

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

oOo

In the Matter of Applications 14505 and 14506 by Paul V. Amick  
to Appropriate Water from Sugar Loaf Creek Tributary to South  
Fork American River in El Dorado County for Domestic, Irrigation  
and Recreational Purposes.

oOo

Decision A. 14505, 14506 D. 776

Decided March 5, 1953

oOo

Appearances at Hearing Held at Placerville on October 23, 1952:

For the Applicant

Paul V. Amick

In propria persona

For the Protestants

Silver Fork School District

{Harold Putzke, President  
{Frances Sabich, Clerk

Silver Fork Home Owners'  
Association

Vludimir Sabich

Henry Lahiff

In propria persona

Winifred C. Wall

No appearance

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic  
Engineer, Division of Water Resources, Department of  
Public Works, for A. D. Edmonston, State Engineer.

Also present - Leslie C. Jopson, Supervising Hydraulic Engineer,  
Division of Water Resources.

oOo

## OPINION

### General Description of the Proposed Development

Under Application 14505 it is sought to appropriate 650 gallons per day, year-round, for domestic purposes, from Sugar Loaf Creek at a point within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, T 11 N, R 15 E, MDB&M. Diversion is to be effected by means of a concrete diversion dam 3 feet high by 8 feet long, conveyance by a 3/4 inch pipeline, 1859 feet long. Use is proposed on Lots 41, 42 and 43 of Silver Fork Subdivision, these lots being said to be within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of the same Section 28.

Application 14506 initiates an appropriation of 0.078 cubic foot per second, from April 1 to November 1, for irrigation and recreational purposes, from the same Sugar Loaf Creek, at two points of diversion, both located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of the above mentioned Section 28. Both of the proposed diversions are to be by gravity. At one of the points of diversion it is proposed to build a concrete dam 4 feet high by 10 feet long; at the other no dam is considered necessary. The project includes an earth ditch of a stated carrying capacity of 0.5 cubic foot per second. The water is to be used on the same Lots 41, 42 and 43 as above mentioned. One acre of general crops is to be irrigated, irrigation extending from about April 1 to about November 1. Water is to be used also for the maintenance of a swimming pool, details unstated.

### Protests

The same parties protest both applications.

The Silver Fork School District states as the basis of its protest that the proposed appropriations

"will cause hardships on operation of Silver Fork School, because of water shortage, will hamper sanitation facilities, and also because there is insufficient water in Sugar Loaf Creek to warrant additional filings for water."

It bases its claim to a water right upon "Subdivision water system and riparian water rights." It asserts that it uses water for domestic purposes only, stating in that connection:

"Silver Fork School has been using this water for seven (7) years and relies on it for its sanitation facilities. School has 6 acres of ground and we have 20 pupils with a larger enrollment expected and also plan on enlarging, or building a new school."

It describes its diversion point as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, T 11 N, R 15 E, MDB&M. It states no terms under which its protest may be disregarded and dismissed, except withdrawal of the applications.

The Silver Fork Home Owners of Silver Fork Subdivision assert in their protest:

"All the lot owners in the Silver Fork Subdivision . . . know there is no unappropriated water available in Sugar Loaf Creek, & all water rights owned and in use by Silver Fork Subdivision since 1911, supplied said Subdivision. There is insufficient water in Sugar Loaf Creek for additional filings."

As the basis of their claim to a water right they rely upon riparian rights and upon what they term "Subdivision Water System." Their protest includes the following statements:

"Has been Silver Fork Water System since Sept. 15, 1939, for which all the home owners of the Silver Fork Subdivision used for domestic use, and which must be supplemented in summer from June, through October by pumping from the Silver Fork River, at least every other year, and sometimes every year.

\* \* \*

"This protest may be disregarded and dismissed if applicant withdraws his Applications 14505 and 14506 and stops interfering with Silver Fork Subdivision's water rights, from which he is already using water. He uses this water 6 mo. every year, because his own line if used freezes up."

The protestants' diversion point is described as falling within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, T 11 N, R 15 E, MDB&M; their places of use are all said to lie within Silver Fork Subdivision. The protest bears 21 signatures.

