

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

oOo

In the Matter of Application 15484 by Frank L. Colby and
Harry A. Rader to appropriate from an unnamed stream
tributary via Rock Creek to Owens River, in Inyo County,
for Domestic Purposes.

oOo

Decision A 15484 D 843

Decided January 16, 1956

oOo

In Attendance at Investigation Conducted by the Division of
Water Resources on July 15, 1955:

Harry A. Rader	Applicant
Jess Chance	Protestant
J. J. Heacock Senior Hydraulic Engineer Division of Water Resources Department of Public Works	Representing the State Engineer

oOo

DECISION

General Description of the Project

The application initiates an appropriation of 3,000 gallons per day, from May 1 to November 1 of each year, from an unnamed spring tributary via Rock Creek to Owens River. The spring is said to be located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 36, T5S R29E, MDB&M. Diversion is to be effected by means of a small metal dam (2 feet high by 8 feet long). The

project includes 800 lineal feet of 1½-inch diameter plastic pipe. The water is to be used for domestic purposes at a group of 12 rental cabins located within the SW¼ NE¼ of the same projected Section 36. The applicants disclaim ownership of either the land upon which the spring is located or the land whereon the water is to be used; they indicate that they have obtained, or will obtain, a special use permit from Inyo National Forest.

Protest

One Jess Chance protests the application, stating in his protest that he owns a ranch in Round Valley and irrigates it by diverting from Rock Creek at two points, that his diversions head near the NE corner of Section 5, T6S R31E and near the corner common to Sections 29, 30, 31 and 32 of T5S R31E, MDB&M, respectively, that he uses water year-round for irrigation, stockwatering and generation of electric power, that for several years the flow of Rock Creek has been insufficient to last through the irrigation season, that nearly every summer supply has been deficient after August 1, that in some years it has been necessary to dam the creek and take all of the water "except a little trickle to keep the fish alive", that the cumulative effect of numerous upstream appropriations is injurious to him as owner of "the oldest and first rights on the creek". Protestant Chance claims a riparian right and

states "the waters of Rock Creek have been used on this ranch continuously since 1870 and perhaps before". He mentions no terms under which the application may be disregarded and dismissed.

Answer

The applicants' answer to the protest reads in part:

"Our point of diversion is about four hundred (400) yards from the main Rock Creek stream. During the early run-off when there is enough water for everyone this small stream runs over ground into the Rock Creek stream. After the run-off is over this stream terminates into the ground a short distance from the spring and point of diversion. Since this water is to be used for domestic purposes, which means that nearly all of it will be returned into the ground again near the point of diversion, it should not be doing any great harm to divert this water."

Field Investigation

The applicants and the protestant, with the approval of the Division having stipulated to the submittal of the application and protest upon the official records of the Division, a field investigation was conducted on July 15, 1955. The applicants and the protestant were present or represented during the investigation.

Records Relied upon

Applications 3850, 12491, 12695, 15484, and all information on file therewith.

Information Secured by Field Investigation

The report covering the field investigation of July 15, 1955, contains among other statements the following:

"The proposed place of use will include 12 rental cabins in a Forest Service Special Use Tract. The cabins will be fully plumbed and the sewage will flow into septic tanks near the top of a fairly steep slope above Rock Creek. The applicant plans to construct two bedroom cabins, and estimates that during the weeks of maximum use the cabins will be occupied by 60 persons."

"The source of the proposed appropriation is a boggy, sloping meadow, in glacial moraine material, on the easterly slopes of the Sierra Nevada and tributary to Rock Creek Lake from the west. The watershed above the proposed point of diversion probably has an area of about one-half square mile, of which about one-half is steep, barren mountainside and the balance is more gently sloping moraine material with a light covering of timber and brush. Average annual precipitation over the watershed is about 40 inches, mostly in the form of snow."

"There is an area of about two acres of marshy land above the point of diversion, and about the same amount below. Below the marshy area the grade steepens and a fairly wide ravine carries the water to a small tarn near the northwesterly shore of Rock Creek Lake. The tarn, or pond, has a surface area of about one acre and is about six feet deep. Flow in the channel at the point of diversion was measured at 35 gallons per minute, about thirty gallons per minute were entering the tarn, and about ten gallons per minute were flowing from the tarn, through a culvert into Rock Creek Lake.

"Mr. Rader stated that water usually ceased flowing from the tarn about August 15 of each year and the tarn is dry by September 15. He also stated that the marshy area below the point of diversion dries out and is dusty dry late in August and September. The applicants have excavated a trench, about 50 feet long and two to three feet deep,

across the meadow about 200 feet above the point of diversion. Conditions in the trench indicate that the water moves downgrade through about the upper one foot of the soil mantle, thus making it vulnerable to evapo-transpiration losses."

"The City of Los Angeles Department of Water and Power maintains three controlled recorder stations between the proposed diversion and the upper diversion of Protestant Chance."

"The ... lower station is 'Rock Creek at Sherwin Hill, in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 29, T5S R31E, and is approximately one-half mile upstream from Chance's upper point of diversion."

"The mean monthly flows of the three stations ... are shown in the following tabulation."

"Sherwin Hill gage is about 19 miles below proposed diversion."

"On July 15, 1955, at 10:00 a.m. at the time of the investigation, flow at the proposed point of diversion was measured at about 0.078 cubic foot per second"

"The protestant owns 240 acres in ... Section 5, T6S R31E, MDB&M, and claims riparian and old appropriative rights initiated about 1870. His rights are recognized by the City of Los Angeles. He irrigates about 237 acres of natural and planted pasture by wild flooding, and at times has several hundred head of cattle on the place. . . . His method of irrigation is usually to use a large head about ten days per month. His normal irrigation season is from May or June to about the last of September. The record of the 'Sherwin Hill' recorder station shows that in all years of record there is more water than the estimated 3.5 cubic feet per second, but in August and September 1950, September 1951, and August and September 1954, there was less than the head he normally uses."

