

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 15830 by Robert W. Gant to
Appropriate Water from Patten Creek, Tributary via Coffee
Creek to Trinity River in Trinity County for Domestic
Purposes.

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Decision A 15830 D 825

Decided March 14, 1955

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In Attendance at Investigation Conducted by the Division of
Water Resources on September 23, 1954:

Robert W. Gant	Applicant
Henry Rother	} Protestants
Irene Rother	
Sadie Alice Bassham	
Stennett M. Sheppard	Protestant Bassham's Attorney
K. L. Woodward Associate Hydraulic Engineer Division of Water Resources Department of Public Works	Representing the State Engineer

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OPINION

General Description of the Project

Application 15830 initiates an appropriation of 3,000 gallons per day, year-round, from Patten Creek, tributary to Coffee Creek thence Trinity River, in Trinity County, at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T38N R8W, MDB&M. The works proposed include a log dam, 5 feet high by 15 feet long and 600 lineal feet of 2-inch galvanized pipe. The water is to be used for domestic purposes at four dwellings with 1/4 acre (in all) of appurtenant gardens. According to the application the applicant owns the proposed place of use and will seek a special use permit from Shasta National Forest to provide necessary right of access to his proposed point of diversion.

Protest

Protests were filed against the application by Henry and Irene Rother and by Sadie Alice Bassham. Extracts from the protests are as follows:

From the Rother protest

"During the entire irrigation season of each year the water in Patten Creek is inadequate to irrigate the property of protestants and during the dry season the quantity is insufficient to serve protestants' property for domestic use."

" ... applicant has adequate water upon his premises in the form of a spring to provide him with water for domestic use and the irrigation of his garden."

"Protestants claim a right ... based upon appropriation and also upon riparian rights."

" ... present and past use of water ... : this water has served two cabins during a portion of the summer season, irrigated and kept alive trees of various kinds."

"This protest may be disregarded ... if the applicant would consent to a permissive use only which would be subject to cancellation and to use the water at such times if and when it was not required by protestants."

" ... the entire flow of Patten Creek has for many years past been used beneficially upon the herein described property as a riparian owner and pursuant to a notice of appropriation filed ... on August 1, 1911"

From the Bassham protest

" ... the proposed appropriation ... will seriously impair my use of the water of the said stream by greatly reducing the flow of water therein and to which my land is riparian; if this application is granted I believe that all of the waters of the stream will be appropriated."

"Protestants claim a right ... based upon riparian claim and use begun prior to December 19, 1914."

"The waters of said stream have been and now are used for domestic purposes in connection with a camp site owned by protestant; said waters have been used continuously since at least 1911. Protestant is unable to state exactly how much water is used in this connection as the water varies but the period of use is generally from March to November of every year."

" ... I respectfully request that this protest not be disregarded and dismissed under any conditions for the reason that if I am deprived of the use of this water my land will become valueless."

Answer

The applicant answers the protest by letter dated July 19, 1954, that letter stating as follows:

"In regards to my filing a water right on a stream of water that runs through my property; an unnamed stream, sometimes known as Patten Cr., there hasn't been any water diverted out of this stream for a number of years.

"There has been water taken out at the north side of my property for many purposes with a bucket, on the Sadie Alice Bassham property, and for camp purposes on Henry Rother's property after it leaves Sadie Alice Bassham's ground on the east.

"There is enough water in this stream for Mr. Rother's use and also Sadie Alice Bassham's use and for my use.

"Since I filed a water right the 12th day of April, 1954 and the notices were put up, Mr. Rother went ahead and put in a dam on my property, and is taking water out of this stream."

Field Investigation

A field investigation was conducted on September 23, 1954, by an engineer of the Division. The applicant and the protestants were present during the investigation and subsequently, with the approval of the Division, stipulated to the submittal of the application and protests upon the official records.

Records Relied upon

Application 15830 and all data and information on file therewith.

Information Secured by Field Investigation

The report covering the field investigation of September 23, 1954 contains among other statements the following:

"Prior to investigation the application sought 0.53 c.f.s. year-round from an unnamed stream (locally known as Patten Creek) in Trinity County for mining and domestic purposes. The plans of the applicant as outlined by him at the investigation now call for diversion of 3,000 gallons per day for domestic purposes at four cabins and for irrigation of one-quarter acre of garden. A request to amend the application accordingly was submitted. No changes are contemplated to the originally planned diversion works or to the locations of the points of diversion and place of use."

"The applicant contended that there had been no water diverted from the source for a number of years by the protestants except by bucket for camping and that there is sufficient water in the stream for the needs of all."