Henry Lahiff in his protest represents that

". . . the proposed appropriation will result in injury to me and all owners in the Silver Fork Subdivision. There is no unappropriated or surplus waters available in Sugar Loaf Creek, all water rights owned and in use by the Silver Fork Subdivision since 1911, and which is the main supply for said Subdivision."

Protestant Lahiff asserts riparian rights and intimates rights as an owner of land within Silver Fork Subdivision which in turn dates from 1938. He claims that he or his predecessors in interest have used all of the available runoff from the watershed since 1911. He states in this connection:

"During the low water period every summer about 5 months water has to be pumped from Silver Fork Ditch across the South Fork of American River to supplement the flow."

He states that his diversion heads within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, T 11 N, R 15 E, MDB&M, that his protest may be disregarded and dis-

missed if the applicant withdraws his applications and ceases interfering with Silver Creek water rights and that the applicant to date has been getting more than his share of the available water.

Winifred C. Wall protests that she and all other lot owners in the Silver Fork Subdivision will be injured by the proposed appropriation. She states that she is served by the Silver Fork Water System, that she has been so served since May 14, 1940, that her diversion heads within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, T 11 N, R 15 E, MDB&M, that her use of water is for domestic purposes on a lot within the Silver Fork Subdivision and that her protest may be withdrawn and dismissed if the applicant withdraws his applications and does not again interfere with Silver Fork water rights. She amplifies her protest by stating:

"I protest because I do not think or believe that one person should have any more water than the other in Silver Fork Subdivision as the water belongs to the owners . . . It would be injurious to me and all owners . . . First there is no unappropriated water available as the water runs very low or dry in late summer and fall . . . The owners . . . have been warned as we were this fall not to use any more water than was necessary in the house and none for irrigation. We had to let our gardens and lawns go dry. The water was for domestic use only. The applicant has a well on his land and never had to be conserving of water so why should he be given rights for more while the rest of the property owners go without?

\* \* \*

"No water for recreation at any time was the word I got because there isn't any water for that purpose."

### Answers

In answer to the several protests the applicant states in effect that there are 3 houses on his property which are in use year-round, that riparian rights attach to his property, that the appropriation which he seeks will not interfere with use under valid rights by any protestant, that the Pacific Gas and Electric Company and the U. S. Forest Service who also use water did not protest his application, that the School District's water supply is unsanitary, that some home owners bring in drinking water from Sacramento in preference to using the local supply, that many home owners intend to put down wells, considering that the only way to secure potable water, that many home owners in Silver Fork Subdivision feel that a better and cheaper water supply could and should be obtained from Silver Fork River, that Protestant Lahiff uses but a small part of the supply available in the creek, and that Protestant Wall's use would not be hindered by the appropriation which he is seeking.

### Hearing Held in Accordance with the Water Code

Applications 14505 and 14506 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested were set for formal hearing under the provisions of Article 13 of the California Administrative Code, Title 23, **Waters**, on Thursday, October 23, 1952 at 10:00 o'clock a.m. in the **Supervisors' Room**, El Dorado County Court House, Placerville, California. Of the hearing the applicant and the protestants were duly notified.

### Discussion

Relevant testimony by witnesses at the hearing of October 23, 1952 was in substance as follows:

Applicant Amick testified (Transcript, pages 9 to 12) to the effect that he purchased the property for which he is now seeking to appropriate water in November, 1951, that his predecessor in interest (Proctor) had used the place very little and had suggested that more water would be needed, that he wants more water, that he does not want to deprive others of water, and that he leaves the decision in the matter to the Department. On cross examination he testified (Transcript, pages 12 to 38) that a part of the flow of Sugar Loaf Creek passes unused into American River, that he already diverts from Sugar **Loaf** Creek at a point above the Lahiff intake, that he also is taking water at 2 points on the Lahiff pipeline, that he uses water from the Silver Fork system in winter time only, that he has a well which has gone dry, that a right to divert from Sugar Loaf Creek was included in his deed, that water wastes into Casino Creek in July and August but not in September, that he does not consider that in seeking additional water he is depriving other users of water.

