

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 15303 by Frank F. and Jean M. Latta to
Appropriate Water from Gazos Creek Tributary to Pacific Ocean in San
Mateo County for Domestic, Irrigation and Stockwatering Purposes.

oOo

Decision A 15303 D 818

Decided January 13, 1955

oOo

Appearances at Hearing Held at Redwood City on March 9, 1954:

For the Applicants

Frank F. Latta)
)
Jean M. Latta)

Jones, Griswold & Henley
Attorneys at Law
By Bruce P. Griswold

For the Protestants

Shoreland Properties, Inc.

Heller, Ehrman, White & McAuliffe
Attorneys at Law
By P. W. Tenney and
William A. Doebele, Jr.

EXAMINER - LESLIE C. JOPSON, Principal Hydraulic Engineer,
Division of Water Resources, Department of Public Works,
for A. D. EDMONSTON, State Engineer

oOo

OPINION

General Description of the Project

The application initiates an appropriation of 1.67 cubic feet per second from March 1 of each year to January 1 of the following from Gazos Creek at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 11, T9S R5W, MDB&M, for domestic, irrigation and stockwatering purposes. Diversion is to be effected by pumping. The proposed works include a pumping plant of an estimated capacity of 750 gallons per minute, 100 lineal feet of 8-inch diameter pipe and 2,600 lineal feet of earth ditch. The water is wanted for the domestic requirements of 40 people living in 4 houses, for the watering of appurtenant gardens, for the watering of 100 head of cattle and 10 horses and for the irrigation of 160 acres of general crops and a 40-acre pasture. The applicants assert also a right to divert from White House Creek but state that the supply therefrom is small and the right debatable.

Protest

The application is protested by Shoreline Properties, Inc. The protestant asserts itself to be wholly dependent upon Gazos Creek as a source of irrigation supply and protests that diversion from that stream as proposed by the applicants would leave too little water therein to satisfy its needs. It claims to irrigate some 200 acres and to serve the domestic requirements of some 100 persons. It asserts

that there is no unappropriated water in Gazos Creek, claims riparian, prescriptive and appropriative rights including an appropriation under Application 4847, Permit 2967, describes its point of diversion as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 11, T9S R5W, MDB&M. As to terms under which the protest may be disregarded and dismissed, the protestant states:

"Protestant would have no objection to diversion of waters at a reasonable distance lower on Gazos Creek than the present point of diversion of protestant if such diversion is made subordinate to the use (both during the period covered by its license and at other times of the year) heretofore made by protestant and is limited to such excess waters. Protestant has no objection to the use of the waters of Gazos Creek by such a lower diversion, which would allow to the applicant full right to any excess waters of said creek, while protecting protestant's fundamental rights to the normal and established use thereof."

Answer

The applicants answer the protest by asserting that protestant obtains a portion of its supply from sources other than Gazos Creek, that the flow of Gazos Creek is such as to enable the amount sought to be diverted without interference with the exercise of any of the protestant's rights; they deny that the protestant has any prescriptive rights or rights of any kind to use water outside of the Gazos Creek watershed; they deny that the protestant uses water from Gazos Creek for domestic purposes or for fire protection; they assert that the protestant's dam leaks and allows much water to

waste; they assert further that the lands that they propose to irrigate are riparian and argue that it would be inconvenient, wasteful and economically unsound for them to shift their diversion works to a location below the protestant's intake.

Hearing Held in Accordance with the Water Code

Application 15303 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, on Tuesday, March 9, 1954, at 10:00 o'clock a.m. in the Redwood City Council Chamber, City Hall, Redwood City, California. Of the hearing, the applicants and the protestant were duly notified.

Hearing Proceedings

At the outset of the hearing the Examiner stated:

"Since it appears that there is a possibility of an amendment of the application and a stipulation by the protestant in regard thereto, I will now recess the hearing until the parties have a chance to confer further on the details"

The recess was taken, the hearing reopened and Attorney Griswold, representing the applicants, announced:

"Mr. Examiner, may I say that in the recess the applicant and counsel have conferred with protestant and counsel and the applicant is willing to amend his

application by changing the proposed point of diversion to a point approximately one thousand feet downstream from the present diversion point of the protestant."

* * *

"We are perfectly willing to have the permit issued, if the Division sees fit to issue it subject to the existing rights of the protestant and with a relocated point of diversion to a point approximately a thousand feet downstream from the point of diversion of Shoreland's properties."

Attorney Tenney, representing the protestant, next stated:

"Mr. Examiner, from the standpoint of the interests of Shoreland Properties, Incorporated, ... we are prepared to enter into that stipulation."

Another recess was taken after which the parties' attorneys stated as follows:

MR. TENNEY: We have discussed further stipulating that we will make an application for the same amount of water during the additional three months which Mr. Latta has in his application; and that would be another application that we would get for those three months and the stipulation would be that our rights to our water would be equal with Mr. Latta, to the rights that he gets for those three months, that is, March, April and December.

MR. GRISWOLD: That is satisfactory.

* * *

MR. GRISWOLD: Yes, we are willing to stipulate that that new license or permit, though subsequent in time, could be made co-extensive or co-equal with Mr. Latta's right for this three months.