"The source of the appropriation called an unnamed stream in the application when filed is locally known as Patten Creek. The stream, perennial in flow, originates on the south slopes of Coffee Creek Canyon and flows in a northerly direction a distance of about one mile to a confluence with Coffee Creek. The watershed area covering about one-third square mile, is narrow, steep and heavily wooded. The streams in the area derive their flow principally from precipitation which occurs during the fall, winter and spring months . . . According to Mr. Rother, Patten Creek reached its minimum flow this year about the middle of September

and had not increased materially since. He stated that the flow this year was lower than he had ever previously observed, which, at the time of investigation, was measured at his point of diversion to be 0.21 cubic foot per second."

"Other sources of water in the immediate vicinity observed were (1) a spring on the applicant's property flowing an estimated ten gallons per minute at the time of investigation, (2) Coffee Creek, one of the major tributaries of Trinity River which flows either through or nearby the properties of all the parties concerned and an unnamed tributary of Coffee Creek from the north which joins Coffee Creek near the west boundary of the Rothers."

"Applicant Gant owns or controls 22.5 acres in three separate tracts on the south side of Coffee Creek. Use of water under the application is planned on a small portion of the northernmost tract which is neither riparian to Coffee Creek or to Patten Creek. Development to date includes two cabins without inside plumbing and a small domestic garden. In the past, water for the applicant's needs has been obtained from the above mentioned spring and although spring produces sufficient water for his anticipated needs, it emits from the ground only a few feet higher than the land to be served, and would require the installation of a pressure system to serve the cabins. Mr. Gant argued that this would be an unreasonable burden as at present he is not served with electricity."

"Mr. and Mrs. Rother own approximately forty acres of land, somewhat rectangular in shape, and approximately bisected by Coffee Creek. To date development of the property includes a modern residence, surrounding lawn of about one-quarter acre, two gardens each about the size of the lawn, swimming pool, small lake for raising fish and two rental summer cabins. The house, lawn and one garden is served from a pipe line which heads on Patten Creek about 150 feet above the applicant's proposed point of diversion. The swimming pool and fish pond is maintained by a ditch diversion from Coffee Creek, and irrigation water for the second garden is obtained through a pipe diverting from the north-side tributary of Coffee Creek. These latter two streams are utilized only in part by Rother even during the season of low flow. Coffee

Creek is not used more extensively due to the little area that could be served by gravity flow, and they have avoided using water from the north tributary for lawn irrigation, although it could be accomplished by gravity, as the water allegedly clogs the sprinklers with silt. In addition to the above uses water is bucketed from Patten Creek for the domestic needs at the two cabins and also diverted by gravity to a small ditch and allowed to dissipate into the ground nearby allegedly to maintain the natural growth of trees. It is not believed that over one-quarter acre is influenced by this diversion. Mr. Rother claimed that unless the trees were irrigated, the maple species would not survive the dry summers. Future plans call for subdividing some of their property on the south side of Patten Creek for homesites and providing water thereto from Patten Creek at a point downstream from the applicant's proposed point of diversion."

"The Rotherers claim an appropriative right for 25 inches through a filing with the Trinity County Recorder in July 1911. Mr. Sheppard stated that his client, Mrs. Bassham, would not acknowledge such a right without further proof due to the question of continuous beneficial use. The property is undoubtedly riparian to Patten Creek"

"Mrs. Bassham claims to own five acres of land below the applicant's diversion point, that the land has been used for about 55 years as a camp ground, that since 1949 or 1950 water has been used by her family for week-end camping and that her riparian right entitles her to a continuance of flow. The Bassham property has no improvements thereon and water is obtained from Patten Creek for domestic use at the camp site by bucket. Mrs. Bassham indicated that their present plans do not call for a use of the property other than for camping but development may be advisable at some future date."

"There are no other users of water from Patten Creek at present, and as Coffee Creek carries a considerable quantity of water even during the driest part of the year, it is doubtful that any diversion from the former stream would have any noticeable effect on the latter's supply."

Additional Information from Division Files

A letter received from the applicant on September 28, 1954, reads as follows:

"I hereby request that my Application 15830 be reduced to 3,000 gallons per day for domestic purposes. All reference to mining purposes should be deleted.

"Domestic use will be for 4 houses and about 1/4 acre of garden."

The application, originally for 0.53 cubic foot per second, year-round, for mining and domestic purposes was in due course amended in accordance with the applicant's above quoted letter request.

