

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

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In the matter of Application of S. D. Balch to
Appropriate from the Los Gatos and Tributaries,
D. D. of Los Gatos Creek in Santa Clara County,
for Domestic Purposes

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DECISION A 4974 D 176

Decided December 2, 1927.

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APPEARANCES AT HEARING HELD February 10, 1927

For Applicant:
S. D. Balch

Echardt, E. J. & Son
By L. D. Echardt

For Protestants:
San Jose Water Works
W. E. Riker
Harry Lyon
Hiram L. Lester, et al

A. J. ...
Edward ...
Hiram ...
as ...

EXAMINER: Everett H. Bryan, Deputy Chief of the Division of Public Works,
Chief of Division of Water Rights, State of California,
San Francisco, California

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C O P I N I O N

Application 4974 was filed by S. D. Balch on March 26, 1926.

It proposes an appropriation of a total amount of 1.0 cubic feet per
second from either San Jose Creek or its tributaries, or from streams
are in turn tributary to Los Gatos Creek for domestic purposes on an area
of 450 acres in Sections 8, 9, 13 and 17, T 9 S, R 1 E, S.B.S. & N., which

is to be subdivided into 2700 to 3000 lots. The application was protested by the San Jose Water Works, W. E. Riker, Harry Ryan and Nathan L. Lester, et al.

The application was 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 was set for a public hearing at the Supervisor's Room of the Court House, San Jose at 10:30 o'clock A.M. on February 10, 1927. Of this hearing applicant and protestants were duly notified.

W. E. Riker claims a right to the use of water from Casey Gulch Creek based upon his ownership of land in said Casey Gulch. He claims that he diverts water from eight places in Casey Gulch for use in Holy City and alleges in effect that the approval of the application for one cubic foot per second would take all the water in the Creek and would result in reducing his water supply and injuring his property and the development thereof beyond repair.

Nathan L. Lester, Silvia M. Lester, William W. Lester, Ethel G. Lester and Hazel Cilker base their claim to the right to use water from Los Gatos Creek upon riparian ownership, prior application and prior appropriation. These protestants claim to have used 5 cubic feet per second during the entire year, each and every year for the seven years immediately last past and allege in effect that there is no surplus or unused water in Los Gatos Creek and that the proposed appropriation of the applicant would if approved, reduce their water supply from Los Gatos Creek which supply is barely sufficient and concerning which supply litigation is now pending.

Harry Ryan claims a riparian right to the waters of Casey Gulch and a general use of the waters thereof. He intends ultimately to take water from Casey Gulch for domestic use on lots within the NE $\frac{1}{2}$ of Section 16, T 9 S, R 1 W, M.D.B. & M. Protestant alleges in effect that if the proposed appropriation of the applicant were approved it would reduce the water in the creek to such an extent as to deprive him of his necessary water supply to which he is entitled by virtue of his riparian ownership.

The San Jose Water Works, a corporation, claims a right to the use of the waters of Los Gatos Creek and its tributaries to the extent of about 6 million gallons per day as measured at the Jones dam which is located about two miles below Casey Gulch, which right is based upon appropriation made prior to the passage of the Water Commission Act, and beneficial use thereafter and also upon riparian ownership and alleges in effect that there are no waters in Casey Gulch or its tributaries subject to appropriation unless it be surplus flood waters flowing therein during that part of the winter and spring months when the flow in Los Gatos Creek at Jones dam exceeds 6 million gallons per day.

After a careful study of the evidence introduced at the time of the hearing this office was forced to conclude that there was no unappropriated water available in normal years at the proposed point of diversion from about April 1st to about December 1st and that if a permit were issued, the season of diversion should be limited to the period from about December 1st to about April 1st.

The applicant was notified to this effect and asked if, under the circumstances he would desire a permit for this limited season or prefer that the application be rejected in its entirety.


Under date of October 18, 1927, this office was informed that Mr. Balch desired to withdraw his application and therefore the application should be revoked.

O R D E R

Application 4974 for a permit 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, subsequent to which the applicant requested the withdrawal of the application and the Division of Water Rights now being full advised in the premises:

IT IS HEREBY ORDERED that the said Application 4974 be rejected and cancelled upon the records of this office.

Dated at Sacramento, California, this 2nd day of December, 1927.



(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS