

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

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In the Matter of Application 6250 of Celia Tobin Clark to Appropriate water from Peters Creek and Five Tributaries in San Mateo County for Irrigation, Domestic and Stock Watering Purposes.

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DECISION A. 6250 D-315

Decided *April 14, 1932*

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APPEARANCES AT HEARING HELD AT SAN FRANCISCO, AUGUST 4, 1931.

For Applicant

Celia Tobin Clark

Cyril Williams, Jr.

For Protestants

Islam Redwoods Shrine

Margaret Dias)

Elma C. Weeks)

A. C. Carpy)

William Middleton, et al.)

Shoreland Properties, Inc.

F. H. Tibbetts

Oliver Dibble

No appearance

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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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O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Application 6250 was filed on April 12, 1929, by Celia Tobin Clark.

As advertised Application 6250 proposed an appropriation of 0.8 cubic foot per second by direct diversion throughout the entire year and 100 acre feet per annum to be collected to storage from about October 1st to about May 1st of each season. The sources of the proposed appropriation are

Peters Creek and five tributaries thereto, all being tributary to Pescadero Creek. The points of direct diversion named in the application are as follows:

Tributary 1a	within	NE $\frac{1}{4}$	NW $\frac{1}{4}$	Section 28, T 7 S, R 3 W, M.D.B. & M.			
Tributary 1b	"	NE $\frac{1}{4}$	NW $\frac{1}{4}$	"	"	"	"
Tributary 2a	"	NW $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"
Tributary 2b	"	NW $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"
Tributary 3	"	SW $\frac{1}{4}$	NE $\frac{1}{4}$	"	"	"	"
Peters Creek	"	SW $\frac{1}{4}$	SE $\frac{1}{4}$	"	"	"	"

The point of diversion to storage on Peters Creek is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T 7 S, R 3 W, M.D.B. & M. The capacity of the proposed reservoir is 100 acre feet.

Applicant proposes to use the water for the irrigation of 130 acres of land within Sections 28, 29 and 33, T 7 S, R 3 W, M.D.B. & M. and for domestic and stock watering purposes within the same area.

At the hearing the applicant requested that Application 6250 be amended by reducing the amount of direct diversion to 0.15 cubic foot per second and the period of diversion to storage from about December 1st to May 1st. The application has been so amended and will be considered in its final amended form.

Application 6250 was protested by Islam Redwoods Shrine, Margaret Dias, Elma C. Weeks, A. C. Carpy, William Middleton and associates and Shoreland Properties, Inc.

PROTESTS

The Islam Redwoods Shrine alleges in effect that the proposed appropriation will conflict with its rights initiated under Applications 4104 and 5180.

Margaret M. Dias, Elma C. Weeks and A. C. Carpy claim riparian rights to the waters of Pescadero Creek and allege in effect that should Application 6250 be approved there would not be sufficient water in Pescadero Creek to satisfy their requirements for irrigation, domestic and stock watering purposes.

William H. Middleton and seventeen associates claim riparian rights to the waters of Pescadero Creek and use of water for the last five years and allege in effect that the appropriation if approved would deprive them of water to which they are entitled and would result in substantial injury to them.

The Shoreland Properties, Inc., claim an appropriative right under Application 2760, Permit 1400, License 548 and allege in effect that the summer flow of Pescadero Creek is not sufficient to supply adequate water for the irrigation of the lands already under irrigation.

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

Application 6250 of Celia Tobin Clark 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 hearing in accordance with Section 1a of the Water Commission Act on August 4, 1931, at 10:00 o'clock A.M. in Room 520 State Building. Of this hearing applicant and record protestants were duly notified.

HYDROGRAPHY AND PHYSIOGRAPHY

Pescadero Creek rises in the Coast Range Mountains near the boundary line between San Mateo and Santa Cruz Counties, flows northwesterly a distance of about nine miles and thence westerly about six miles to the Pacific Ocean. Its main tributaries are Butano Creek which enters Pescadero Creek about one-half mile above its mouth, and Peters Creek, Slate Creek and Oil Creek which are tributary to its upper reaches. The drainage area of Pescadero Creek exclusive of Butano Creek comprises some 60 square miles of which Peters Creek and its tributary Evans Creek, comprise about 9.7 square miles. The drainage area above the southerly boundary line of Celia Tobin Clark is approximately 4.8 square miles.

