by gravity a distance of about 265 feet to a sump just off the stream bed containing charcoal and gravel. From this sump water will be pumped to 2 regulatory tanks from which water will be released into the existing distributing system. Also from the point of diversion applicant proposes to pump water to 2 storage reservoirs. The water stored in these reservoirs during the period from September 15 to July 1 will be released to the main diversion dam from which the water will be passed down the streambed to the sump and from there will be pumped to the regulatory tanks.

Protests

Protests against the approval of Application 9878 were filed by the following:

- (1) La Honda Vista Water Company No. 1
- (2) Helen Hughes
- (3) Ethel St. John
- (4) Annie L. Sears
- (5) William Debenedette and Angie Francis
- (6) J.E. and E.J. Montevaldo
- (7) R. W. Krobitzsch

- (8) R. W. Krobitzsch, Ethel St. John, Louis F. Zanoni, Annie L. Sears, N.D. Tichenor, R.E. Tichernor, William J. Debenedette, Carlo Modeno, T. E. Roe, Montevaldo Bros., Ellen E. Bell, J. D. Derry, Harry E. Wright, Maude Evelyn Wright, R. J. Pringle, Mrs. W.B. Thompson, W.B. Thompson, Viola B. Derry, Lillian M. Woodhams, Archie F. Woodhams, Mrs. Charlotte Woodhams, Gertrude N. Pringle, Manuel V. Santos, Mosquete Estate, Manuel Souza, John V. Souza, Eric M. Alsford, Antone Andrade, A.V. Andrade, Joseph Silva and Serafino Quadros.
- (9) Ralph W. Evans, as Building and Loan Commissioner of the State of California in the Liquidation of California Mutual Building and Loan Association
- (10) Frank F. Chapman
- (11) George W. and Harry W. Rascoe
- (12) The Cuesta La Honda Guild, a corporation

La Honda Vista Water Company No. 1 by Helen Hughes, President, bases its claim of right to use water from La Honda Creek upon the doctrine of riparian rights. Protestant admits that no use of water from La Honda Creek has actually been made as the existing supply from a small brook tributary to La Honda Creek has met the requirements of the Company except in very dry years. It claims however that it has depended upon La Honda Creek as a "stand-by" source of supply and that the waters of this stream will be necessary as the tract develops. Protestant also claims that any diversion above will tend to decrease the value of its lands as a recreational and residential area.

The protest of Helen Hughes is substantially the same as that submitted by her as president of La Honda Vista Water Company No. 1.

Ethel St. John claims a right to the waters of La Honda Creek by virtue of riparian ownership and use for domestic purposes at five houses, a gas station, two stores and a garage, and for stock watering and the irrigation of seven acres of land. She alleges in effect that should Application 9873 be approved she would be deprived of water to which she is entitled.

Annie L. Sears claims the ownership of a 350 acre tract of land

bordering upon La Honda Creek and that water is used for domestic purposes at a hotel, cottages and tents and for stock watering and irrigation purposes and alleges in effect that should Application 9873 be approved it would deprive her of the water to which she is entitled.

Williams J. Debenedetti and Angie Francis claim the ownership of 75.6 acres of land riparian to San Gregorio Creek to which La Honda Creek is tributary and also appropriative rights initiated prior to the effective date of the Water Commission Act. Their present use is approximately 300 g.p.m. for the irrigation of at least 70 acres of land and they allege in effect that except during the months of January, February and March there is no unappropriated water in San Gregorio Creek.

J. E. and E. J. Montevaldo claim the ownership of land riparian to San Gregorio Creek and the use of 300 g.p.m. from May to December of each year for irrigation purposes. They allege in effect that should Application 9873 be approved it would result in depriving them of water to which they are entitled except in years of excessive rainfall.

R. W. Krobitzsch claims a right to the use of the waters of San Gregorio Creek by virtue of the ownership of lands riparian thereto and use commenced prior to the effective date of the Water Commission Act. He owns lands within the NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T 7 S, R 4 W, M.D.B.M. ("Troutmers") which he is subdividing and selling and also the so-called "Driver Ranch" located near the mouth of San Gregorio Creek upon which water has been used for irrigation purposes during the past thirty years to the extent of 200 g.p.m. for the irrigation of over 100 acres of farm crops. Mr. Krobitzsch alleges in effect that should Application 9873 be approved it would result in depriving him of sufficient water to adequately serve his recreational and irrigation purposes and would result in an extensive loss to him.

The joint protest of R. W. Krobitzsch and 30 others although incomplete sets forth the claims of ownership of riparian and appropriative rights initiated prior to the effective date of the Water Commission Act and alleges infringement upon their rights should Application 9678 be approved. Several of these protestants filed individual protests.