MR. TENNEY: May it be understood then, Mr. Griswold, that we will now have a stipulation that Shoreland Properties, Incorporated, may file an application for the ...

* * *

MR. TENNEY: 1.67 cubic feet per second to be appropriated from Gazos Creek during the months of March, April and December of each year and that the rights of Shoreland Properties, Incorporated, to appropriate that amount of water during those months will be co-extensive and equal with the rights of Mr. Latta to appropriate his water during those three months ... notwithstanding the priority in time of making the applications.

MR. GRISWOLD: Yes, Mr. Examiner, we will accept that stipulation.

The applicants now having met the conditions under which the protestant agreed to withdraw its protest, no apparent necessity remained for further proceedings and the hearing was closed.

Information from Division Files

Application 4847, Permit 2967, License 1190, stands in the names of Shoreland Properties, Inc. and W. C. Thompson. It authorizes the diversion for irrigation, domestic and fire protection purposes of 1.23 cubic feet per second from about May 1 to December 1 of each season from Gazos Creek at a point described as being located N 39° 20' E - 1,284 feet from the center of the north end of the County Road bridge over Gazos Creek. In a report covering an inspection of the project under Application 4847 by an engineer of the Division on May 13, 1931, the following statements appear:

"Gazos Creek has a watershed of about fifteen square miles, well wooded and steep. The mean seasonal runoff is 853 acre-feet per square mile of which 2.3% occurs in May. This would indicate a stream flow in that month of 4.9 c.f.s."

"All use is within the permit area, which is a high bench of sandy loam, slightly rolling. In 1930 ... 95 acres in sprouts, artichokes and peas were irrigated. These crops were scattered over the 200 acre permit area. Use is rotated and all of the 200 acres has either been irrigated or is capable of being irrigated. When pre-irrigating the plant is run continuously for a thirty day period. This would indicate a diversion at the rate of 1.23 c.f.s."

" ... 26,000 g.p.d. would appear to be put to beneficial use for domestic requirements in four sets of ranch buildings and at a forty cow dairy at Pigeon Point. The buildings at Pigeon Point are used as warehouses and these are equipped with fire protection apparatus."

Application 15886 was filed by Shoreland Properties, Inc., on May 26, 1954. It initiates an appropriation of 1.23 c.f.s., from March 1 to May 1 and from December 1 of each year to January 1 of the next for domestic, irrigation and fire protection purposes from Gazos Creek at the same point of diversion as described in Application 4847.

The application states, among other things, "This application is to have equal priority with Application 15303." A letter dated May 25, 1954, signed by Attorney F. W. Tenney, transmitting Application 15886, contains the following statements:

"In filing this application, we would like the following facts to be entered in the record:

(1) This application is by way of supplement to Application 4847, License 1190, already held by Shoreland Properties, Inc. Point of diversion, conduit works, pumping facilities, etc., are all exactly the same as set forth on that application and license and reports filed thereunder. The present application is intended to extend the appropriation period each year.

(2) The stipulations and other testimony entered at the hearing conducted by your Division at Redwood City on March 9, 1954 are to be considered as incorporated by reference in this application and are to be referred to in interpreting the same.

(3) Specifically, for the months covered by this application, it has been stipulated that this application shall be considered equal in time and right to Application 15303, submitted by Frank F. and Jean M. Latta to your Division.

* * *

"A copy of this letter is being sent to Mr. Bruce P. Griswold, Attorney for Frank F. Latta and Jean M. Latta"

Under date of August 4, 1954, in accordance with the oral stipulations entered into by the parties through their attorneys at the hearing and in accordance with letters received on June 11, 1954 and June 25, 1954, from Applicant F. F. Latta, Paragraph 4 of Application 15303 was amended to read as follows:

"4. The point of diversion is to be located N 72° E - 425 feet from south end of east railing on bridge (State Highway No. 1) crossing Gazos Creek, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 11, T9S R5W, MDB&M, in the County of San Mateo."

Gazos Creek is one of several small streams collectively designated the Soquel Group in Bulletin No. 5 -- "Flow in California Streams" -- Department of Public Works, Division of Engineering and Irrigation, 1923. According to Bulletin No. 5 the watershed drained by the Soquel Group produces a mean seasonal yield of 864 acre-feet per square mile. Gazos Creek watershed, reportedly 15 square miles in extent, may therefore be supposed to yield an average of about

15 x 864 or 12,960 acre-feet per annum. The bulletin also sets forth the percentage of seasonal flow that occurs during each month of an average year. On the basis of the figures so obtained monthly mean flows of Gazos Creek may be supposed to approximate roughly the following:

Month	:Percentage of : : mean annual : : runoff :	: Acre-feet : : during month :	: Monthly mean : : in acre-feet : : per day :	: Monthly mean : : in cubic feet : : per second :
January	38.1	4940	159.4	79.7
February	30.5	3950	141.0	70.5
March	13.2	1715	55.3	27.7
April	4.4	570	19.0	9.5
May	2.3	299	9.7	4.8
June	1.5	195	6.5	3.3
July	0.9	117	3.8	1.9
August	0.7	91	2.9	1.5
September	0.6	78	2.6	1.3
October	1.2	156	5.0	2.5
November	1.3	168	5.6	2.8
December	5.3	687	22.1	11.1