"The City of Los Angeles owns most of the property in Round Valley in the vicinity of protestant's place of use. Its policy is to lease

lands for irrigated pasture, in that area, during years when the runoff estimate of Rock Creek is good. They did not lease lands in 1948, 1951 or 1955."

"Protestant's use amounts to about 3.5 cubic feet per second on a continuous flow basis."

"Flow at the source was approximately 0.078 cfs. and during drier years, it ceases to contribute to Rock Creek before August 15."

"The proposed project will have a negligible effect on lower uses"

Monthly mean flows of Rock Creek at Sherwin Hill, in cubic feet per second, as extracted from the tabulation mentioned in the report of field investigation, are as follows:

Month	1950	1951	1952	1953	1954
January	8.9	10.4	12.5	15.5	10.5
February	9.5	9.2	11.7	12.9	12.8
March	7.9	9.3	13.2	13.2	12.9
April	14.9	14.8	23.2	16.8	21.7
May	21.5	25.3	77.4	12.7	42.2
June	34.0	45.1	96.8	31.7	32.4
July	33.3	37.4	88.7	51.2	21.9
August	8.9	18.5	56.7	19.6	8.4
September	6.9	8.8	23.7	10.5	7.1
October	4.7	6.5	16.4	9.4	6.8
November	14.1	8.5	13.8	10.2	8.5
December	13.9	11.9	15.4	9.0	8.8

Other Information from Division Files

Filings on waters of Rock Creek include among others the following:

Application 3850, City of Los Angeles, 50 cubic feet per second, year-round, and 40,000 acre-feet per annum collected without restriction as to time, for power generation, at plants on Owens River, the water to be diverted from Rock Creek at a point within Section 32, T4S R30E, MDB&M. Application 3850 and several related applications were heard in September and November, 1938 and the resulting order directed among other things that action upon Application 3850 be withheld pending entry of further order, the decision (No. 455) stating with respect to that application:

"We feel that there is insufficient information before this office at the present time upon which to determine what restrictions if any should be placed in any permit which may be issued in approval of Application 3850 in order to insure an adequate domestic supply to the Rock Creek Recreational Tract and to properly sustain fish life in the creek."

Application 12491 Permit 7968 License 3754, Gene Cahoon, 30 gallons per day from about May 1 to about October 1, for domestic purposes, from an unnamed spring, tributary to Rock Creek, located within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 6, T6S R30E, MDB&M. Application 12491 was protested by the same Jess Chance who protests Application 15484. In report covering field

investigation conducted by an engineer of the Division in connection with Application 12491 the following statements appear:

"Mr. Chance stated his main objective in protesting ... was to call ... attention (to) the fact that continued approval of small applications ... would result in ... injury."

" ... a compilation of applications to appropriate water from Rock Creek was made. ... the total consumptive use approved under license and permit to date amounted to 0.55 cfs. and non-consumptive use totalled 2.5 cfs."

" ... it would appear that 3.5 cfs. was sufficient for Mr. Chance's needs."

Application 12695 Permit 7969, Rock Creek Lakes Store, 500 gallons per day from about April 15 to about November 1, for domestic purposes, from an unnamed spring, tributary to Rock Creek, located within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 36, T5S R29E, MDB&M. Application 12695 was also protested by Jess Chance and, as in the matter of Application 12491, the protest was found insufficient. Application 12695 Permit 7969 now stands in the name of Rock Creek Lakes Store, the proprietors of which are Frank L. Colby and Harry Rader, the applicants in the matter of Application 15484.

Discussion

It appears from the information above set forth that Protestant Chance's requirements are of the order of 3.5 cubic

feet per second from May or June through September, that diversions, if any there are, between "Rock Creek at Sherwin Hill" and the Chance intakes are negligibly small, that within the 5 recent years considered monthly mean flows passing the gaging station mentioned have exceeded 3.5 cubic feet per second invariably, by amounts in excess of the amount that Applicants Colby and Rader seek to appropriate, and that the basis of Protestant Chance's objection to the appropriation sought under Application 15484 is therefore insufficient to bar that application's approval.

Conclusion

The information indicates that unappropriated water ordinarily exists in the source from which the applicants seek to appropriate, during the season designated in the application, and that such water may be taken and used in the manner proposed without injury to any other user supplied from the same source. It is the opinion of this office therefore that Application 15484 should be approved and that a permit should be issued to the applicants, subject to the usual terms and conditions.

oOo

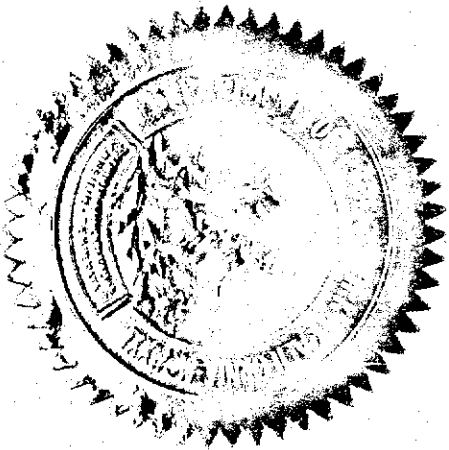
ORDER

Application 15484 having been filed with the Division of Water Resources as above stated, a protest 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 15484 be approved and that a permit be issued to the applicants, 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 16th day of January, 1956.



HARVEY O. BANKS
~~ACTING~~ STATE ENGINEER

By *L. C. Jopson*
L. C. Jopson
Principal Hydraulic Engineer