

BEFORE THE DIVISION OF WATER RESOURCES

DEPARTMENT OF PUBLIC WORKS

STATE OF CALIFORNIA

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In the Matter of Application 11229 of Carl Schmidt to  
Appropriate Water from Haggerty's Gulch in Marin County,  
for Irrigation and Domestic Purposes.

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Decision A. 11229 D 536

Decided July 22, 1946

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Appearances at Investigation Conducted by the Division of Water Resources  
at the Site of the Proposed Appropriation on April 30, 1946.

For Applicant

Carl Schmidt

in Propria persona

For Protestants

A. J. Lang et al.

Mr. and Mrs. August Lang

C. F. Eschwig

Mr. and Mrs. August Rohmann

Joseph Gardner et al.

Alois L. Gardner Sr.

For Division of Water Resources

S. C. Whipple, Associate Hydraulic Engineer

for Gordon Zander, Supervising Hydraulic Engineer, Division  
of Water Resources, Department of Public Works, State of  
California.

General Description of Proposed Development

Application 11229 was filed by Carl Schmidt on November 27, 1945,  
for a permit for the appropriation of 0.10 cubic foot per second to be

diverted from Haggerty's Gulch, tributary to Tomales Bay in Marin County for domestic purposes including the irrigation of a small garden and the irrigation of 6 acres of general crops. The applicant proposes to pump the water from a pool in the stream bea--no dam is contemplated. The point of diversion is described as being S.54° 15' W. 4,000 feet from the SE corner of Rancho Punta de los Reyes (Randall) as said Rancho is shown on the Point Reyes Quadrangle of the United States Geological Survey and is approximately on the boundary line of said Rancho about 1½ miles south west of Point Reyes Station on the San Francisco and Cazadero Line of the Northwestern Pacific R. R.

As the lands in the Punta de los Reyes area have not been sectionized it is difficult to state with any degree of certainty the subdivision of the public land survey, if projected, in which the point of diversion and place of use are located, but according to the application both are within the SW¼ of projected Section 35 T. 3 N., R. 9 W., M.D.B. and M.

It is proposed to use the water for domestic purposes throughout the entire year. The irrigation season is specified in the application as being from March 1 to about November 1 of each season.

#### PROTESTS

A protest against the approval of Application 11229 was filed jointly by A. J. Lang, George Ashley, C. F. Eschwig, Robert L. Eschwig and August Rohmann who own lands bordering upon Haggerty's Gulch below the lands of the applicant. They claim rights as riparian owners. According to the protest A. J. Lang, since about January 1, 1920, has used water from the Gulch for the irrigation of several thousand holly trees and August Rohmann

has been using water since about May 29, 1943, for household and garden irrigation purposes. Although no use of water is claimed by the other protestants they intend to use the water at some future time. These protestants allege in effect that the amount of water which applicant seeks to appropriate exceeds the flow in the Gulch during the summer months and that should Application 11229 be approved it would result in depriving them of sufficient water to meet their needs.

Another protest was filed jointly by Joseph Gardner, Alois L. Gardner, Jr., and William Gardner, who own approximately four acres of land adjacent to Haggerty's Gulch at its lower end. They claim that since about January 1, 1908, water has been used on their lands for domestic and irrigation purposes and that they are now serving 3 houses in addition to their own 3 families with water for domestic purposes. These protestants also allege in effect that should Application 11229 be approved the summer flow in the Gulch would be inadequate for their needs.

#### FIELD INVESTIGATION

Stipulations to an informal hearing under Regulation 12B (now Section 733b) of the Rules and Regulations of the Division of Water Resources having been entered into by both applicant and the protestants, and the stipulations having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on April 30, 1946, at which the applicant was present and the protestants were either present or represented.

In arriving at a decision in the matter of Application 11229 reliance is placed on the entire file in connection therewith, but especially upon the report of Engineer S. C. Whipple who conducted the field investigation.

## GENERAL DISCUSSION

Haggerty's Gulch, the source of the proposed appropriation rises on the northwesterly slope of Mt. Wittenberg (Elevation 1403) in the Inverness Ridge of the Coast Range Mountains, flows in a general northerly direction for about a mile and then turns abruptly to the right and flows in a general northeasterly direction for a distance of about a mile to its outlet on Tomales Bay. It drains a steep-sided watershed of approximately 0.68 square mile which is covered with dense vegetation. The soil along its course, at least up to mid elevations is rich, deep, and of a texture favorable to moisture retention. Watershed characteristics are favorable to perennial flow. The average gradient of the gulch is about 12.6%.