At the hearing held on August 4, 1931, miscellaneous measurements of flow were submitted by the applicant but the only continuous record available was submitted in connection with the hearing held August 25, 1926, on Application 4104 of Islam Redwoods Shrine. These records cover a period from July 1, 1915, to June 30, 1917, and are based upon actual measurements made by the Spring Valley Water Company at its "Camp Howard Gaging Station" in Section 17, T 8 S, R 3 W, about one mile above the point of diversion described in Application 5180 of Islam Redwoods Shrine and at its "Lower Dam Site" Gaging Station located in Section 4, T 8 S, R 4 W, about 6 miles east of Pescadero. The record for the season October 1, 1915, to September 30, 1916, is complete. The index of runoff for this season according to Table 151 of Bulletin 5 of the Division of Engineering and Irrigation, Department of Public Works, for the Pescadero Group is 136 and applying this index to the measured flow the normal runoff of Pescadero Creek at the two gaging stations may be estimated. According to Bulletin 5, the annual runoff for the Pescadero Group is 853 acre feet per square mile or an equivalent to a continuous flow of 754,900 gallons per day. At the hearing held August 4, 1931, applicant's engineer testified that his estimate of runoff as an average for Pescadero Creek at Camp Howard was 925,000 gallons per day (1036 A.F. per annum) and at the lower dam site (elevation 120) it was some 810,000 gallons per day (907 A.F. per annum). From the above estimates and assuming the distribution of seasonal runoff by months to be approximately the same as set forth in Bulletin 5, the following table of average runoff has been prepared.

TABLE SHOWING AVERAGE RUNOFF OF PESCADERO CREEK AT CAMP HOWARD AND LOWER DAM SITE AS COMPUTED FROM ACTUAL STREAM GAGINGS AND FROM ESTIMATES OF APPLICANT'S ENGINEER

Month	Normal runoff as estimated from actual gagings	Average Daily Flow	Average Daily Flow	Monthly Distribution	Per cent	Total runoff	Total runoff	Average	Average
	at Camp Howard	At Lower Dam Site	At Lower Dam Site	(Bulletin 5)	(Bulletin 5)	Acres	Acres	Sec. Ft.	Sec. Ft.
October	0.0 c.f.s.	4.4 c.f.s.	1.2	198.9	3.2	437.1	7.1		
November	0.0	7.3	1.3	215.5	3.6	473.5	7.9		
December	15.9	29.1	5.3	878.5	14.2	1,930.5	31.1		
January	157.0	391.0	38.1	6,315.4	102.0	13,877.9	224.0		
February	68.0	139.0	30.5	5,055.7	90.4	11,109.6	198.5		
March	36.2	69.2	13.2	2,188.0	35.3	4,808.1	77.5		
April	10.3	24.0	4.4	729.4	12.2	1,602.7	26.7		
May	6.9	10.8	2.3	381.3	6.1	837.8	13.5		
June	4.0	6.9	1.5	248.6	4.1	546.4	9.1		
July	2.3	6.4	0.9	149.2	2.4	327.8	5.3		
August	1.5	4.8	0.7	116.0	1.9	255.0	4.1		
September	1.1	3.4	0.6	99.5	1.7	218.6	3.7		
TOTAL									
RUNOFF									
ACRE FEET	24,986	57,479		16,576.0					36,425.0

A comparison of the runoff in second feet as derived from actual measurements and as derived from estimates of applicant's engineer show a fairly close agreement during the season of low runoff.

PRIOR RIGHTS ON PESCADERO CREEK

The lands of protestants Margaret M. Dias, Charles Carpy, Mrs. Elma C. Weeks and Shoreland Properties are situated near the mouth of Pescadero Creek within an area extending not more than two miles from the Pacific Ocean.

Margaret M. Dias claims that of 36 acres which are available for irrigation 26 acres have been actually cultivated and irrigated at least four times yearly from about April to November. Water is pumped onto the lands by means of a four inch pump having a capacity of approximately 500 gallons per minute.

Mrs. Elma C. Weeks claims that of 100 acres which are available for irrigation 50 acres are actually cultivated and irrigated four or five times a year between April 1st and December 1st. The amount of water applied to the land has been about 700 gallons per minute for several hours each day.

A. C. Carpy claims that of 60 acres available for irrigation 40 acres have been actually cultivated and irrigated four or five times a year.

