

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of Application 9998 of Werner Schoop to
Appropriate from La Honda Creek, Tributary to
San Gregorio Creek in San Mateo County
For Domestic Purposes

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Decision A 9998 D 485

Decided *December 31, 1941*

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APPEARANCES AT HEARING HELD AT SACRAMENTO ON DECEMBER 8, 1941

For Applicant

No appearance

For Protestants

No appearance

Examiner: Harold Conkling, Deputy State Engineer in Charge of Water Rights,
Division of Water Resources, Department of Public Works, State
of California.

O P I N I O N

General Description of Project

Application 9998 was filed by Werner Schoop on September 10, 1940. As advertised it proposed appropriations from La Honda Creek of 10 gallons per minute and 2.5 acre feet per annum to be diverted throughout the year for domestic purposes on approximately 46 lots in Sky L'Onda Subdivisions Numbers 1, 2, 3 and 4 and parcels of land in SE $\frac{1}{4}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T 6 S, R 4 W, M.D.B.M.

In its final amended form filed with the Division on November 3, 1941, Application 9998 proposes appropriations of 3500 gallons per day for diversion to be directly applied to beneficial use without storage, to be diverted from December 15 to March 15 of each season provided, however, that in years of late and abundant flow direct diversion might continue as long as water is wasting to the sea, and 1.0 acre foot per annum to be collected to

storage between December 15 and March 15 of each season for domestic purposes on a $9\frac{1}{2}$ acre tract of land located west of Skyline Boulevard within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T 6 S, R 4 W, M.D.B.M.

Protests

Londa S. Fletcher owns land adjacent to and below the lands of the applicant which she claims is riparian to La Honda Creek. Her only use has been for week end picnics but it is claimed that the land has good potential value for summer home sites and has been placed on sale for this purpose. Protestant alleges in effect that if Application 9998 is approved it would result in depriving her of water to which she is entitled and would impair the sale value of her land.

Helen Hughes, also known as Helen Hughes Brown, owns an interest in La Honda Vista Tract which fronts on La Honda Creek in Section 35, T 6 S, R 4 W, M.D.B.M. Protestant claims that the subdivision is now supplied with water from springs and an unnamed tributary of La Honda Creek but that it is dependent upon La Honda Creek as a supplementary or stand-by source which will be needed as the subdivision grows. Protestant also claims that the water flowing in the creek adds materially to the value of the property and that should Application 9998 be approved it would not only deprive the land owners of their rights but would result in depreciating the value of the land from an aesthetic standpoint.

La Honda Vista Water Company No. 1 of which Helen Hughes is president filed a protest which is similar to that filed by Helen Hughes on behalf of herself.

William Debenedetti and Angie Francis claim ownership of lands riparian to San Gregorio Creek and appropriative rights initiated prior to the

effective date of the Water Commission Act. They claim a right to divert 300 gallons per minute from March 15 to December 15 of each season for irrigation and domestic purposes upon their 75 acre vegetable ranch adjacent to San Gregorio Creek and allege in effect that should Application 9998 be approved it would result in depriving them of water to which they are entitled.

Maude Evelyn Wright, Executrix and C.H. Woodhams, Executor of the M.S. Woodhams Estate and Viola Derry, Maude Evelyn Wright and Archie F. Woodhams, owners of La Honda Park, filed a joint protest against the approval of Application 9998.

Maude Evelyn Wright and C. H. Woodhams own 2 acres of land adjacent to La Honda Creek just above La Honda Park, which Park comprises some 20 acres and belongs to Viola Derry, Maude Evelyn Wright and Archie F. Woodhams.

These protestants claim rights by virtue of ownership of land riparian to La Honda Creek and the use of water since about 1926 when a timber and rock dam was constructed across La Honda Creek forming a large pool in the creek bed. The water was not actually diverted from the stream bed but was detained in storage with the overflow passing downstream. The dam was partially destroyed by the floods of 1940 but it is the intention of the protestants to restore it. Protestants allege in effect that the natural flow of the creek to the extent of 2,000,000 gallons per day (or approximately 3.1 cubic feet per second) is desirable for the maintenance of the pool and the growth and perpetuation of timber upon their lands. Protestants claim the ownership and the operation of a parking, picnic and camping grounds which are used by a large number of people because of the flow of water through the property.

Protestants also objected to the approval of Application 9998 upon the grounds that the entire Sky L'Onda Tract would be amply supplied with water under Application 9678.

