

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

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In the matter of Application 4667 of John F. Coleman to appropriate from Lompico Creek and Zayante Creek, tributaries of San Lorenzo River in Santa Cruz County for domestic purposes and in the matter of Application 5055 of Leonard and Holt to appropriate from Zayante Creek, tributary of San Lorenzo River in Santa Cruz County for domestic purposes.

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DECISION A 4667, 5055 D 166
Decided August 18, 1927

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APPEARANCES AT HEARING HELD May 16, 1927.

For Applicants:

John B. Coleman
Leonard and Holt

G. G. McDaniel
J. H. Morris

For Protestants:

Santa Cruz Land and Title Company
J. Lansing Lane
Olympia Trout Farm, Inc.
A. M. Mannell
W. F. McNamara
E. Fox
Mrs. John Forde

H. J. Bias
H. J. Bias
H. J. Bias
in propria persona
in propria persona
no appearance
no appearance

EXAMINER: Everett K. Bryan, Deputy Chief, Division of Water Rights, for Edward Hyatt, Jr., Chief of Division of Water Rights, Department of Public Works, State of California

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O P I N I O N

Application 4667 was filed July 1, 1925. It proposes an appropriation of 0.4 of a cubic foot throughout the entire year from Lompico Creek and 0.2 of a cubic foot per second throughout the entire year from Zayante Creek, both being tributaries of the San Lorenzo River, for domestic purposes on approximately 620 acres of land located in Section 35, T 9 S, R 2 W and Section

2, T 10 S, R 2 W, M.D.B. & M. which the applicant proposes to subdivide into about 3600 lots for summer home sites. This application was protested by the Olympia Trout Farm, Inc., J. L. Lane, A. M. Hannell, E. Fox, W. L. McNamara and Mrs. John Forde.

Application 5055 was filed June 14, 1926. It proposes an appropriation of 0.2 of a cubic foot per second throughout the entire year from Zayante Creek, a tributary of the San Lorenzo River, for domestic purposes on 1400 lots located in Sections 1 and 2, T 10 S, R 2 W, M.D.B. & M. This application was protested by Olympia Trout Farm, Inc., Santa Cruz Land and Title Company and J. L. Lane.

Both applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested were set for a public hearing at the Supervisor's Room of the Court House at Santa Cruz at 10:30 o'clock a.m. on May 16, 1927. Of this hearing applicants and protestants were duly notified.

Description of Protests.

In general, the protestants claim prior vested rights by virtue of ownership and use of water prior to December 19, 1914 and allege in effect that the proposed diversions would interfere with the natural flow of the streams especially during the summer months. They also claim that the amount of water applied for is excessive in that it is to be presumed that the number of actual holdings will be greatly reduced, as several lots will be under a single ownership and not so much water will be required.

General Description of the source of Appropriation.

Zayante Creek, a tributary of the San Lorenzo River rises in the Santa Cruz Mountains about 15 miles north of Santa Cruz and flows in a general southwesterly direction to its junction with the San Lorenzo River in the

vicinity of Felton. One of its main tributaries is Lompico Creek which enters Zayante Creek about two and three quarters miles above the junction of Zayante Creek and the San Lorenzo River.

The area drained by Zayante Creek above its junction with Bear Creek, the lowest tributary of Zayante Creek, is approximately 17.4 square miles. This drainage area includes that of Lompico Creek which is about 3.1 square miles.

Under Application 4667 it is proposed to divert water at two points on Lompico Creek one being about 1.7 miles and the other about 2.2 miles above its junction with Zayante Creek. The drainage area above the lower point of diversion is about 2.0 square miles. In addition to the two points of diversion on Lompico Creek it is proposed to divert water at a point on Zayante Creek about 1 1/2 miles above the junction of Lompico and Zayante Creek to which about 10.4 square miles of drainage area are tributary.

Under Application 5055 it is proposed to divert water from Zayante Creek about 1.2 miles above the junction of Lompico and Zayante Creeks to which point about 10.4 square miles of drainage area is tributary.