Under Application 2760, Permit 1400, License 548 the Shoreland Properties, Inc. acquired a right to appropriate 722 acre feet per annum from the waters of Pescadero Creek to be diverted from about May 15 to about November 15th of each year to be diverted at a rate not to exceed 4.57 cubic feet per second and used for irrigation purposes on a tract of land containing 722.09 acres. The license was based upon the use of water as determined by an engineer of this office on October 10, 1925. The report on use of water under the license filed in this office on February 2, 1929, indicated that 250 acres

were irrigated in 1926, 200 acres in 1927 and 150 acres in 1928.

The inspecting engineer reported that the Shoreland Properties, Inc. had constructed a diversion dam across the mouth of Pescadero Creek below the junction with Butano Creek by means of which the flow of water into the ocean from the creek is controlled as well as the flow of salt water into the creek from the ocean. By means of this dam the waters of Pescadero Creek were backed up into Butano Creek and tributary sloughs and diverted by means of a pump at the Company's point of redirection.

At the hearing held on August 4, 1931, applicant's engineer presented testimony to the effect that for the past two years the Shoreland Properties, Inc. had diverted no water from Pescadero Creek but instead had constructed dams across the channels of Butano Creek and had diverted Butano waters only.

San Mateo County some five or six years ago purchased a tract of land containing 310 acres which has been developed as a county park, known as Memorial Park located about six miles east of Pescadero on Pescadero Creek. The park was purchased on account of its natural beauty consisting chiefly of the native redwoods and the waters of Pescadero Creek. The county maintains swimming pools and places of natural beauty which are dependent upon the flowing water of Pescadero Creek and the park is used as a recreational ground for thousands of people each week end. The Boy Scouts of America have also established a permanent camp and buildings in the park.

While the Board of Supervisors are not record protestants in the matter of Application 6250, a protest was filed against the approval of Application 6247 of Edith Van Antwerp to appropriate from Peters, Slate and Oil Creeks which application has since been cancelled at the request of the applicant.

The County alleges in effect that any decrease in the waters of Pescadero Creek will diminish the value of the park as a recreational center.

Islam Redwoods Shrine under Application 4104, Permit 2654 has the privilege of diverting 4.59 cubic feet per second from Evans, Slate and Peters Creeks with the understanding that the diversion from any one of these three sources shall not exceed 3 cubic feet per second. The season of diversion is from about November 1st to about June 15th of each season.

Under Application 5180, Permit 3051 the Islam Redwoods Shrine may divert 275 acre feet per annum from Pescadero Creek at a point below its junction with Peters Creek, to be collected to storage from about November 1st to June 15th of each season.

William Middleton and Associates own a tract of land comprising some 560 acres on Peters Creek about one mile below the property of the applicant which tract has been subdivided and lots sold to individuals for recreational home sites. Mr. Middleton and those to whom lots have been sold claim a right to the waters of Pescadero Creek by virtue of riparian ownership and use of water for more than five years last past. Testimony presented at the hearing indicated that 17 or 18 cabins had been constructed on the property which require water for domestic purposes only; that the amount of water required for such purpose would probably not exceed 2000 gallons per day, and that the flow of Bear Creek a tributary of Peters Creek at a point between the properties of applicant and protestant was sufficient to satisfy this use.

SEASON OF DIVERSION LIMITED BY THE DIVISION IN AN EARLIER CASE

At the hearing held August 25, 1926, in connection with Application 4104 of Islam Redwoods Shrine to appropriate from Evans, Slate and Peters Creeks, tributaries of Pescadero Creek, unrefuted testimony was presented to the effect that a shortage of water usually occurred about the middle of June

in a year of normal runoff and continued until about 2 inches of rain had fallen which usually occurred about the latter part of October or the early part of November. It was admitted by applicant's engineer that the protestants had acquired water rights far in excess of the low water flow (Transcript p. 7) and that in the summer time applicant could not hope to depend upon natural flow (Transcript p. 13). In view of the testimony and the fact that the stream flow records available were very meager the Division upon issuance of permit on Application 4104 limited the period of diversion named therein to the period from about November 1st to about June 15th of each season.