Felix and Fenny Guerra claim a riparian right to the waters of La Honda Creek. They claim that during the past 4 or 5 years, 15,000 gallons per day of water have been used for the watering of 250 head of cattle pastured on 1382 acres of land. The water is diverted within the N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 11, T 7 S, R 4 W, M.D.B.M. These protestants allege in effect that should Application 9998 be approved it would result in depriving them of water to which they are entitled. They further object to the approval of Application 9998 upon the grounds that the water supply of the entire Sky L'Onda Tract will be amply provided for under Application 9678 of the Sky L'Onda Mutual Water Company and therefore Application 9998 in so far as it proposes to serve lots in this subdivision is not necessary.

R. W. Krobitzsch claims a right to divert water from San Gregorio Creek by virtue of the ownership of lands riparian to the creek and actual use of water since 1915.

Protestant claims that at Troutmere (within the NW $\frac{1}{4}$ of Section 22, T 7 S, R 4 W, M.D.B.M.) 1,500,000 gallons per day are diverted for fish culture and garden irrigation. It is also claimed that water for domestic purposes is diverted from a well within the NW $\frac{1}{4}$ of Section 22, T 7 S, R 4 W, M.D.B.M. which well is supplied by the underflow of San Gregorio Creek. The well is equipped with a 60 g.p.m. pump discharging into a 50,000 gallon tank.

Mr. Krobitzsch also claims that at his ranch which is located near the town of San Gregorio water is diverted at a point about 1/2 mile southwest of the town of San Gregorio at a rate of 200 g.p.m. for the irrigation

of 100 acres of artichokes.

Protestant alleges in effect that should Application 9998 be approved it would result in creating a serious shortage in his water supply for fish culture, irrigation and domestic purposes. He also objected to the approval of Application 9998 upon the grounds that the Sky L'Onda Tract already has a supply of water under Application 9678 of Sky L'Onda Mutual Water Company.

Ralph W. Evans, Building and Loan Commissioner of the State of California, in the Liquidation of the California Mutual Building and Loan Association claims riparian rights and long continued use of the waters of La Honda Creek. Protestant alleges in effect that the proposed appropriation would result in decreasing the flow of La Honda Creek at the dam and lake of the protestant on said creek which dam and lake are used for recreational purposes and would result in decreasing the value of the property. Protestant further objects to the approval of Application 9998 upon the grounds that the Sky L'Onda Tract will be amply supplied with water under Application 9678 of Sky L'Onda Mutual Water Company.

Mrs. E. R. Bell claims a riparian right to the waters of San Gregorio Creek. She states that her present water supply is obtained from a well located about 100 yards from the creek but that in the past her supply was obtained from a well located at the creek. She claims that both wells are supplied with water percolating from San Gregorio Creek and alleges in effect that the proposed appropriation would reduce the already insufficient subsurface flow into her well. She further objects to the approval of Application 9998 upon the grounds that the Sky L'Onda Tract already has a source of supply under its Application 9678.

Mrs. Annie L. Sears claims riparian rights to the use of water from

La Honda Creek, also appropriative rights initiated prior to the effective date of the Water Commission Act and alleges in effect that the proposed diversion would result in seriously diminishing the underground water which collects in her well which supplies a hotel and a number of cabins constructed on camping grounds bordering the creek. She claims that a continuous and substantial flow in the creek adds great value to her property which would be destroyed if the flow were diminished.

She states that a 3" diameter pump discharges water at the rate of 1100 gallons per hour into a 5000 gallon tank and that as many as 50 persons are served at the hotel each summer and that cabins are supplied and water provided to several hundred people at the recreational grounds on week days and holidays during the summer. Diversion is made within the $W\frac{1}{2}$ SW $\frac{1}{4}$, Section 14, T 7 S, R 4 W, M.D.B.M.

Protestant further objects to the approval of Application 9998 upon the grounds that the Sky L'Onda Tract already has an ample supply of water under Application 9678 of Sky L'Onda Mutual Water Company.

It appears from the record that the interest of Ralph W. Evans has been acquired by Duncan McCloud and that Mr. R. B. Krobitzsch is deceased.

Hearing Set in Accordance With
Section 1a of the Water Commission Act

Application 9998 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing in accordance with Section 1a of the Water Commission Act on Monday, December 8, 1941 at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento. Of this hearing applicant and protestants were duly notified. No appearances were made at the hearing.

