

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

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In the Matter of Application 10548 of R. L. Zink to
Appropriate from Rock Creek, Tributary to
Owens River in Mono County
for Domestic Purposes

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DECISION A. 10548 D 513

Decided April 26, 1944

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APPEARANCES AT INVESTIGATION CONDUCTED AT THE SITE OF THE PROPOSED
APPROPRIATION ON SEPTEMBER 22, 1943.

For Applicant

R. L. Zink

In propria persona

For Protestants

Jess and Mildred F. Chance

Jess Chance
Hugh E. Brierly

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer, for Harold Conkling,
Deputy State Engineer in Charge of Water Rights, Division of Water
Resources, Department of Public Works, State of California.

O P I N I O N

GENERAL DESCRIPTION OF PROJECT

Application 10548 was filed by R. L. Zink on October 19, 1942, for
the appropriation of 1300 gallons per day from Rock Creek to be diverted from

May 1 to October 1 of each season for domestic purposes on Lot 22 of Lower Rock Creek Tract of the Inyo National Forest. The point of diversion is described as being within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 32, T 4 S, R 30 E, M.D.B.&M.

Applicant has licensed Application 9421 before this office to appropriate water from the same point of diversion and for the same purpose as proposed in Application 10548. At the time of the inspection for license action, it was found that Mr. Zink was actually diverting to beneficial use approximately 1500 gallons per day which was 1300 gallons per day in excess of the amount applied for under his Application 9421 and Application 10548 was filed in order to initiate a right to appropriate this additional amount.

PROTEST

Jess Chance and Mildred F. Chance claim rights to the use of water from Rock Creek based upon riparian ownership and use of water commenced prior to December 19, 1914, the effective date of the Water Commission Act. Water is diverted at a point near the intersection of Highway 395 and Rock Creek at Paradise Camp within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 29, T 5 S, R 31 E, M.D.B.&M. and at a point in the vicinity of the intersection of the south line of Section 32, T 5 S, R 31 E, M.D.B.&M. for the irrigation of 237 acres of pasture from April 1 to November 1 of each year and for domestic and stock watering purposes throughout the entire year. Their property is in the N $\frac{1}{2}$ of S $\frac{1}{2}$ and the S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 5, T 6 S, R 31 E, M.D.B.&M. in Inyo County. Protestants allege in effect that during the late summer months and continuing through the remainder of the season, the entire flow of the creek is necessary to irrigate their parcel of land and other lands

in Round Valley having rights equal to theirs and that should Application 10548 be approved it would result in interference with their prior vested rights.

FIELD INVESTIGATION

Stipulations under Regulation 12B of the "Rules and Regulations of the Division of Water Resources with Respect to Protests and Hearings" having been signed by applicant and by the attorney for the protestants and having been approved by the Division, a field investigation was scheduled to take place on the afternoon of Wednesday, September 22, 1943, at the site of the proposed appropriation. Of the proposed investigation, applicant and protestants were duly notified.

The investigation was made as scheduled. Those present were the field engineer for the Division, applicant Zink, protestant Jess Chance and Hugh E. Brierly, attorney for the protestants.

GENERAL DISCUSSION

At the time of the inspection of the development under Application 9421 of Mr. Zink on September 11, 1942, it was found that he was beneficially using approximately 1500 gallons per day instead of the 200 gallons per day applied for. Use of the water was being made for domestic purposes at a cottage supplied with sink, bath tub and wash basin by 6 consumers during the week of maximum use requiring approximately 180 gallons per day and for the irrigation of 8500 square feet of very pervious volcanic soil for the maintenance of native grasses, with a few fruit trees and flowers requir-

ing approximately 1320 gallons per day or a total of 1500 gallons per day. The 1300 g.p.d. for which Mr. Zink is now applying is for the amount of water not already included in his license. His lot borders upon the creek and doubtless much of the water used by him returns as underflow.

Mr. Chance took the stand that while in itself the diversion of 1300 g.p.d. would not ordinarily occasion any serious injury, in view of the rights already established by cabin owners above together with those which may be established in the future if unopposed, he would be deprived of water to which he has a prior right, that if he acquiesced in this appropriation it would establish a precedent and encourage others to file and that eventually he would be obliged to police the stream in times of low flow to prevent the loss of water and the establishment of prescriptive rights under the guise of approved applications.