At the hearing held May 14, 1928, in connection with Application 5180 of Islam Redwoods Shrine under which applicant sought to appropriate 275 acre feet throughout the entire year from Pescadero Creek, engineer for applicant was given to understand that unless additional testimony was introduced or further showing made it would be necessary to limit the season of diversion named in Application 5180 to the period from about November 1st to about June 15th of each season, such period having been theretofore estimated by this office as the period during which there was unappropriated water in Pescadero Creek and its tributaries. The engineer for the applicant signified his willingness to have the season of diversion to storage so limited and stated that he had already entered into an informal agreement with the protestants to that effect and both applicants and protestants were willing to accept our former judgment in the matter. However upon further demands by the protestants at the hearing, applicant's engineer withdrew his concession and signified his intent to stand upon the season of diversion named in the application. As no further testimony was introduced relative to the flow of water in Pescadero Creek, this office, upon issuance of permit, limited the season of diversion to the period from about November 1st to about June 15th of each season.

GENERAL DISCUSSION

We have heretofore adverted to the fact that when Applications 4104 and 5180 of Islam Redwoods Shrine were approved the season of diversion was limited to the period from about November 1st to about June 15th, it being our conclusion based upon the evidence adduced by interested parties that the waters of Pescadero Creek were fully appropriated and in use by prior and existing rights during the remainder of the year. One of the claimants of prior and existing rights recognized at the time was Shoreland Properties, Inc., which holds a license confirming its right under Application 2760 of this office to appropriate 4.57 cubic feet per second from about May 15th to about November 15th for irrigation purposes by diversion from Pescadero Creek at or near tidewater. It is urged on behalf of Celia Tobin Clark, applicant in the present case, that the rights under Application 2760 of Shoreland Properties, Inc., were forfeited—whether by non-use or abandonment is not clear—during the period which intervened between the time of approval of Applications 4104 and 5180 of Islam Redwoods Shrine and the time of filing Application 6250 by Celia Tobin Clark, and that the waters thus released to other claimants became available to her under Application 6250 rather than to Islam Redwoods Shrine under its prior Applications 4104 and 5180. This claim is vigorously contested however by Islam Redwoods Shrine which urges that if the rights under Application 2760 are in fact forfeited then the waters thus released to other claimants inure to its own benefit under Applications 4104 and 5180 rather than to Celia Tobin Clark under Application 6250, and that the permits issued to it should be modified to allow diversion throughout the year. It is a very interesting point but one upon which we find it unnecessary to rule at this time inasmuch as our action in this

matter will be governed by other considerations which will now be presented.

Pescadero Creek and its principal tributaries, of which Peters Creek from which Celia Tobin Clark seeks to appropriate/ ^{is one,} rise in the Coast Range near the summit and flow westerly throughout the greater portion of their length through an area which is famed as one of the scenic areas of California and one of the most accessible and pleasing playgrounds of the San Francisco Bay region. It is only in the lower reaches of Pescadero Creek, after it debouches from the mountains and where it flows across the alluvial lands of the coastal plain, that the stream becomes of any agricultural value. It is here that we find the lands of protestants Margaret M. Diaz, Elma C. Weeks, A. C. Carpy and Shoreland Properties Inc. A portion of their lands have been irrigated for many years from Pescadero Creek and their objection to the appropriation which is now proposed, like the objections which they have made to approval of Applications 2760, 4104 and 5180 is based upon the grounds that further appropriations will interfere with the use of water which they have heretofore enjoyed. We were impressed with these claims when acting upon Applications 4104 and 5180 as has been shown above, but we were not impressed when acting upon Application 2760 because diversion under that Application was to be made at tidewater and before any water from Pescadero Creek would become available to applicant it must have flowed by protestants diversion points where they were free to take what was their own.

We are confronted by a different situation in connection with Application 625C. Here the diversion would be made at a point within two or three miles of the summit of the Coast Range. The waters which would be taken by applicant are those which if not diverted would flow later through the lands of protestant Middleton and associates which have been subdivided and partially disposed of for summer homesites; through the property of

Islam Redwoods Shrine which is a public playground for the members of that order and their families; through Memorial Park of San Mateo County; and through many additional miles of private holdings which are cherished and valued for their scenic beauty and recreational advantages arising out of the growth of native redwoods and other such coastal vegetation and the flowing water of Pescadero Creek and its mountain tributaries.

It is altogether probable that but for the prospect of these flowing waters during the late spring, summer, and early fall months when vacationists are most inclined to visit these areas protestant Middleton and his associates would not have purchased, or at least would not have paid the price which they did for their property and it is clear we believe that they could not now dispose of it to such advantage.

