

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

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In the Matter of Applications 9604, 9629, 10346, 10409 and 10517  
of San Lorenzo Valley County Water District to appropriate  
from San Lorenzo River and Certain Tributaries  
thereof, in Santa Cruz County for  
Recreational, Domestic and Fire Protection Purposes

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Decision A. 9604, 9629, 10346, 10409, 10517 D. 498

Decided February 5, 1943

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APPEARANCES AT HEARING HELD SEPTEMBER 30, 1942 AT SANTA CRUZ, CALIFORNIA

For Applicant

San Lorenzo Valley County Water District

L.D. Bohnett of Bohnett,  
Hill, Cottrell and Boccardo

For Protestants

City of Santa Cruz

Francis R. Hall, City  
Attorney

Felton Water Company

Stephen Wyckoff of Lucas  
and Wyckoff

Henry Cowell Lime and Cement Company

Bert B. Snyder

General Description of Project

Under Applications 9604, 9629, 10346, 10409 and 10517 filed with  
the Division on June 2, 1939, June 20, 1939, December 26, 1941, March 19,  
1942 and July 23, 1942, respectively, San Lorenzo Valley County Water District  
proposes a comprehensive plan of the development of San Lorenzo River and  
certain of its tributaries involving both direct diversion and storage for  
recreational, domestic and fire protection purposes within the San Lorenzo

Valley County Water District in Townships 8, 9 and 10 S, Ranges 2 and 3 W, M.D.B.M. as shown upon a map filed with this office.

On the upper San Lorenzo River it is proposed to construct the Waterman Gap Reservoir (capacity 3596 A.F.) in which 2000 acre feet per annum of the waters of San Lorenzo River will be stored under Applications 10346 and 1596 acre feet per annum of the waters of San Lorenzo River will be stored under Application 10409. Under Application 10346 applicant also proposes an appropriation of 3 cubic feet per second of the waters of San Lorenzo River to be diverted directly without storage at the Waterman Gap Reservoir dam.

On Bear Creek it is proposed to construct the Bear Creek Reservoir (Capacity 7350 A.F.) in which 7350 acre feet per annum of the waters of Bear Creek will be stored under Application 9629. Under this application it is also proposed to appropriate 5 cubic feet per second of the waters of Bear Creek to be diverted directly without storage at the Bear Creek Reservoir dam.

On upper Boulder Creek it is proposed to construct the China Grade Reservoir (capacity 795 A.F.) in which 795 acre feet per annum of the waters of Boulder Creek will be stored under Application 10346. Under this application it is also proposed to appropriate 2 cubic feet per second of the waters of Boulder Creek to be diverted directly without storage at the China Grade Reservoir dam.

On lower Boulder Creek it is proposed to construct the Boulder Creek Reservoir (capacity 113 A.F.) in which 113 acre feet per annum of the waters of Boulder Creek will be stored under Application 10346. Under this application it is also proposed to appropriate 2 cubic feet per second of the waters of Boulder Creek to be diverted directly without storage at the Boulder Creek Reservoir dam.

On Newell Creek it is proposed to construct the Newell Creek Reservoir (capacity 7000 A.F.) in which 5000 acre feet per annum of the waters of Newell Creek will be stored under Application 9604 and 2000 acre feet per annum of the waters of Newell Creek will be stored under Application 9629. Under Application 9629 it is also proposed to appropriate 5 cubic feet per second of the waters of Newell Creek to be diverted directly without storage at the Newell Creek Reservoir dam.

On upper Fall Creek it is proposed to construct the Fall Creek No. 2 Reservoir (capacity 83 A.F.) in which 83 acre feet per annum of the waters of Fall Creek will be stored under Application 9629. Under this application it is also proposed to appropriate 2 cubic feet per second of the waters of Fall Creek to be diverted directly without storage at the Fall Creek No. 2 Reservoir dam.

On lower Fall Creek it is proposed to construct the Fall Creek No. 1 Reservoir (capacity 55 A.F.) in which 55 acre feet per annum of the waters of Fall Creek will be stored under Application 9629. Under this application it is also proposed to appropriate 2 cubic feet per second of the waters of Fall Creek to be diverted directly without storage at the Fall Creek No. 1 Reservoir dam.