Mrs. Henry Lahiff testified (Transcript, pages 39 to 46) in effect that in her opinion the installation of Mr. Amick's dam, by people named Smith, his predecessors, was wrongful, diversion by means of that dam "robbing the Silver Fork people of the regular water they use"; that the "water problem" exists usually during June, July, August, September and October, that many times "they fill it with a water wagon" (apparently referring to protestants' regulating tank).

Harold Putzke testified (Transcript, pages 48 to 60) with reference to protestants' water system to the effect that water is diverted at the "old dam," into a ditch and also into a 2-inch pipeline, that part of the water diverted enters a concrete tank, that from the tank one pipeline supplies users south of the highway and another supplies users north of the highway, that the only other outlet from the tank is a 4-inch overflow pipe, that there is also an earth reservoir and a ditch extending to Casino Creek, that at times of spring surplus water is diverted into the earth reservoir and stored there for use for fire fighting, that the earth reservoir leaks and to remain full has to have water running into it continuously, that the concrete tank does not ordinarily overflow during June, July, August or September but did overflow until August in 1952 and 1951 as a result of above normal rainfall, that there is some leakage from the concrete tank due to a **crack therein**, that the water system serves about 40 home owners and also serves Silver Fork resort and Silver Fork School, that there is also a ditch leading from Silver Fork River, that the water carried in that ditch is used for power but is also used for domestic purposes when Sugar Loaf Creek is dry, that Sugar Loaf Creek has been dry every year except 1951 and 1952, and that besides the lots that have been sold many of Mr. Lahiff's lots for which water rights are claimed remain unsold.



Vludimir Sabich testified (Transcript, pages 60 to 73) to the effect that he built on his property in 1938, that he and his family are permanent, year-round residents, that in July of 1939 there was no water at all at the point where Mr. Amick now seeks to appropriate, except a little night flow, that to conserve that night flow he laid a pipe line from the Lahiff point of diversion to the concrete tank, that he also pumped water into that tank from American River, that the pipe line which he laid is still in use except that part of it has been replaced by a flume, that last summer and fall there were many days when no flow occurred during daylight hours and only enough at night to partly fill the tank, that when Mr. Amick irrigates which he usually does each week he diverts all the water and the concrete tank goes dry, that diversion as proposed by Mr. Amick at his lowermost described point of diversion would interfere with no one, that supply is abundant but not beyond June, that supply is insufficient in October, and that on about October 9, 1952 at 3 o'clock p.m. he observed the concrete tank to be about two-thirds full.

Frances Sabich testified (Transcript, pages 74 to 79) to the effect that in certain months supply is deficient, that the school needs water for a cooling system as well as for drinking and other purposes, that there are two people - Mrs. Wall and Mrs. Cook - who depend on water from Sugar Loaf Creek at points below the lowermost point at which Applicant Amick proposes to divert, and that Applicant Amick is "hooked up" on the Silver Fork system.

In a general discussion following the more formal taking of testimony statements by one or another of the witnesses (Transcript, pages 80 to 102) were to the effect that Applicant Amick is "hooked into" the Silver Fork system in 3 places as well as having his own system, that Mr. Amick claims rights to be supplied through the Silver Fork system, that it is Mr. Amick's practice to use water from the Silver Fork system until that supply is exhausted and then by diverting at his own intake on Sugar Loaf Creek to prevent the Silver Fork system from refilling, that Applicant Amick's land doesn't border on any creek, that the Silver Fork system is for the use of all Silver Fork property owners except those whose deeds lack a provision for diversion from that system, that ordinarily full use is made of diversions into the Silver Fork system, that any surpluses as in spring or winter pass by Mr. Amick's place, that the reason that certain lots of the subdivision remain unsold is that water supply is insufficient, that in a week of maximum use 1000 people per day pass through the resort, 250 people are in the houses and 20 children attend the school, that the Silver Fork system is not faulty but is not quite adequate, that it would operate satisfactorily if the concrete tank could be kept full, that the elevation of the concrete tank is sufficient, that the pipe line dips in crossing the river and then rises to serve the area south of the river, and that when the pipe line is less than full the pressure necessarily drops, making it impossible for certain customers to receive water.