About 3/4 of a mile below the junction of Lompico Creek and Zayante Creek there has been a dam constructed, commonly known as the Markham dam, by means of which water is diverted through a wooden flume to the fish hatcheries of the Olympia Trout Farm, Inc., one of the protestants.

From the testimony presented at the hearing this diversion of the Olympia Trout Farms, Inc., is the last one on the Creek and any water which passes this point enters San Lorenzo Creek, although a small amount may be withheld on its way down by the Mt. Herman resort for swimming purposes.

Use of Water by Protestants.

(a) W. F. McNamara.

Mr. W. F. McNamara owns 85 acres of land lying immediately south of and adjacent to the lands of the Lompico Subdivision described as the place of

use under Application 4667.

Up until five years ago, the testimony shows that Mr. McNamara had used water from Lompico Creek for domestic purposes but at that time had transferred his pump to Zayante Creek and is using 570 gallons per day or about 0.0009 cubic foot per second from that source. With the exception of occasional use of water in a cottage opposite his residence no water is being used by him from Lompico Creek.

In a year or two Mr. McNamara contemplates subdividing his property into summer home sites and for this reason seeks to preserve the present flow of Lompico and Zayante Creeks to which creek Mr. McNamara claims that his land is riparian.

(b) J. Lansing Lane.

Mr. Lane owns about 79 acres of land on the bank of Zayante Creek immediately adjoining Mr. McNamara's land on the south. Mr. Lane acquired this property in 1921 with the understanding that he was entitled to one-third of the waters of Zayante Creek.

Mr. Lane has never used any water from Lompico or Zayante Creeks but obtains his supply from a spring which is tributary to Zayante Creek about 700 feet above the Markham dam. The flow of this spring is about 60 gallons per minute.

Mr. Lane uses this water for a fish pond and the irrigation of about one acre of land. He obtains his domestic supply from another spring the flow of which is about 9 gallons per minute.

It is Mr. Lane's intention to eventually subdivide his lands.

(c) A. M. Mannell.

Mr. A. M. Mannell owns about 4 acres of land. He uses about 2900 gallons a day or about 0.004 cubic foot per second for domestic purposes and the irrigation of about two acres of lawn and flowers.

Mr. Mannell has no objection to the proposed appropriations so long as his use is not interfered with.

(d) Mr. E. Fox and Mrs. John Forde.

No appearance was entered at the hearing on behalf of Mr. Fox and Mrs. Forde and as no testimony was presented from which the use of water of these two protestants could be determined they have failed to support the burden of proof appropriate to a moving party.

(e) Olympia Trout Farm, Inc.

The Olympia Trout Farm, Inc., owns 120 acres of land lying on both sides of Zayante Creek about 1 1/2 miles northeasterly of the town of Felton. The Company claims that under the terms of the deed by which the property was acquired, 2/3 of all the waters of Zayante Creek were reserved for its use.

The only use made of the waters of Zayante Creek has been for filling the ponds at the fish hatchery. The domestic supply of the Company is obtained from springs, the waters of which are also used to supply the fish hatchery ponds during the winter season as this water is much clearer at that time than the waters of Zayante Creek. During the summer months the waters of these springs are not sufficient in quantity to supply the fish ponds and the Company is therefore dependent upon the supply from Zayante Creek.

The water from Zayante Creek is diverted into a 10" x 12" flume by means of the Markham dam and conveyed a distance of about 2500 feet to the ponds.

At the entrance to the flume there is a screen which often becomes clogged with leaves and other debris and causes water to spill over the dam. The Company claims that any water spilling over the dam during the low flow period is either caused by the clogging of the screen or else it is water which is drained from a 2,000,000 gallons reservoir which is located on Mr. Lane's property.

No measurements of flow of the water through the Company's flume

were available but from the evidence presented at the hearing it seems probable that the flow during the summer months was approximately one cubic foot per second. No water is diverted during the winter months from Zayante Creek for the reasons stated above.

The Company proposes to enlarge the flume and increase its stock of fish and may eventually subdivide the property into about 250 lots.