As originally filed and advertised Applications 9604, 9629, 10346 and 10409 proposed storage during the period from October 1 to May 31 of each season and Applications 9629 and 10346 proposed direct diversion throughout the year but at an informal conference held at Santa Cruz on July 8, 1942 it appeared that applicant did not intend to actually divert water during the summer months even when the water was available but that it sought only to divert whatever it could of the flow in excess of the demand by vested rights

in an emergency such as might be caused by the depletion of its storage by fire control or by a break in the system and at the suggestion of the Division the season of diversion to storage in Applications 9604, 9629, 10346 and 10409 was amended to include only the period from November 1 to May 31 of each season and the season of direct diversion in Applications 9629 and 10346 was amended to include only the period from November 1 to May 31 of each season provided however that in the case of an emergency due to the depletion<sup>of</sup> the reservoirs by fire or break in the system, or similar contingency direct diversion might be made between June 1 and October 31 inclusive to the extent necessary to make up the depletion.

The amended applications however did not provide for the refilling of the reservoirs during the summer months in the event of depletion by an emergency use and to remedy this condition Application 10517 was filed to appropriate an amount of water not to exceed 5000 acre feet per annum to be diverted from any or all sources combined described in Applications 9604, 9629, 10346 and 10409 during the period from June 1 to November 1 to compensate for depletion in storage under these applications caused by the use of storage thereunder for actual fire fighting purposes or by a break in the system or other emergency.

#### Protests

The City of Santa Cruz has two filings before this office. Under licensed Application 4017 it has the right to an amount of water not to exceed 6.2 c.f.s. to be diverted from the San Lorenzo River (surface and subsurface flow) throughout the year for municipal and domestic purposes at 5 points of diversion within the NW $\frac{1}{4}$  of Section 12, T 11 S, R 2 W, M.D.B.M. Under approved Application 5215 the City may appropriate an amount of water

not to exceed 25 c.f.s. from San Lorenzo River throughout the year at the diversion points described above for municipal and domestic purposes.

The City claims that during certain years, the flow of water in San Lorenzo River at the City's intake is such that there is no water available for applicant's use between June 1 and November 1. It is not in accord with the emergency provisions and is of the opinion that the applicant is asking for water in excess of its needs.

The Felton Water Company claims a right to the waters of Fall Creek by virtue of use commenced prior to the effective date of the Water Commission Act and continued thereafter. It also claims a right under approved Application 8845 to appropriate an amount of water not to exceed 0.75 c.f.s. throughout the year from Fall Creek for domestic purposes. Its point of diversion is located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 16, T 10 S, R 2 W, M.D.B.M. near the junction of Fall Creek and San Lorenzo River.

The Felton Water Company claims that its present use is approximately 120,000 gallons per day (0.186 c.f.s.) for domestic and irrigation purposes. It alleges that direct diversion between June 1 and October 31 under any circumstances will seriously impair its service to its customers. It is willing that its protest which is directed only against Applications 9629 and 10517 be dismissed if applicant is limited to the collection of flood waters for storage.

Henry Cowell Lime and Cement Company protested all of the applications although it appears that its only interest is in the appropriation of water from Fall Creek. It claims that for more than 36 years it has operated a mill on the upper reaches of Fall Creek about 1/4 mile from its source and that it owns practically the entire watershed of Fall Creek which is "devoted and adapted to be devoted" to recreational and mill purposes. It

alleges in effect that the approval of the applications will result in "impoverishing" the lands for recreational purposes and interfering with the existing mill operations; that there is no surplus water available for appropriation except flood waters, that there is no demand for the proposed diversion as the entire San Lorenzo area is adequately served by the Public Utilities California Corporation and that applicant has not acquired the necessary rights of way. Protestant states that its protest may be withdrawn provided the applications are amended to divert flood waters only and that satisfactory terms are made for rights of way over its lands.

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

Applications 9604, 9629, 10346, 10409 and 10517 were 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 were set for public hearing on Wednesday, September 30, 1942 at 10:00 o'clock A.M. in Counsel Chambers, City Hall, Santa Cruz, California. Of this hearing applicant and protestants were duly notified.

General Discussion

The main issue between the applicant and the protestants involves the proposed diversion by the applicant during the summer months.

Prior to the amendment of Applications 9604, 9629, 10346 and 10409 and the filing of Application 10517, applicant was informed by the Division that for some time past it had been the policy of this office to refuse to approve applications for the appropriation of water during the summer months in recreational areas such as the San Lorenzo Valley because of the fact that the flow of water through these areas during the summer months was very small and further depletion would seriously detract from the desirability

of the area for recreation. It was suggested that the applicant consider the amending of its applications to exclude from the seasons of diversion named therein the period from about June 1 to about October 31 as it was our opinion that little would be gained by attempting to appropriate water during this period because there would be little, if any, water available for appropriation.