According to the report of the engineer who conducted the field investigation, a total of 740 acres are irrigated in Round Valley from the waters of Rock Creek. The soil is of loose texture and is mainly in pasture, both native and planted. Irrigation is accomplished by the wild flooding method and results in a fairly extravagant use of water. At the time of the investigation, the entire flow of the creek was being diverted with the exception of about 0.35 cubic foot per second which was passed downstream for the preservation of fish life. Both Mr. Chance and the man engaged to do his irrigation stated that there is usually a shortage of water from about August 15 to the latter part of September when the irrigation season closes.

Our engineer is of the opinion that a gross diversion of 1 cubic foot per second to each 60 acres of land irrigated would be ample with which

to irrigate the lands in Round Valley, requiring approximately 12 c.f.s. for the area which is claimed to have been irrigated and that any amount of water in excess of 12 c.f.s. could be considered subject to appropriation.

At a point about $3/8$ mile upstream from the Gene Crosby place and above all diversions to Round Valley, a Venturi flume has been installed by the City of Los Angeles and from August 1922 to September 1940 inclusive, daily flows have been recorded and have been published in the United States Geological Water Supply Papers from August 1922 to September 1940, inclusive. Apparently the measurements were discontinued at the end of that period.

The following table shows the maximum, minimum and mean flows in Rock Creek at this gaging station for the period of record during the critical months of August and September:

DISCHARGE OF ROCK CREEK
AT
SHERWIN HILL GAGING STATION, NEAR BISHOP, CALIFORNIA
IN
SW $\frac{1}{4}$ SECTION 29, T 5 S, R 31 E, M.D.B.&M.

Year	W.S. Paper No.	Seasonal Runoff Ac.Ft.	Per cent of 18 year mean	Discharge in cubic feet per second					
				August			September		
				Max.	Min.	Mean	Max.	Min.	Mean
1922	630	--		98	25	44.3	37	19	22.6
1923	630	18,700	112	47	19	27.8	25	14	19.5
1924	630	11,600	70	17	11	13.1	13	9	10.2
1925	630	16,000	96	40	16	26.0	16	12	13.7
1926	630	14,500	87	29	12	17.2	14	9	10.2
1927	650	25,100	150	65	17	36.1	24	13	17.6
1928	670	18,400	110	22	15	17.9	15	11	13.1
1929	690	12,200	73	15	11	12.6	11	7	9.2
1930	705	10,600	62	17	8	12.9	10	6	8.0
1931	720	7,730	46	14	6.5	10.5	14	7.5	9.9
1932	735	20,200	121	56	24	35.1	23	15	17.6
1933	750	13,200	79	22	8.5	14.5	12	8	9.4
1934	765	8,240	49	14	7.5	9.6	15	7.5	10.0
1935	790	13,760	83	21	14	17.3	15	8.5	10.7
1936	810	17,520	105	36	15	24.3	17	10	12.8
1937	830	19,860	119	40	10	20.2	12	8.5	10.5
1938	860	36,530	215	118	42	70.9	53	28	34.8
1939	880	17,420	105	29	15	19.8	15	11	12.6
1940	900	18,110	109	23	14	18.5	14	10	11.5
Means		16,650		38.05	15.29	23.61	18.68	11.26	13.89

It will be noted from the foregoing table that during the 19 years of record there were only 7 years when the minimum flow in Rock Creek was below 12 c.f.s. during the month of August and in only 2 instances did the mean flow fall below 12 c.f.s. The average minimum flow for the 19 year period was 15.29 c.f.s. and the average mean flow was 23.61 c.f.s., both amounts being in excess of the 12 c.f.s. required for irrigation in Round Valley.

During the month of September there were 13 years of the 19 years of record that the minimum flow was less than 12 c.f.s. and there were 10 years when the mean flow fell below 12 c.f.s. The average minimum flow for the 19 year period was 11.26 c.f.s. and the average mean flow was 13.89 c.f.s.

In view of the above it would appear that even during the critical months of August and September in a year of normal runoff there is sufficient unappropriated water to justify the approval of Application 10548. There are times however when there is a scarcity of water during these months and at such times it will be incumbent upon the applicant to so regulate his diversion and use as not to interfere with the prior vested rights below.

ORDER

Application 10548 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a field investigation having been made, a stipulated hearing having been held in accordance with Regulation 12B of the Rules and Regulations of the Division, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10548 be approved subject to the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 26th day of April, 1944.

EDWARD HYATT, STATE ENGINEER

WES:MP



BY Harold Conkling
Deputy State Engineer