

5-811

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

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In the Matter of Application 4542 of the East Bay Country Club to  
Appropriate from Crow Creek a Tributary of San Lorenzo Creek  
in Alameda County for Domestic Purposes and the Irrigation  
of a Golf Course, and in the Matter of Application 5811  
of the West Oakland Home to Appropriate from the Under-  
ground and Surface Waters of Crow Canyon a Tributary  
of San Lorenzo Creek in Alameda County for Domestic  
and Swimming Pool Purposes.

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DECISION A. 4542, 5811 D 197  
Decided *June 21, 1928.*  
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APPEARANCES AT HEARING HELD February 25, 1927 on Application 4542.

For Applicant:

East Bay Country Club

H. H. McPike

For Protestants:

Eden Township County Water District

Lester Perry and  
Cyril Williams, Jr.

Kate and Marie Bowman, Joseph Martin,  
Manter Bros., et al

C. W. White

Charles A. Grate

In propria persona

EXAMINER: Everett H. Bryan, Deputy Chief for Edward Hyatt, Jr.,  
Chief of Division of Water Rights.

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APPEARANCES AT HEARING HELD May 16, 1928 on Applications 4542 and 5811

For Applicants:

East Bay Country Club

No appearance

West Oakland Home

No appearance

For Protestants:

Charles A. Grate (4542)

In propria persona

Cyril Williams, Jr. (4542)

In propria persona

Eden Township County Water District (4542)

Cyril Williams, Jr., and  
Lester Perry

R. C. Acevedo and Joseph Martin (4542)

C. W. White

Edwin S. and Clara A. Warren (5811)

No appearance

Joseph Martin (5811)

C. W. White

EXAMINER: Everett H. Bryan, Deputy Chief for Harold Genkling, Chief of  
Division of Water Rights.

## O P I N I O N

### General Features of Applications

#### Application 4542

Under Application 4542 filed April 16, 1925 by the East Bay Country Club it is proposed to divert 30 acre feet per annum of the waters of Crow Creek tributary to San Lorenzo Creek in Alameda County, from about November 1st to about June 1st of each season for domestic purposes and the irrigation of a golf course on 100 acres of land located in Sections 24 and 25, T 2 S, R 2 W, M.D.B. & M. The capacity of the reservoir will be 8,000,000 gallons or approximately 24.55 acre feet. The application was protested by Charles A. Grate, Eden Township County Water District and Kate and Marie Bowman, et al including R. C. Azevedo and Joseph Martin, and at the hearing held May 15, 1925 by Cyril Williams, Jr.

#### Application 5611

Under Application 5611 filed January 28, 1928 the West Oakland Home proposes an appropriation of 0.30 cubic feet per second of direct diversion throughout the entire year from the surface and underflow waters of Crow Canyon, a tributary of San Lorenzo Creek in Alameda County, for domestic and swimming pool purposes. The swimming pool and property to be served for domestic purposes is located in the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 25, T 2 S, R 2 W, M.D.B. & M.

The West Oakland Home is a charitable organization for the care and training of orphans and destitute children and the water from Crow Canyon will be used to supply the requirements of a childrens summer camp at which there will be approximately 75 children and attendants. Of the 0.30 cubic feet per second or 135 gallons per minute, about 130 gallons per minute would be run continuously through the swimming pool and the remaining 5 gal-

tons per minute would be pumped into a tank for household and domestic uses at the camp. The application was protested by Edwin T. and Clara A. Warren, Joseph Martin and by the Eden Township County Water District. The protest of the Eden Township County Water District was however withdrawn on May 12, 1928.

Protests against the Approval of Application 4542  
of The East Bay Country Club

The Eden Township County Water District claims a right to use water from the source from which the applicant proposes to divert based upon riparian ownership of land owners along San Lorenzo Creek and diversions from wells fed by percolating waters from said creek and alleges in effect that the proposed diversion of the applicant would result in decreasing the supply to the underground waters from which the District obtains its supply.

Kate and Marie Bowman and thirty other protestants claim interference with their riparian rights to pump from San Lorenzo Creek.

Charles A. Crate under Application 3248, Permit 1546, License 538 has the right to divert 0.15 of a cubic foot per second from San Lorenzo Creek from about April 1st to about September 30th for irrigation purposes on 12.39 acres. He also claims rights by virtue of riparian ownership and use prior to the passage of the Water Commission Act and alleges in effect that if Application 4542 were approved it would result in depriving him of water to which he is lawfully entitled, there being insufficient water after June 1st to supply his needs, and that all of the water available after June 1st is seepage water.

Mr. Cyril Williams, Jr., on his own behalf at the hearing on May 16, 1928, entered a protest to the approval of Application 4542, on the grounds that the proposed diversion would deprive him of the necessary water on a parcel of land which he has contracted to purchase.

Protest Against the Approval of Application 5811

Edwin S. and Clara A. Warren under Application 3426, Permit 1548, License 539 have the right to divert 0.10 of a cubic foot per second from San Lorenzo Creek from about May 15th to about July 15th of each season for irrigation purposes on 8 acres of land within the town of Hayward. They also claim riparian rights and allege the proposed appropriation would interfere with their use of water inasmuch as during the irrigation seasons of 1926 and 1927 there was insufficient water in San Lorenzo Creek at their intake to warrant the installation of a pump. They allege that there is insufficient water in San Lorenzo Creek to satisfy the present users.