Discussion

The distribution of the seasonal flow of Patten Creek, a tributary via Coffee Creek of Trinity River, may be supposed to somewhat parallel the distribution of seasonal runoff from Trinity River watershed. According to Bulletin No. 5 -- "Flow in California Streams" -- 1923, the distribution of seasonal runoff from Trinity River watershed is as follows:

Month	Percentage of seasonal runoff
January	11.8
February	15.8
March	13.9
April	15.1
May	17.2
June	8.2
July	2.8
August	1.5
September	1.4
October	1.3
November	4.9
December	6.1

These figures indicate that the natural flow of Trinity River is relatively low, usually, in August, September and October, relatively greater in all other months.

Protestant Rother on September 23, 1954, stated to the investigator that Patten Creek was lower in 1954 than he had ever before observed it to be, that the creek was lowest about mid-September and had not materially increased since that time; and the investigator determined that the flow on September 23, 1954, was approximately 0.21 cubic foot per second. These circumstances together with the data of the preceding paragraph indicate that the lowest flow that may be expected in Patten Creek at the applicant's proposed point of diversion is of the order of 0.21 cubic foot per second, that flows of approximately that order are to be expected

during August, September and October, and that flows during all other months are apt to be considerably greater.

A flow of 0.21 cubic foot per second, equivalent to about 135,700 gallons per day, at the applicant's proposed point of diversion appears to be much more than enough to satisfy the protestants' requirements and the applicant's projected requirements. For the actual uses made by the Rothers of water from Patten Creek -- domestic use at their home, the watering of a quarter acre garden, the bucketing of water for domestic purposes at two cabins and the watering of the quarter acre of maple trees -- some 10,000 gallons per day would seem ample. For the supply of campers, by bucketing, on the Bassham property, demand probably does not exceed a few hundred, perhaps 500, gallons per day. These amounts, plus the 3,000 gallons per day sought by the applicant, total roughly about 10% of the probable low flow of Patten Creek.

While the Rothers assert that they plan at some future time to subdivide part of their property and Mrs. Bassham remarks that development of her property may sometime be advisable, it is an established principle that anticipated future use by a riparian owner is not a bar to the approval of an application to appropriate. Until such time as a riparian owner has need of additional water and

can actually apply it to beneficial use the water may be appropriated by others. Such time may of course come and there is therefore no assurance that use based upon a permit to appropriate may not at some future time be interrupted.

The assertions by the protestants of appropriative rights based upon filing and/or upon use begun prior to December 19, 1914, do not require consideration in connection with the application at issue because of the limited progress that has been made in the development of facilities and/or in the application of water to beneficial use under those alleged rights.

Summary and Conclusion

The applicant seeks to appropriate 3,000 gallons per day, year-round, from Patten Creek, in Trinity County, for domestic purposes. The application is protested by Henry and Irene Rother and by Sadie Alice Bassham who assert both riparian and appropriative rights and contend that the rights that they claim cannot be fully exercised if Application 15830 is approved.

The parties stipulated to proceedings in lieu of hearing and a field investigation was conducted on September 23, 1954. According to the report covering that investigation

the minimum flow of Patten Creek is approximately 0.21 cubic foot per second, equivalent to about 135,700 gallons per day, the Rothers use water from Patten Creek to supply domestic needs at a modern residence and at two cabins, to water a one-quarter acre garden, and to support the natural growth of maple and other trees on another area of about one-quarter acre; Protestant Bassham owns five acres, her land is unimproved but is used by her family for week-end camping; both the Rothers and Mrs. Bassham plan at some future time to subdivide their properties and will then require more water than they use at present.

From the information obtained by field investigation present requirements by the Rothers and by Mrs. Bassham may be of the order of 10,000 gallons per day and 500 gallons per day, respectively. Such amounts plus the 3,000 gallons per day that the applicant seeks to appropriate total some 13,500 gallons per day or approximately 10% of what appears to be the minimum flow of Patten Creek.

The behavior of Patten Creek presumably parallels that of Trinity River, to which Patten Creek is tributary, via Coffee Creek. Low stages in Trinity River are the rule during August, September and October, flow in all other months being substantially greater.

The protestants' assertions of appropriative rights initiated prior to December 19, 1914, are not a deterrent to the approval of Application 15830 because of the limited progress that has been made in perfecting those alleged rights. Neither are the protestants' assertions as to riparian rights a bar to approval of the application, it being an accepted principle that until a riparian owner has use for water and can apply it beneficially the water is subject to appropriation by others.

The circumstances summarized point to the conclusion that unappropriated water usually exists in the source from which Applicant Gant seeks to appropriate and that such water may be taken and used in the manner proposed without infringement upon the rights of lower users. It is the opinion of this office therefore that Application 15830 should be approved and permit issued subject to the usual terms and conditions.

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ORDER

Application 15830 having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15830 be approved and that a permit be issued to the applicant, 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 14th day of March 1955



A. D. Edmonston
A. D. Edmonston
State Engineer