The applicant apparently agreed with the policy of the Division and stated under date of June 15, 1942 that to relieve this very condition it proposed to release most of the water collected to storage in order to increase the flow of water in the streams during the recreational season with the understanding however that this released flow would not be appropriated by others. The applicant admitted that there was practically no summer flow in any of the sources from which it proposed to appropriate with the possible exception of Fall and Boulder Creeks and asked to be allowed to divert any excess water which might be available in these streams during the summer months in the event of depletion of the storage caused by fire draft or other emergencies. It stated that its sole purpose in filing on such large amounts of water was "to bring the matter to a head".

On July 8, 1942, an informal conference was held at Santa Cruz at which representatives of the applicant, protestant and the Division were present. Mr. Foss, representing the applicant, explained the proposed development, stating that the District did not propose to divert water during the low flow season except in the case of an emergency but that in the event of a depletion of the reservoirs due to fire fighting or a break in the system it felt that it should have the privilege of diverting any water in excess of vested rights both for direct use without storage and/or to replenish

the depleted reservoir supply. He also reaffirmed the District's intention of releasing water into the streams during the low flow seasons in order to produce a larger flow for recreational purposes.

As a result of the conference a circular letter was sent to the applicant and all other known interested parties suggesting that Applications 9604, 9629, 10346 and 10409 be amended by limiting the season of diversion to the period from November 1 to May 31, inclusive, except that direct diversion between June 1 and October 31 inclusive, might be made under Applications 9629 and 10346 in the case of emergency due to the depletion of the reservoirs by fire, a break in the system or similar contingencies and also suggesting that a new application be filed for the purpose of refilling the reservoirs in the summer time in the event of depletion by emergency, the amount of water stored not to exceed a maximum of 5000 acre feet per annum. Furthermore the parties were informed that as it appeared that there was considerable flow in all of the streams during June and sometimes in July of many years it appeared desirable to insert a special clause in any permits which might be issued in approval of the applications to the effect that on petition of applicant or other water user or on its own motion, the Division of Water Resources shall investigate and if it finds that public interest will be served, shall hold a hearing to determine whether the limitations as to time of diversion imposed should be changed. A copy of the proposed permit terms was attached to the circular letter.

In accordance with the Division's suggestion, applicant amended its Applications 9604, 9629, 10346 and 10409, and filed Application 10517 to appropriate storage water during the period from June 1 to October 31 in case of emergency.



The proposed amendments and new application were suggested and carried to conclusion in the thought that the proposals as embodied in the circular letter would satisfy the objections of the prospective protestants but such however was not the case, as the protestants still objected to any diversion by the applicant during the recreational season even in an emergency. Also the City of Santa Cruz objected to the large amount of water which applicant was seeking to appropriate, which amount it alleged was all out of proportion to its needs. It therefore became necessary to set the matter for public hearing.

Although very little testimony was presented at the hearing held on September 30, 1942 relative to the availability of unappropriated water in the San Lorenzo River and its tributaries, considerable testimony was presented at a former hearing held on November 29, 1937 in connection with Application 8999 of Riverside Grove Water Company to appropriate from the San Lorenzo River and it was understood that the testimony presented at the former hearing as well as official records of the runoff and other data on file with this office pertinent to the situation should be considered in arriving at a decision.

Application 8999 of Riverside Grove Water Company was filed on June 14, 1937 for a permit to appropriate 0.10 cubic foot per second of the waters of San Lorenzo River to be diverted throughout the year for summer resort purposes. The proposed point of diversion was within the NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 1, T 9 S, R 3 W, M.D.B.M. about 3 miles above the town of Boulder Creek. This application was protested by a large number of protestants including the City of Santa Cruz. Much testimony was presented at the hearing and exhibits and briefs filed.

After due consideration of the facts in the case it was the opinion of the Division that during a year of normal runoff no diversions could be made during the period from about June 1 to about October 31 without infringing upon prior vested rights and impairing the recreational value of the stream and the application was approved on January 25, 1939 with the season of diversion limited to the period from about November 1 to about June 1 of each season.

Conditions on the San Lorenzo River have not materially changed since the approval of Application 8999 except that since 1937 there have been a series of wet years resulting in a greater than normal runoff. In fact the record indicates that since 1937 the City of Santa Cruz has had plenty of water and sometimes more than it needed during the summer months whereas during the years 1932 to 1936 inclusive, the flow in the San Lorenzo River at the City's intake has been below normal.

The following table has been prepared from the records of the water resources branch of the United States Geological Survey indicating the discharge of the San Lorenzo River at Big Trees, 4 miles north of Santa Cruz, during the months of May to December inclusive.

