

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

oOo

In the Matter of Application 6218 of Santa Cruz Development
Company to appropriate from West Branch of Branciforte
Creek, also called Carbonero Creek in Santa Cruz
County, for Irrigation and Domestic Purposes.

oOo

DECISION A. 6218 D 290

Decided

May 12, 1931

oOo

APPEARANCES AT HEARING HELD AT SANTA CRUZ, MARCH 28, 1931.

For Applicant

Santa Cruz Development Company

Wm. A. Boekel

For Protestant

Emma Bartlett

Harry J. Bias

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

oOo

O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Application 6218 was filed by the Santa Cruz Development Company
on March 15, 1929. It proposes an appropriation of 3.5 cubic feet per second
throughout the entire year for irrigation and domestic purposes on 530.3 acres
of land of which 102.5 acres is laid out as a golf course and the remaining
acreage has been divided into 500 residence lots. The irrigation use will
be confined strictly to the golf course except for such irrigation use as
may be incidental to the domestic use at the residences and clubhouse and

hotel. The point of diversion is at a point on the West Branch of Branciforte Creek within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T 11 S, R 1 W, M.D.B. & M. The application was protested by Emma Bartlett.

PROTEST

Mrs. Emma Bartlett objects to the approval of Application 6218 on the grounds that it will interfere with her rights as a riparian owner, and deprive her of sufficient water for stock watering purposes, for keeping alive the shrubs and trees along the creek and prospective use for irrigation and domestic purposes on lands which she proposes to subdivide for recreational purposes. She also claims that the amount of water applied for is excessive.

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

Application 6218 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 on March 28, 1931, at 10:00 o'clock A.M. in the Council Chamber of the City Hall, Santa Cruz, California. Of this hearing applicant and protestant were duly notified.

DISCUSSION

The Santa Cruz Development Company is the owner in fee of a tract of land containing 530.3 acres lying just north of the city limits of Santa Cruz. A portion of the property is bounded on the east by the center line of the West Branch of Branciforte Creek, also known as Carbonero Creek, the source of the proposed appropriation described in Application 6218. Since its acquisition the property has been developed into an eighteen hole golf course and a residence subdivision. The golf course has been completely constructed and four residences built. A water distribution system has been installed and is in use at the present time. A power house has been erected

at the upper end of the property in which a motor and pump have been installed and water is pumped from the mains of the City of Santa Cruz to a reservoir from which it is distributed for irrigation purposes on the golf course and for domestic use at the four residences. The remaining portion of the applicant's lands have been subdivided, macadam roads have been constructed and residence lots are for sale.

The applicant now proposes to extend a pipe line from the pump house easterly to the stream bed of Carbonero Creek for the purpose of obtaining a supply from this source rather than by purchase from the City whenever sufficient water is available augmenting any deficiency by purchase from the City.

At the present time the applicant is consuming a yearly average of about 0.27 cubic foot per second for the irrigation of the golf course and domestic use at the four dwelling houses. The maximum use occurred during the month of September 1930 when 2,054,000 cubic feet of water were consumed at an average rate of 0.80 cubic foot per second.

Mrs. Emma Bartlett, the protestant, owns a tract of land containing 166.6 acres of land also bordering on Carbonero Creek and lying immediately east of applicant's property. Testimony presented at the hearing indicated that at one time protestant hauled water in buckets from the creek for domestic purposes but at the present time domestic water is purchased from the City of Santa Cruz. For many years and at the present time the only use of water from Carbonero Creek, made by the protestant has been and is for watering about 40 or 50 head of stock from May or June to the end of the year. No actual diversion of the water from the stream bed is made by the protestant, the stock being watered directly therefrom.

The property of the protestant is also suitable for recreation purposes and sixty acres have been subdivided into residence lots, but beyond the survey and preliminary map of the subdivision nothing further has been done. No appropriation has been made for a water supply for this tract and apparently protestant is depending entirely upon her riparian right. She is primarily interested in having the flow of Carbonero Creek maintained for the purpose of preserving the shrubbery and scenic advantages of the creek along her property and the future use for domestic and irrigation purposes on the subdivision.