Joseph Martin filed no regular protest but appeared at the hearing and protested against any diversion which would result in the diminution of the subflow of the creek.

Hearings Held in Accordance with Section 16  
of the Water Commission Act

Application 4542 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing in accordance with Section 16 of the Water Commission Act on February 25, 1927, at 10:30 o'clock A.M. in the State Building, San Francisco, California. Of this hearing applicant and protestants were duly notified. The hearing was convened but as applicant was not ready to proceed with its case and there appeared to be a prospect of an agreement between the applicant and protestants if additional time was allowed, the hearing was continued indefinitely.

Application 5811 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of

Water Rights and as applicant and protestants under Application 4542 had failed to reach an agreement, and since both applications proposed diversions from the same source both Application 4542 and 5811 were set for a public hearing in accordance with Section 16 of the Water Commission Act on May 16, 1928 at 10:00 o'clock A.M. in Room 118 State Building, San Francisco, California. Of this hearing applicants and protestants were duly notified. Neither of the applicants appeared at this hearing.

#### Physiography and Hydrography

Crow Creek, a tributary of San Lorenzo Creek in Alameda County and the source of proposed diversion common to both applications, has a drainage area of approximately ten square miles. A considerable portion of the water from this source sinks into the delta of San Lorenzo Creek between Hayward and San Francisco Bay and contributes to the underground waters from which the supply of the Eden Township County Water District and other users of water from the cone derive their supply.

While no information was submitted at the hearings as to the amount of water normally flowing in Crow Creek, data were presented which would appear to indicate that there was little or no surface flow during a normal year from about the latter part of June or first part of July until the coming of the fall rains.

At Hayward on San Lorenzo Creek there is a gaging station below about 45 square miles of watershed. Measurements made at this station indicated that in June 1921 the flow from this watershed was as low as 1.4 acre feet per day. In May 1922 the lowest flow was 3.9 acre feet per day. In June 1922, 2.14 acre feet per day. In July 1922 the lowest flow was only 0.35 acre feet from the entire watershed and it all disappeared into the gravels below Hayward.

## DISCUSSION OF PROTESTS

### Protests against Application 4542

Testimony presented at the hearing indicated that with the exception of flood flows which occur between about December 1st and March 1st or April 1st the normal flow of San Lorenzo Creek and its tributaries percolates into the San Lorenzo cone and contributes to the underground supply from which the protestants pump.

While the protestants admitted that a portion of the flood flows could be made available for the use of the applicant provided that the reservoir be so constructed as to allow the normal flow to pass on down the creek so as to replenish the underground gravels of the San Lorenzo cone, the applicant has not signified its intention to comply with this reasonable request on the part of the protestants and it is the opinion of this office that the construction of the dam as proposed would interfere with the regimen of the stream to such an extent as to insure to the injury of the protestants. The hearing held on February 25, 1927 was indefinitely postponed in order that the applicant might endeavor to adjust the matter with the protestants but insofar as we know no attempt has been made by applicant to meet this objection on the part of the protestants.

Furthermore, inasmuch as the Division of Water Rights has received no communication from the applicant since August 18, 1927, although several letters have been addressed to it since that date and since no appearance was made by applicant at the May 1928 hearing it is concluded that the applicant has abandoned the project and Application 4542 should be cancelled.

### Protests Against Application 5811

No appearance was made at the May hearing in behalf of protestants Edwin S. and Clara A. Warren and it may therefore be assumed that they did

not care to press their protest against the application.

As to the other protestants it appeared that they had no objection to the proposed diversion by the West Oakland Home provided that the overflow from the swimming tank be returned to the stream and the sub-surface flow be allowed to pass down to them. They conceded that the applicant had the right to use water for domestic purposes as well as other owners on the stream.

As it is clearly indicated in the application that the West Oakland Home intends to divert about 135 gallons per minute of which about 150 gallons per minute will be passed continuously through the swimming pool and about 5 gallons per minute used for domestic purposes the waste from which will naturally return to stream or ground water, the only loss being that by evaporation incidental to these uses it is the opinion of this office that the loss to the lower users on San Lorenzo Creek will be negligible and since the use to which the applicant proposes to put the water is a useful and beneficial one the application should be approved.

Although the applicant was not represented at the hearing the West Oakland Home has been very attentive to the details of its application and has been very diligent in the completion thereof. Subsequent to the hearing this office was informed that the failure of any representative of the applicant to appear at the hearing was due entirely to a misunderstanding as to who was to attend, and it was the desire of applicant that failure to attend be not construed as indicating indifference on its part.

O R D E R

Applications 4542 and 5611 for permits to appropriate water having been filed by the Division of Water Rights as above stated, protests having been filed, public hearings having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that the said Application 4542 be rejected and cancelled upon the records of this office, and

IT IS HEREBY FURTHER ORDERED that the said Application 5911 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 21<sup>st</sup> day of June, 1928.

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(Harold Conkling)  
CHIEF OF DIVISION OF WATER RIGHTS

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