General Discussion

On May 14, 1941, Application 9678 of Sky L'Onda Mutual Water Company for the appropriation of water from La Honda Creek was approved for an amount of water not to exceed 55,000 gallons per day by direct diversion from about December 15 to about March 15 of each season; provided, however, that in years of late and abundant flow direct diversion may be continued after March 15 as long as water is wasting to the sea; and also for an amount of water not to exceed 30 acre feet per annum by storage to be collected from about December 15 to about March 15 of each season at a maximum rate of diversion not to exceed 200 gallons per minute.

With the exception of Londa S. Fletcher and Felix and Fenny Guerra, all of the protestants against the approval of Application 9998 of Werner Schoop also protested against the approval of Application 9678 of Sky L'Onda Mutual Water Company and the grounds of protest were similar.

Before Application 9678 was approved, a public hearing was held at which testimony was presented by both applicant and protestants and following the hearing a field investigation was conducted by this office at which representatives of the applicant and protestants were present.

As a result of the information obtained it was the opinion of this office that from about December 15 to about March 15 of a season of normal runoff there was unappropriated water in La Honda Creek and that in years of late and abundant flow direct diversion might be made by the applicant company as long as water was wasting to the sea without interfering with prior vested rights below and Application 9678 was accordingly approved for the amounts and season stated above.

As we felt that we were in possession of the facts and that no purpose could be served by holding a public hearing under the ordinary procedure which we believed would involve considerable expense to the interested

parties, it was suggested that a stipulated hearing be held as provided for in Regulation 12B of our Rules and Regulations with Respect to Protests and Hearings and forms of stipulation were sent to the applicant and the protestants.

Although the stipulations were executed by the applicant and several of the protestants, the refusal or neglect on the part of some of the protestants to sign the stipulation made it necessary to set the matter for public hearing under Section 1a of the Water Commission Act. . No appearances at the hearing were made.

As stated above Application 9998 was finally amended at the request of the applicant by reducing the place of use to the $9\frac{1}{2}$ acre tract, not already included in the Sky La Honda Subdivisions and by reducing the amounts of water applied for to the amounts necessary to serve this tract as estimated upon the same basis as the amounts of water for which Application 9678 was approved.

Protestants were informed of the amendment and also that any permit issued in approval of Application 9998 would contain the following clause:

"All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Division of Water Resources in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water."

Although the action on the part of the applicant in amending Application 9998 removed certain objections to its approval, the protestants, especially those who claimed unused riparian rights, were insistant that Mr. Schoop enter into an agreement with the lower riparian owners which agreement would not only be binding upon himself but also upon his assignees and

would in effect state that any hostile diversion on his part would be permissive only thus protecting the lower riparian owners against a possible claim of prescriptive right; that this declaration of permissive use should attach to the land itself and be recorded.

Mr. Schoop however refused to enter into any such agreement and directed attention to the fact that any permit issued in approval of Application 9998 would at all times be subject to vested rights such as claimed by the protestants if they have actually been using the water for beneficial purposes and that there was no need to protect those vested rights against any hostile diversion on his part or on the part of his successors in interest; that any water diverted under Application 9998 would be subject to the continuing authority of the Division of Water Resources and any adverse use would be contrary to the terms of any permit which might be issued in approval of Application 9998.

Until such a time as the lower riparian owners have need for additional water and can actually apply it to beneficial use, the law provides that the water may be appropriated by others. Riparian use which is prospective only cannot be urged as a basis upon which to deny an application.

We fully appreciate the concern of certain riparian owners on the stream to afford themselves the fullest possible protection against the acquisition of a right by an appropriator which would ripen into prescription as against a future use by them. Inasmuch as the applicant refuses to enter into an agreement with these protestants affording them protection as against future use under claim of riparian ownership it would appear that the only remedy against such an acquisition is a declaratory injunction issued by the court. We do not believe that the Division which is a non-judicial agency

is authorized to give such protection or afford a substitute therefor.

From the information before this office, gathered in connection with our action upon Application 9678, we are satisfied that there is sufficient unappropriated water in La Honda Creek during a season of normal run off to justify the approval of Application 9998.

O R D E R

Application 9998 for a permit to appropriate water having been filed with the Division of Water Resources, protests having been received, a public hearing having been held, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 9998 be approved and that a permit be granted 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 *31st* day of *December* 1941.

EDWARD HYATT, STATE ENGINEER

BY

Harold Conkling
Deputy State Engineer