Ralph W. Evans, as Building and Loan Commissioner of the State of California, in the Liquidation of California Mutual Building and Loan Association, claims rights to the waters of La Honda Creek by virtue of riparian ownership and appropriation initiated prior to the effective date of the Water Commission Act and alleges in effect that the proposed appropriation would result in reducing the surface and subsurface flow of La Honda Creek during the summer season, which flow is essential to the proper administration of the Cuesta La Honda project as an asset of California Mutual Building and Loan Association, in liquidation. Protestants' point of diversion is described as being located within the $W\frac{1}{2}$ $SW\frac{1}{4}$, Section 14, T 7 S, R 4 W, M.D.B.M.

Frank C. Chapman claims to have acquired a part of the $NE\frac{1}{4}$ of $NW\frac{1}{4}$ and $NW\frac{1}{4}$ of $NE\frac{1}{4}$ of Section 26, T 8 S, R 4 W, M.D.B.M. upon which applicants' points of diversion and rediversion are located, from his father who was an appropriator from the creek about 1894 and that after acquiring the property he continued to use the water from the creek for recreational purposes.

He states that in 1928 one C. S. Crary entered into a contract with him to purchase all of his lands east of Skyline Boulevard and proceeded to subdivide them and to sell lots to various individuals who are now members of applicant Company and to supply them with water from his Woodside Farms; that Crary also had a contract to purchase protestant's lands west of the

Skyline Boulevard which applicant is now endeavoring to serve with water and proceeded without his knowledge to excavate a reservoir for the storage of water; and that Crary defaulted in his agreement to purchase these lands and the property reverted to the protestant.

He further states that one Watt then contracted to purchase these lands and that he (Chapman) had expressly reserved from the agreement all of the Creekbed and the lakes (reservoirs), with permission to Watt to take water from the creek and to enter the lands so long as he was not in default on his contract; that later Watt defaulted and the lands were returned to protestant's possession and that he claims ownership to all of the lands.

He claims that the land where the lake and dam are situated is valuable property and that if the lake and dam were discontinued it could be subdivided and sold for cabin sites to his advantage.

He also claims that he has attempted to negotiate a lease with the applicant but that applicant has repeatedly refused to negotiate or pay any rental for the property; that it has also extended the boundaries of the tract which it proposes to serve to include lands outside of La Honda Creek watershed and has excluded other lands within the watershed which are entitled to the use of water from the creek.

Protestant alleges in effect that applicant has no right to enter upon his lands for the purpose of appropriating water and that any action taken by this office would be an idle gesture and would result in litigation.

George M. and Henry W. Fessce claim riparian right to the use of water from La Honda Creek. Although no use of water has been made, protestants acquired the property consisting of about 12 acres for subdivision purposes and allege that the water is essential to the development. They

also allege in effect that should Application 9673 be approved their property would be surrounded on three sides by lands included as the place of use in Application 9673 and would be "boxed in" with no available water supply. These protestants claim that Application 9673 is misleading in that the water applied for is for the benefit of 620 lots whereas maps on file with the County Recorder indicate a total of 276 lots in the Sky L'Onda Tracts as of March 1, 1939.

The Cuesta La Honda Guild, a corporation, composed of the purchasers of lots at Cuesta La Honda claims rights by virtue of riparian ownership, and present and past use of the water for domestic, irrigation and recreational purposes. It alleges in effect that should Application 9673 be approved it would result in depriving about 250 lot owners of water to which they are entitled. Its point of diversion is located within the $\frac{1}{4}$ of $\frac{1}{4}$ of Section 14, T 7 S, R 4 W, M.D.B.M. downstream from the proposed point of diversion of the applicant.

Hearing Set in Accordance With
Section 1a of the Water Commission Act

Application 9673 was completed in accordance with the Water Commission Act and the requirements of 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 Friday, May 3, 1940 at 10:30 o'clock in Room 318 State Building, San Francisco, California. Of this hearing applicant and protestants were duly notified.

Field Investigation

On May 20, 1940, a field investigation of the situation was made by Mr. Biscoe Kibbey, engineer for the Division of Water Resources. Others present at the investigation were:

C.C. Boynton, Attorney for Wm. J. Debenedetti and Angie Francis
William J. Debenedetti and brother.

Cyril Williams, engineer for P.W. Krobitzsch, et al.