From the testimony presented at the hearing it appears that the only time that the Company may have taken all of the flow of the creek was during the months of August and September 1924 and with the exception of these two months which was a period of exceptionally low runoff, there has always been water flowing over the dam.

(f) Santa Cruz Land and Title Company.

The Santa Cruz Land and Title Company appears to have been interested in the matter only to the extent that at the time of the filing of the protest against the approval of Application 5055 the Olympia Trout Farms, Inc. had deeded its land to the Title Company to hold in trust for it.

Subsequent to the filing of the protest however the property has been reconveyed to the Olympia Trout Farm, Inc. and it would therefore appear that the Title Company had no further interest in the matter.

Water Supply.

Very little testimony was presented at the hearing relative to the quantity of water flowing in Lompico and Zayante Creeks.

Mr. McDaniel, appearing for applicant Coleman, made some measurements of flow in September 1926. These measurements were made by means of floats and the results have been misplaced so that they are not available, but from data submitted at the hearing, from memory only, the results were approximately as follows:

Flow of Zayante Creek passing the Markham dam.	0.11	c.f.s.
Flow of Lompico Creek at junction of Lompico and Zayante Creeks.	0.025	"
Flow of Lompico Creek about 1/2 mile above junction.	0.042	"

These measurements were taken at the lowest stage of the creeks that the observer had noticed. It is possible however that during the low runoff period of the year 1924 this flow would have been less.

About the middle of August 1925, Mr. H. H. Jones, a witness for Messrs. Leonard and Holt, made a weir measurement of the water flowing in Zayante Creek at a point about 200 feet below the applicant's proposed point of diversion. The results of this measurement indicate that about 0.78 of a cubic foot per second was flowing in the creek at that point.

From the testimony of several witnesses it seems clear that possibly with the exception of a short period in 1924 there has always been a flow of water in Longico and Zayante Creeks and water flowing past the Markham dam.

Proposed Use of Water by Applicants.

The use as proposed by the applicants is a beneficial one and the estimate of 108 gallons per lot by Mr. Coleman and the estimate of 60 gallons per lot by Leonard and Holt, assuming 4 people to the lot, do not appear to be excessive. However at the time of issuance of license if the amount requested is found to be excessive the amount named in the license may be reduced accordingly.

General Discussion.

There appears to be a comparatively small amount of water which is being diverted from the sources of proposed appropriation at the present time and it would appear that the protestants were in general more concerned with the possible interference with their proposed future use than with their present use.

Mr. Lane claims one-third of the waters of Zayante Creek and the Olympia Trout Farm, Inc., claims the remainder by virtue of clauses in the deeds which conveyed the property to them.

It seems unreasonable to presume that no other parties on this source have a right to the use of water and to straighten the matter out Mr. Lane and

the Olympia Trout Farm, Inc., were asked to submit an abstract of the title to their respective lands which this office could examine with a view of determining the character of the right which these protestants claim. This abstract has not been presented. This office is obliged therefore to base its opinion in the matter of rights of protestants upon the present use.

Conclusion.

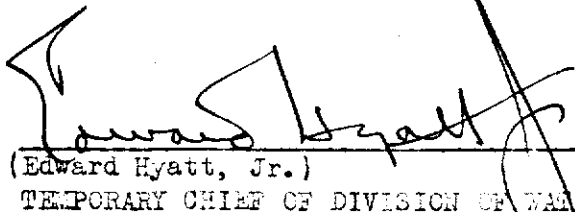
It is the opinion of this office that during years of normal runoff there is unappropriated water in Lompico and Zayante Creeks subject to appropriation under these applications. In the summer months of a year of low runoff however it is likely that the water supply may be insufficient to enable the applicants to avail themselves of the entire amount which is sought and care should be exercised that the prior existing rights should not be interfered with.

O R D E R

Applications 4667 and 5055 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Applications 4667 and 5055 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 18th day of August , 1927.



(Edward Hyatt, Jr.)
TEMPORARY CHIEF OF DIVISION OF WATER RIGHTS

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