San Lorenzo River at Big Trees - Discharge in Sec. Ft.

	<u>1937</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>
max.		90	67	31	22	22	26	59	3380
min.		41	27	20	14	14	15	16	23
mean		65.5	39.3	24.3	17.2	16.2	17.8	28.8	262
1938									
max.		148	83	49	28	27	48	40	45
min.		84	48	29	23	19	21	23	24
mean		111	60.9	36.8	25.1	21.3	24.3	25.2	28
1939									
max.		38	20	13	10	19	15	19	46
min.		13	9.5	7.5	8	8	10	10	12
mean		22.9	14.2	10.5	9.6	10.5	11.6	12.8	15.3
1940									
max.		130	76	40	28	26	43	33	2670
min.		68	41	26	18	18	17	21	19
mean		92.2	54.2	33.1	22.2	21.7	21.1	23.8	281
1941									
max.		329	120	71	47	38	not published		
min.		124	72	47	38	32	" "		
mean		186	93.7	57.2	41.8	34.4	" "		

The following table has been prepared from the official records of the U.S. Weather Bureau.

Seasonal Rainfall at Santa Cruz - Inches

<u>Season</u>	<u>Rainfall</u>	<u>% of 64 year mean (27.7)</u>
1930-31	13.15	48
1931-32	27.45	99
1932-33	21.65	78
1933-34	18.25	66
1934-35	29.52	107
1935-36	32.91	119
1936-37	34.57	125
1937-38	42.71	154
1938-39	20.01	73
1939-40	44.75	162
1940-41	61.62	222
1941-42	42.15	152

The above tables indicate clearly the reason for the adequacy of the City's supply during the period from 1937 to 1942 inclusive, and the deficiency in supply during the period from 1932 to 1936 inclusive.

The record indicates that the present use of the City of Santa Cruz is from 6 to 7 million gallons per 24 hours or from about 9.3 to 10.8 cubic feet per second. Under licensed Application 4017 the City has a right to appropriate 6.2 cubic feet per second and under approved Application 5215 the City may appropriate an amount of water not to exceed 25 cubic feet per second. The City's total estimated needs are therefore 31.2 cubic feet per second of which only approximately one-third has been diverted.

There have been times during the summer months in recent years, particularly during the months of June and July when there has been a flow of water in San Lorenzo River in excess of the ultimate needs of the City but it must be remembered that these years have been exceptionally wet and even during some of the months the flow has not been greatly in excess of the City's present needs. We feel therefore after due consideration of the records that there is no unappropriated water in the San Lorenzo River subject to appropriation during the summer months in a year of normal runoff without interfering with the City's prior rights.

Ordinarily the water supply of the protestant Felton Water Company is obtained by gravity diversions under its Applications 5297, 5298 and 5299 which were each approved for an amount of water not to exceed 0.232 of a cubic foot per second to be diverted throughout the entire year from Bennett Creek and Shingle Mill Creek for domestic, irrigation and municipal purposes respectively, under Application 8843 which was approved for an amount of water not to exceed 0.50 of a cubic foot per second to be diverted throughout the entire year from Bennett Creek for domestic purposes and under Application

8844 which was approved for an amount of water not to exceed 1.00 cubic foot per second to be diverted from Bulls Creek from about April 15 to about October 31 for irrigation purposes and throughout the entire year as required for domestic purposes.

These applications are in no way affected by the proposed diversions of the applicant but the record indicates that during week ends when the Company's use is a maximum and in the event of an emergency such as a break in the Company's system, the protestant is dependent upon pumping water from Fall Creek just above its junction with the San Lorenzo River under its Application 8845 which as stated above was approved for an amount of water not to exceed 0.75 of a cubic foot per second which may be diverted throughout the entire year for domestic purposes.

While it is more economical for the protestant company to divert by gravity from the tributaries of Fall Creek and San Lorenzo River which are not affected by applicant's proposed appropriations, yet the fact remains that to a certain extent it is now dependent upon the water in Fall Creek which it pumps under its Application 8845 and as its number of consumers increases it is proposed to enlarge its present system and to utilize the water during the entire year. In fact the 1942 progress report filed in connection with Application 8845 indicates that the water was actually used during the entire year.

Although water may be available at its point of diversion on Fall Creek in sufficient quantity to supply the demands of the Felton Water Company, yet not a drop of this water can be legally taken until the prior rights of the City of Santa Cruz have been fully satisfied. Therefore whether or not there is unappropriated water in San Lorenzo River and its tributaries during the summer months is largely dependent upon whether or not the City

of Santa Cruz is dependent upon the summer flow in San Lorenzo River for its water supply.