J.D. Pierce, W. Schoop and A. J. Turner, representing the applicant

General Discussion

After reviewing the testimony presented at the hearing, the report on the field investigation and other sources of information, the interested parties were informed that apparently water was available for storage under Application 9678 from about December 15 to about March 15 in the amount of 30 acre feet per annum applied for without interference with prior vested rights and that during this same period unappropriated water was likewise available for direct diversion in sufficient quantities to supply the peak demand were the entire subdivision developed. This peak demand based upon the present rate of consumption was estimated at 55,000 gallons per day and the interested parties were informed that it was proposed to reduce the amount of water applied for (165,600 g.p.d.) to this amount. Furthermore the Division found that during a season of favorable run-off there was unappropriated water in La Honda Creek much later in the season than March 15 and that so long as there was surplus water wasting into the sea there was apparently no reason why the applicant could not divert and use the water.

The interested parties were therefore informed under date of June 8, 1940 that it was proposed to condition the permit issued in approval of Application 9678 along the following lines:

"The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 30 acre feet per annum to be collected in storage from December 15th to March 15th of each season at the maximum rate of 200 g.p.m., and 55,000 g.p.d. by direct diversion from December 15th to March 15th of each

season, provided however, that in years of late and abundant flow direct diversion may be continued after March 15th as long as water is wasting to the sea."

The proposed solution apparently met with the approval of the applicant and Mr. Charles C. Boynton representing William J. Ebenedetti and Angie Francis but Cyril Williams objected to the proposal upon the grounds that he believed that the 30 acre feet of storage was sufficient to care for the future needs of the applicant without any direct diversion; that whether or not water was wasting into the sea was no criterion as to whether or not there was unappropriated water available in La Honda Creek as the use of water by his client Mr. Krobitzsch at Troutmere was for fish propagation, a non-consumptive use and that applicants' proposed method of diversion was objectionable in that there would always be an uncertainty as to whether applicant was rediverting stored waters or diverting directly from the creek without storage.

As direct diversion without storage can be made at less cost to the applicant than storage applicant should have the privilege of diverting water directly from the stream without storage at such times as unappropriated water may be available in the stream reserving the storage for use at times when the direct flow can not be used without interfering with prior rights below.

The mere fact that there may be water flowing into the ocean from San Gregorio Creek does not in itself indicate that non-consumptive use above such as that of Mr. Krobitzsch at Troutmere is fully satisfied. It is, however, indicative of the existence of such a condition and the burden will be upon the applicant to divert water from La Honda Creek at such times only as will not interfere with prior rights below whether they are for consumptive or non-consumptive purposes.

As to applicants' proposed method of diversion and use it would appear that the following clause which is now inserted in all permits issued by the Division would take care of that situation.

"All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Division of Water Resources in accordance with law and in the interest of the public welfare to prevent waste, unreasonable method of use or unreasonable method of diversion of said water."

Furthermore the applicant under date of January 17, 1941 addressed a letter to certain of the protestants and other interested parties which in effect stated that it recognized their prior rights and agreed that any hostile diversion would be permissive only, thus protecting them against a possible claim of a prescriptive right on the part of the applicant.

As a result of this letter the protests of R.W. Krobitzsch, Louis P. Zanoni, Archie F. Woodhams, Viola Derry, Maude Evelyn Wright, Estate of W.S. Woodhams, Lillian M. Woodhams, Ellen R. Bell, E. J. Montevaldo, J. E. Montevaldo, J. D. Derry, Harry E. Wright, Annie Sears, William J. Debenedetti and Angie Francis were definitely withdrawn. The other protestants have evidenced little concern in the matter since the hearing was held and apparently are either satisfied with the issuance of permit as proposed or are no longer interested in maintaining their protests.

The protest of Frank G. Chapman has little merit as it appears that the applicant is already in control of the property and has been using the water for some time. Furthermore as a mutual water company it has powers of condemnation.

Conclusion

The applicant has consented to the conditioning of any permit which may be issued in approval of Application 9678 along the lines set forth in

our letter of June 8, 1940; the most active of the protestants have entered into an agreement with the applicant whereby they have actually withdrawn their protests, and it has been definitely established that during a year of normal runoff there is unappropriated water which may be taken and used by the applicant without interfering with prior rights. It is therefore the opinion of the Division that Application 9678 should be approved subject to the conditions set forth above.

ORDER

Application 9678 for a permit to appropriate water having been filed with the Division of Water Resources, protests having been received, a public hearing having been held, followed by a field investigation and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 9678 be approved for an amount of water not to exceed 55,000 gallons per day by direct diversion from about December 15th to about March 15th of each season; provided, however, that in years of late and abundant flow direct diversion may be continued after March 15th as long as water is wasting to the sea; and also for an amount of water not to exceed 30 acre feet per annum to be collected to storage from about December 15th to about March 15th of each season at a rate of diversion not to exceed 200 gallons per minute.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 12 day of *May* 1941.

EDWARD HYATT, State Engineer

By MAROLD CONKLING
Deputy

(Seal)
m