In the report of a field investigation conducted on September 15, 1952 in connection with Applications 14505 and 14506 appear, among others, the following statements:

"At the time of this investigation . . . flows were as follows:

Creek at Lahiff, etc., dam	0.40 cfs
Creek at Amick place	0.077 cfs
Creek at Wall place	dry
Delivered to Lahiff, etc., tank	0.19 cfs
Spilling at Lahiff, etc., tank	0.16 cfs

". . . excess flow was mainly due to 3 days of rain and snow a few days prior to the investigation . . .

"Mr. and Mrs. Amick both stated that until the storm there had been no surface flow at their place since the middle of June.

"Spill at the Lahiff, etc., tank . . . was being carried through a ditch to Casino Creek and thence to the upper of two ponds . . . where it appeared no beneficial use of the water was being made. The lower pond was dry and the upper pond had a heavy growth of tule, water grasses and brush. From the pond the water was wasted into the river.

\* \* \*

"Protestants' use of water involves use within a partly developed subdivision of 125 or more lots for household, public, fire protection, garden and lawn irrigation, recreational and fish life uses.

". . . although the ponds had not been put to recreational and fish life uses of late years it was proposed to resume the use of the ponds for these purposes.

"Protestants all obtain water through the Silver Fork Water System . . . and in addition Protestant Wall secures water from a well near the channel of Sugar Loaf Creek and the protestants living on the portion of the subdivision lying south of the river secure water from Silver Fork Creek and from a well.

"The line from Silver Fork Creek was damaged during last winter's storms and . . . had not been repaired or used during 1952.

"Applicant's use is for household, fire protection and garden irrigation used on a group of four lots within the subdivision on which are located three fully plumbed houses.

"Applicant secures water through his own pipe line during a portion of the year and through the Silver Fork System during the balance of the year.

"Applicant has connected his pipe line to the Silver Fork System at two points and also has a well near Sugar Loaf Creek from which he occasionally pumps water for irrigation use.

"Applicant is entitled to . . . 1300 gpd under . . . Applications 9328 and 9329 and seeks approximately an additional total of 51,000 gpd under Applications 14505 and 14506. Of the total sought 650 gpd is from the point of diversion covered by his licenses.

"It appeared that the 1300 gpd covered by the licenses was sufficient for applicant's household needs.

"The points of diversion proposed under Application 14506 are, with the exception of Protestant Wall, below protestants' point. Under the circumstances only Protestant Wall's well would be affected if any, by approval of the application."

Pertinent extracts from the report of a field investigation conducted on October 9, 1952 are as follows:

"The second investigation was made in the belief that, since there had been no precipitation in the area for about a month, stream flow would be at about the lowest point for the year.

"Measurements of flow were made with following results:

<u>Location</u>	<u>Flow in cfs</u>	<u>Equivalent in gpd</u>
Creek at Lahiff Dam	0.033*	21,329
Lahiff Ditch at flume entrance	0.011	7,110
Lahiff Flume	.0038	2,456
Below Lahiff Dam	No flow	0
At Amick place	No flow	0

\*All being diverted in Lahiff Ditch.

"Since no water was being diverted in the Amick pipe line the flow at the Amick upper diversion point (Application 14505) was practically the same as at the Lahiff Dam.

"It will be noted from the measurements that 0.022 cfs or 14,219 gpd was lost in the Lahiff Ditch and that an additional 0.0072 cfs or 4654 gpd was lost at the transition from ditch to flume. The total loss therefore between the Lahiff Dam and the Lahiff tank at the lower end of the flume was 0.0292 cfs or 18,873 gpd.

"There were no leaks in the flume but a crack in the South-east corner of the tank was causing loss of more water than was entering the tank.

"In connection with the ponds . . . it was found that the upper pond had been cleaned and work was in progress on the lower pond."