The point of diversion of protestant Henry Cowell Lime and Cement Company is located on Fall Creek within the NE<sub>4</sub> of Section 17, T 10 S, R 2 W, M.D.B.M. above the proposed points of diversion of the applicant. Therefore the protest of the Company may be dismissed as it is in a position both legally and physically to take such water as it may be entitled to before this water reaches the applicant's proposed points of diversion. While the Company claims the ownership of lands at the applicant's proposed points of diversion on Fall Creek, the applicant has the right of eminent domain and is in a position to acquire the use of the lands either by negotiation or condemnation under proper legal procedure.

Mr. George W. Cooper, Vice President of the Big Basin Company, although not a record protestant, stated at the hearing that one of applicant's points of diversion (Boulder Creek Reservoir Dam) was located on land owned by his company, a public utility corporation, and that any attempt on the part of the applicant to erect any diversion structure in Section 23 (T 9 S, R 3 W, M.D.B.M.) would be met with the full recourse of the law. This is a matter however over which this office has no jurisdiction. Suffice it to say that the applicant has the right of eminent domain.

There appears to be no reason why Applications 9604, 9629, 10346 and 10517 should not be approved for appropriations during the season from about November 1 to about May 31 of each season the "from about to about " allowing some degree of latitude. However, negotiations are now pending by the applicant for the purchase of one or more of the utilities now supplying water in San Lorenzo Valley and applicant has informed the

Division that the acquisition of at least the principal utility should precede the actual building of any of the proposed dams. Furthermore, on account of the present emergency applicant has asked that the time within which to commence construction be extended as far as possible into the future as may be consistent with our rules and regulations.

In view of the uncertainty of the District's plans, it was informed under date of November 13, 1942 that we would prefer to defer action in connection with these applications until such a time as the District should be in a position to proceed rather than to issue permits at this time.

#### Summary and Conclusion

In its final judgment as to whether there is unappropriated water in the source from which an applicant proposes to divert in sufficient quantities to justify the approval of an application, this office bases its action on the flow of the stream during a year of normal runoff.

An effort was made by the Division to adjust the apparent differences between the applicant and the protestants by suggesting amended applications and also a new application which would permit direct diversion and storage during the summer months only in the event of an emergency. Protestants, however, opposed the taking of any of the summer flow and it became necessary to set the matter for hearing.

After giving due consideration to the testimony presented at the hearing held in connection with Application 8999 of Riverside Grove Water Company, the testimony presented at the hearing held in connection with the applications now before us, rainfall and runoff records and other information before the Division, we are of the opinion that in this particular instance

there is insufficient water in the several streams from which applicant is seeking to appropriate to justify the approval of Application 10517 and the emergency clauses in Applications 9629 and 10346 proposing to appropriate water during the months of June to October inclusive. Moreover, under Applications 9604, 9629, 10346 and 10409 applicant is seeking to appropriate during the period from November 1 to May 31 of each season 18,992 acre feet of stored waters in addition to a total of 19 cubic feet per second by direct diversion, amounts greatly in excess of its domestic requirements.

With the large amounts of storage proposed we feel that the applicant should so regulate this storage as to have an ample supply on hand to meet any emergency and that any diversion during the summer months is not necessary as it would only require the release of approximately 5700 acre feet to supply a uniform flow of 19 cubic feet per second from June 1 to October 31. Furthermore if there should be unappropriated water during the summer months it is believed that the applicant could, under ordinary police power, take any unappropriated water which might otherwise be wasting into the ocean and use it for fire fighting purposes or any other emergency which would benefit the entire community. However if the storage is properly regulated as stated above there should be no need of taking this water during the summer months for emergency purposes.

If the applicant were ready to proceed with the proposed development it would be our conclusion that Applications 9604 and 10409 which involve storage only should be approved in their present form and that Applications 9629 and 10346 should be approved without the emergency clause proposing diversion during the period from June 1 to October 31.



However in view of the uncertainty of the District's plans it is the opinion of the Division that Application 10517 should be cancelled and that action in connection with Applications 9604, 9629, 10346 and 10409 be withheld for the time being.

ORDER

Applications 9604, 9629, 10346, 10409 and 10517 for permits 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 10517 be rejected and cancelled upon the records of the Division of Water Resources, and

IT IS FURTHER ORDERED that action in connection with Applications 9604, 9629, 10346 and 10409 be withheld until further order is entered.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 5th day of February 1943.

EDWARD HYATT, State Engineer

By Harold Conkling  
Deputy State Engineer

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