Likewise we are convinced that the prospect of these flowing waters was one of the factors which drew the agents of Islam Redwoods Shrine to this area and entered into their choice of the lands which have since become the park of that organization, and we are of the opinion that these flowing waters, even though not diverted and applied to the purposes of agriculture, the driving of power generating machinery, or what not among the commonly recognized purposes of beneficial use, nevertheless do serve a useful and beneficial purpose. In order to extend this beneficial use the Shrine proposes and holds permits of this office by which it would construct and maintain a reservoir for boating, bathing and other recreational purposes. We are advised that already as many as 3,000 people have visited the park in a single day and agents of the Shrine estimate that eventually as many as 25,000 may be entertained there in a single day.

Memorial Park of San Mateo County is in the same position and of similar status.

At the time of the hearing held on August 4, 1931, in connection with Application 6250 it was stipulated by the parties in interest to include in the record all evidence presented at the earlier hearings referred to above, upon condition that applicant's engineer should have the privilege of examining it and filing a reply statement in the form of an affidavit. Such an examination of the evidence presented at former hearings was made and on September 16, 1931, applicant's engineer made affidavit that in his judgment the amount of water which the Shrine was allowed to appropriate under Application 4104, Permit 2654 from Evans, Slate and Peters Creeks was far in excess of the entire flow of these streams. If such were the case, clearly there would be no water subject to appropriation under the junior priority of Application 6250 but the data which are available do not support such a conclusion. An analysis of the stream flow data in these creeks indicates that during the winter and early spring there is an excess of water over and above the use proposed by Islam Redwoods Shrine.

The areas of the watersheds of these three streams above the points of diversion of Islam Redwoods Shrine are determined by planimeter to be approximately as follows:

Evans Creek	0.6 sq. miles
Slate Creek	1.8 sq. miles
Peters Creek	<u>8.2</u> sq. miles
Total	10.6 sq. miles

By tabular analysis we have shown on page 5 the normal daily flow of Pescadero Creek for various months of the year at Camp Howard and at Lower Dam Site. The first named point is near the boundary of the property of Islam Redwoods Shrine and the last named point is near the lower boundary of Memorial Park of San Mateo County.

mate only half this amount. These amounts of water we deem to be essential and necessary to the highest and most beneficial use of the properties lying along Peters Creek and the diversion thereof would in our opinion be not only a damage and injury to the freehold but also a damage and injury to the public which visits and enjoys this recreational and playground area.

We have been forced to this conclusion after mature deliberation in which the necessities of water for domestic use and irrigation have received careful consideration. We are aware that water must be provided for such imperative human needs, and that unless water is available with which to satisfy these needs it is of no consequence to man how the scenic beauties of his playground areas may be ravaged. But we do not consider that the exigencies of the present case approach such a situation that unless appropriations are allowed from the summer flow of the small streams which traverse this area it must be abandoned to the uses of man.

We cannot conceive of a condition wherein the people of California would permit Lake Tahoe to be drained in order to serve the needs either of agriculture or domestic uses, or the waters of magnificent Bridal Veil, Nevada, Vernal, or Yosemite Falls to be turned from their courses and permitted no longer to delight the eyes of man. Similarly we are of the opinion that in this case the waters of Peters Creek, from which applicant seeks to divert, are already wholly in use and have for many years served a beneficial purpose during the period from about June 15th to about November 1st. For a domestic supply and any other necessary uses during this period we are of the opinion that this applicant, and all other appropriators in similar cases, must depend upon importations, storage, or springs which have no surface connection with living streams and the diversion from which will have no appreciable effect on living streams. Appropriations under this application must be further limited to the period from about December 1st to about May 15th because of the prior rights of Islam Redwoods Shrine under Application 4104.

CONCLUSION

The uses to which the water is to be applied under Application 6250 are useful and beneficial ones and the application should be approved. The period of direct diversion however should be limited to the period from about December 1st to about May 15th of each season.

ORDER

Application 6250 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 6250 be approved for an amount not to exceed 0.15 cubic feet per second by direct diversion from about December 1st to about May 15th of each season and not to exceed 100 acre feet per annum by diversion to storage to be collected from about December 1st to about May 1st of each season, 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 *14th* day of *April*, 1932.

EDWARD HYATT, State Engineer

BY *Harold Conkling*
Deputy

WES:
ENB:MP