A memorandum dated October 24, 1952 by Mr. Harrison Smitherum, relating to Applications 14505 and 14506, reads as follows:

"At the conclusion of the subject hearing, Mr. L. C. Jopson and the writer visited the diversion works of the Amick Applications 9328 License 2836 and 9329 License 2535 and the diversion works of the Lahiff water system which supplies the Silver Fork Subdivision.

"The Lahiff diversion system consists of a concrete dam from which a 2" pipe formerly conveyed water to a concrete storage tank. Below the concrete dam an earth and rock fill dam has been placed across Sugar Loaf Creek. From this dam a gravity ditch about 1 foot in width and 1 foot in depth extends for a distance of some 350 feet; here the conduit branches. One branch continues to the right as an earth ditch and empties into a small earthen reservoir, the overflow from

which is carried to Casino Creek. The other branch consists of a flume which extends to the concrete storage tank mentioned above. The reservoir will not hold water, hence it is only utilized in the Spring when there is a heavy runoff and it can be kept filled. As mentioned in Mr. Wheeler's report dated October 9, 1952, the concrete storage tank loses considerable water through cracks in the wall . . . This leakage is tributary to Sugar Loaf Creek but is not of sufficient volume to reach the main channel of that stream.

"Mrs. Lahiff had testified at the hearing that Mr. Amick's property did not border on Sugar Loaf Creek; that the channel of the Creek was from the Lahiff diversion dam to the reservoir and thence to Casino Creek. Her testimony was not understandable until after the Lahiff diversion system was viewed. It appears what Mrs. Lahiff meant was that no water originating in Sugar Loaf Creek above the Lahiff diversion flowed down Sugar Loaf Creek unless there was more flow than could be diverted through the Lahiff ditch. Mr. Jopson and the writer estimated that the flow of Sugar Loaf Creek would have to be in excess of 1 cubic foot per second before any water would by-pass the earth-fill dam at the head of the ditch.

"It appears that the entire flow of Sugar Loaf Creek reaching the Lahiff diversion works has been diverted through the Lahiff ditch for many years past except at times of very excessive flows. The water so diverted except that which overflowed or seeped from the ditch or leaked from the storage tank had been used by the Silver Fork subdivision or spilled into Casino Creek. During years of normal runoff there would be very little if any water available to spill into Casino Creek under the present requirements by the Silver Fork Subdivision. During the Spring months however, it appears that considerable water is flowed down Casino Creek which rightfully should be allowed to flow down Sugar Loaf Creek."

Under Application 9328 License 2836 Paul V. Amich is authorized to divert not to exceed 650 gallons per day from about March 1 to about November 15 at a point located S 71° 55' E, 650 feet from the NW corner of Section 28, T 11 N, R 15E, MDE&M, for domestic purposes.

Under Application 9329 License 2535 Paul V. Amick is authorized to divert not to exceed 650 gallons per day, year-round, from the same source, at the same point of diversion and for the same purpose. The points of diversion specified in Applications 9328, 9329 and 14505 are identical. Mr. Amick therefore is already licensed to divert 1300 gallons per day from about March 1 to about November 15 and to divert 650 gallons per day from about November 15 to about March 1. His point of diversion is within the same quarter quarter section as, but upstream from, Protestant Lahiff's intake. The two diversions that Applicant Amick proposes under Application 14506 are to head at points downstream from the Lahiff intake, but upstream from Protestant Wall's well. The effect of the proposed diversions upon that well may be considered negligible. The protestants other than Lahiff and Wall - Silver Fork School District and Silver Fork Home Owners - appear to be served entirely by means of the Lahiff system and to base their protests solely upon the injury which they suppose the Lahiff system will suffer if the Amick applications are approved.