At or near the proposed point of diversion the two main branches of Haggerty's Gulch unite and at the time of the investigation the main or southerly branch was flowing an estimated 75 gallons per minute and the northerly branch was flowing about 50 gallons per minute making a total of approximately 125 gallons per minute or nearly 3 times the amount of water which the applicant proposes to appropriate. On the same date the flow of the stream above its mouth and below all points of diversion was about 250 gallons per minute or over five times the amount of water which applicant is seeking to appropriate.

This accretion is no doubt caused by the flow from springs and streams tributary to Haggerty's Gulch which enters the Gulch below applicant's proposed point of diversion. The springs are said to flow the year around.

According to Alois L. Gardner, Sr. who was present at the investigation, the smaller tributaries of Haggerty's Gulch go dry during the summer months, but that, even so, the flow in the Gulch at its mouth seldom drops to half the quantity present at the time of the investigation and

water has been supplied by the Gadners to approximately 19 people the year around for 18 years or longer.

Protestant Lang, probably the oldest resident on the Gulch stated at the investigation that there was "enough (water) for all", provided it is rightly used.

According to applicant Schmidt, the flow at the Forks referred to above, was measured during the late part of September 1945 as being 200 to 240 gallons per minute. Protestant Gadner claims however that the season of 1945 was above normal.

There are but two actual diversions from Haggerty's Gulch; those of Protestant Rohmann and Protestant Gadner. Rohmann takes his water through a 1 inch pipe line for domestic purposes and the irrigation of  $1\frac{1}{2}$  acre of garden and miscellaneous crops. Gadner diverts his water through a  $1\frac{1}{2}$  inch pipe line for domestic needs of 8 families (19 people) and the irrigation of some 4 acres of garden and orchard. The total estimated beneficial use does not exceed approximately 32 gallons per minute.

The other protestants while asserting riparian claims are not using water at the present time but have expressed their intention to divert in the future. All of the protestants concede the right of applicant Schmidt to share in the beneficial use of water from Haggerty's Gulch but resent his seeking a special advantage over them by seeking an appropriative right when he is already riparian to the stream.

It is the well established policy of the Division not to deny an application for an appropriative right on account of the prospective uses of a riparian owner and therefore all of the protests except those of

protestants Rohmann and Gardner are dismissed upon the grounds that a protest which is based upon an unused claim of riparian right is not such as to justify the denial of an appropriation.

As to the protests of Rohmann and Gardner, the record clearly indicates that during a season of normal runoff there is sufficient unappropriated water in Haggerty's Gulch to justify the approval of Application 11229 and therefore these protests are also dismissed. If during seasons of sub-normal runoff there should be insufficient water in the Gulch for appropriation under Application 11229, the burden will be upon the applicant to so regulate his diversions under Application 11229 as not to interfere with riparian rights below him. In such seasons he would no doubt rely on his claim of riparian ownership and share the water reasonably with other riparian owners on the stream.

#### CONCLUSION

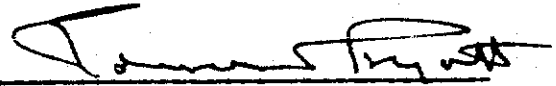
The result of the investigation made in connection with the protests filed against the approval of Application 11229 of Carl Schmidt to appropriate water from Haggerty's Gulch indicates that during a season of normal runoff there is sufficient unappropriated water in the Gulch to justify the approval of Application 11229 without interfering with the present use. As to the protestants who base their protests under an unused claim of riparian right these protests are dismissed as it is the well established policy of the Division not to deny an application on account of the prospective use of a riparian owner. Application 11229 should therefore be approved and a permit issued to the applicant subject to the usual terms and conditions.

ORDER

Application 11229 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been received, stipulations under Regulation 12B (now Regulation 733b) of the Rules and Regulations of the Division of Water Resources having been filed and approved by the State Engineer, a field investigation by the Division of Water Resources having been made and the Division now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11229 be approved and permit issued subject to such of 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 22 day of July, 1946.



Edward Hyatt, State Engineer

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