Carbonero Creek, the source of the proposed appropriation is usually a torrential stream during the winter time but the flow rapidly diminishes as the rains cease and during the summer time it is a very small rivulet. The City of Santa Cruz diverts water from Carbonero Creek at a point about three miles above the applicant's proposed point of diversion and it appears that the entire summer flow of the creek is diverted at this point. However there are springs and small tributaries between the City's point of diversion and applicant's proposed point of diversion which contribute to the flow of the Creek and at all times there has been sufficient water for the stock watering use of the protestant and water has always flowed past the lower boundary of protestant's property to the Pacific Ocean. Protestant claims that this flow is necessary in order to keep the water fresh and pure for stock watering purposes.

Very few measurements of the summer flow in Carbonero Creek are available. On June 26, 1929, a measurement was made under the direction of the City Engineer of Santa Cruz which indicated that the flow at the upper end of protestants property and at the proposed diversion point of the ap-

plicant was about 0.28 cubic foot per second. In the Santa Cruz Sentinel of June 26, 1915, there is a news article which sets forth the fact that in June, 1914, the flow in Carbonero Creek was 256,000 gallons per day or approximately 0.40 cubic foot per second. The year 1929 was one of very low runoff and the year 1914 was one of more than normal runoff according to estimates of flow of San Lorenzo River found in Bulletin 5 of the Division of Engineering and Irrigation, Department of Public Works, State of California. It appears from these measurements that the summer flow in Carbonero Creek is less than 0.5 cubic foot per second.

It is the contention of the applicant that it has the right to appropriate all the water that becomes available at its proposed point of diversion up to and including the 3.5 cubic feet per second which it has applied for, subject however to vested rights and actual use of water made by the protestant and in the event that the total amount which it has need for is not available from Carbonero Creek, the deficiency will be made up by purchase from the City of Santa Cruz.

The protestant is undoubtedly making a valid use of the waters of Carbonero Creek for stock watering purposes during a portion of the year and is entitled to have the water thus used kept free from stagnation even though a portion of the water should pass through her property without actually being consumed. A small amount of water is necessary to support the fish life of the stream and to prevent the shrubs and trees along its bank, which undoubtedly add to the esthetic and recreational value of the property, from dying. Just how much water is necessary to satisfy the riparian rights of the protestant is not known nor has it been definitely shown at what time the waters of the creek diminish to such an

extent as to require that the entire stream flow be permitted to pass through protestant's property undiminished in quantity to satisfy her riparian rights. The protestant has stated that she would have no objection to the approval of the application in the event that the amount applied for was reduced to 0.5 cubic foot per second but from testimony presented at the hearing even this amount of diversion during the summer months would apparently deprive her of sufficient water for her present needs.

The entire amount of water which the applicant seeks to appropriate may possibly be needed for the purposes indicated in the application but of this we have some doubt. However it is difficult at this time to determine just what amount of water will be necessary and in view of the applicant's statement at the hearing that the amount of water applied for is the minimum for its requirements, we do not feel that it would be proper at this time to force a reduction. At the time of issuance of license the amount may then be reduced to the quantity actually applied to beneficial use.

The protestant apparently has no objection to the applicant appropriating any water which may be going to waste and her object in protesting the application was apparently to bring to the attention of the applicant and to make it a matter of record that she had certain vested rights to which any appropriative right which may be acquired under Application 6218 would be subordinate.

In view of the above it is believed that Application 6218 should be approved subject to prior vested rights and the burden placed upon applicant to divert at such times only as will not interfere with the riparian rights of the protestant. The approval of the application should not be construed to convey an unconditional right to divert from Carbonero Creek, par-

ticularly during the summer months when the flow of the stream is greatly reduced.

CONCLUSION

The use to which the applicant proposes to put the water is a useful and beneficial one. It has been shown that there are periods when the water may be appropriated without injury to the protestant and that there is a possibility that the entire amount of water applied for may be put to beneficial use. It is therefore the opinion of this office that Application 6218 of the Santa Cruz Development Company should be approved.

ORDER

Application 6218 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest 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 Application 6218 be approved and that a permit 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 *12th* day of *May*, 1931.

EDWARD HYATT, State Engineer

BY *Harold Conkling*
Deputy

WES:FP