It may be presumed that Protestant Lahiff's rights to the use of waters of Sugar Loaf Creek are prior to Applicant Amick's rights under licensed Applications 9328 and 9329. The applications just mentioned were protested by Henry Lahiff for substantially the same reasons now advanced by that protestant against Applications 14505 and 14506. The matter of Applications 9328 and 9329 was heard formally on August 31, 1938 and an extract from the resulting decision reads:

"The unnamed stream from which it is sought to appropriate rises on government land in Eldorado National Forest, flows thence into the subdivision of private lands owned by Protestant Lahiff . . . and discharges into South Fork of American River. Many years ago a ditch, pipe line, flume, etc. were constructed by predecessors in interest of Protestant, which conduit . . . conveys water down the westerly side of the stream onto the subdivision. Apparently several acres were thus irrigated at one time and the water was used to supply a number of cabins and a lodge with domestic water. There is connected into this diversion system a diversion from Silver Fork of South Fork of American River . . . and from this we assume comes the name 'Silver Fork System' commonly applied to Mr. Lahiff's diversion system."

With respect to sufficiency of supply the same decision states:

"It would appear that while there may be little or no flow in the stream in late summer months upon the Lahiff lands . . . there is normally a considerable flow at the proposed new intake. This flow is at present lost during the summer months by percolation into the stream bed and by transpiration, or it is diverted into the pipe lines and ditches at the existing dam. It appears clear that there is a considerable waste both above and below the present dam and that with a more efficient diversion there would normally be abundant water to supply these applicants after supplying all other beneficial uses now cared for by the Silver Fork System . . . "

#### Summary and Conclusions

The applicant seeks to appropriate 650 gallons per day, year-round, from Sugar Loaf Creek, at a point upstream from Protestant Lahiff's intake; and 0.078 cubic foot per second, from about April 1 to about November 1, from the same stream, at a point downstream from the Lahiff intake but upstream from Protestant Wall's well. It is not apparent that the yield of Protestant Wall's well would be affected materially by any of the diversions that the applicant proposes. The other protestants against the applications under consideration, except



Protestant Lahiff, base their protests upon the fact that they receive service through the Lahiff system. Sugar Loaf Creek apparently yields enough water to supply both the Lahiff system and the applicant until about mid-June. From then on until about mid-October, by which time rains probably will have occurred, supply is less plentiful and shortages of supply reaching customers appear to have been at times acute. The evidence suggests that such shortages might be remedied by provision of better facilities and/or by better maintenance, but it is insufficient to prove that supply would exceed reasonable demand even were supply to be better conserved. The preponderance of protestants' testimony is to the effect that unappropriated water does not exist in Sugar Loaf Creek above the Lahiff intake after about mid-June. The applicant's showing and the physical data available to the Division are insufficient to refute that testimony.

The circumstances above summarized point to the conclusion that unappropriated water exists at times in the source from which the applicant seeks to appropriate, and that such water, when it occurs, may be taken and used in the manner proposed in the applications, without injury to any protestant. They point to the conclusion also that for the protection of users dependent upon the Lahiff system diversions under Application 14505 should be restricted to periods extending from mid-October to mid-June of each season. It is the opinion of this office therefore that Applications 14505 and 14506 should be approved, subject

to the usual terms and conditions, with diversions under Application 14505 limited to periods extending from October 15 of each year to June 15 of the next.

oOo

ORDER

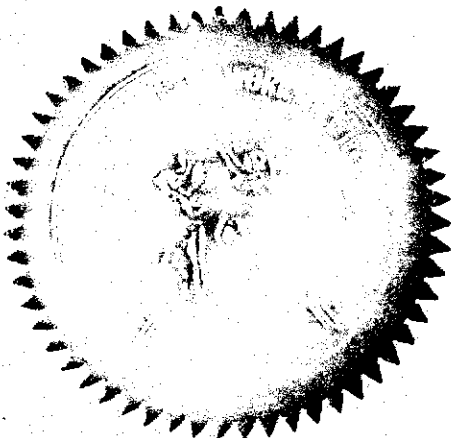
Applications 14505 and 14506 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14505 insofar as it relates to diversion from about October 15 of one year until about June 15 of the next be approved and that a permit be issued subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that authorization to divert under Application 14505 from about June 15 to about October 15 be denied.

IT IS FURTHER ORDERED that Application 14506 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 5th day of March, 1953.



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