Discussion

By plotting the protestant's point of diversion according to the description in Application 4847 and plotting the location of the applicants' proposed point of diversion as described in Application 15303 after the amendment of August 4, 1954, and scaling the distance between the two it appears that the applicants' proposed point of diversion as Application 15303 as now worded is some 1,000 feet downstream from the protestant's point of diversion. As a result of the amendment of Application 15303 the protestant is assured the advantage of being above the applicants and therefore in a position to take water to which it is entitled before said water can reach the applicants. Under such circumstances it is not apparent that the protestant can be injured by the appropriation at issue or that basis for protest longer exists.

On the assumption that the deduced values of monthly mean discharges tabulated in an earlier paragraph are substantially correct it is evident that excesses beyond the protestant's entitlement under Application 4847 occur in every month of a normal year and that in all months of a normal year except July, August, September, October and November those excesses are larger than the amount the applicants seek to appropriate.

Summary and Conclusion

The applicants seek to appropriate 1.67 cubic feet per second from March 1 of each year to January 1 of the following, from Gazos Creek, for domestic, irrigation and stockwatering purposes.

The application is protested by Shoreline Properties, Inc. which contends that the flow of Gazos Creek is insufficient to satisfy its own rights if the applicants divert as they propose. It states that its protest may be disregarded and dismissed if the applicants will shift their proposed point of diversion farther downstream, if their diversion is made subordinate to the use it (the protestant) has made heretofore, if the waters they divert are limited to "excess" waters.

The applicants answer the protest by asserting that the flow of the source is sufficient to cover the appropriation that they seek in addition to satisfying any rights that the protestant holds; that it would be inconvenient, wasteful and economically unsound for them to move their proposed point of diversion to a location below the protestant's.

The application was the subject of a hearing at Redwood City on March 9, 1954, at which the applicants and the protestant were represented. At the hearing the parties through their attorneys agreed orally to a stipulation to the effect that the applicants would so amend the application as to change their proposed point of diversion to a point

approximately one thousand feet downstream from the protestant's present point of diversion, that the protestant would file an application supplementing the licensed application that it now holds, that said new application would cover the 3 months covered in the Lattas' application but not in its own, that right under said new application would be co-extensive and co-equal with rights under the Lattas' application notwithstanding the difference in filing dates.

Information from the files of the Division indicates that Application 4847 Permit 2967 License 1190 covers an appropriation under which Shoreland Properties and W. C. Thompson may divert 1.23 cubic feet per second from Gazos Creek at a point which bears N 39° 20' E and is distant 1,284 feet from the center of the north end of the County Road bridge over Gazos Creek, for irrigation, domestic and fire protection purposes, from May 1 to December 1 of each year; and that Gazos Creek has a watershed of about 15 square miles, well wooded and steep, and has a mean seasonal runoff of ^{about} 860 acre-feet per square mile. Information from the files also indicates that Shoreland Properties, Inc. filed Application 15886 on May 26, 1954, initiating an appropriation of 1.23 cubic feet per second from March 1 to May 1 and from December 1 to January 1 of each season, from Gazos Creek, at the same point of diversion as described in Application 4847, for domestic, irrigation and fire protection purposes, the application stating, among other things, "This application is to have equal priority with Application 15303." The

letter transmitting Application 15886 states among other things "It has been stipulated that this application shall be considered equal in time and right to Application 15303."

On August 4, 1954, in accordance with the stipulation agreed to at the hearing and with letters from Applicant F. F. Latta, the description of the proposed point of diversion in Application 15303 was amended by personnel of the Division by deleting the words "due South 850 feet from the NW corner of projected Section 12, T9S R5W, MDB&M, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of projected Section 12" and substituting therefor, "N 72° E - 425 feet from south end of east railing on bridge (State Highway No. 1) crossing Gazos Creek, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 11". This change places the applicants' proposed point of diversion roughly 1,000 feet downstream from the point of diversion described in the protestant's two filings.

Monthly mean flows of Gazos Creek, estimated on the basis of figures contained in Bulletin No. 5 -- Flow in California Streams -- in a normal year are:

Month	: Cubic feet	:	Month	: Cubic feet
	: per second	:		: per second
January	79.7		July	1.9
February	70.5		August	1.5
March	27.7		September	1.3
April	9.5		October	2.5
May	4.8		November	2.8
June	3.3		December	11.1

The information hereinabove considered points to the conclusion that the protestant's objections to the approval of Application 15303 have been met by the stipulation entered into at the hearing, that the terms of the stipulation have been and/or are being carried out by the parties, that unappropriated water exists at times in Gazos Creek and that such water may be taken and used in the manner proposed by the applicants without injury to the protestant or to any other user. In the absence of any apparent bar to the approval of Application 15303 it is the opinion of this office that that application should be approved and permit issued, subject to the usual terms and conditions.

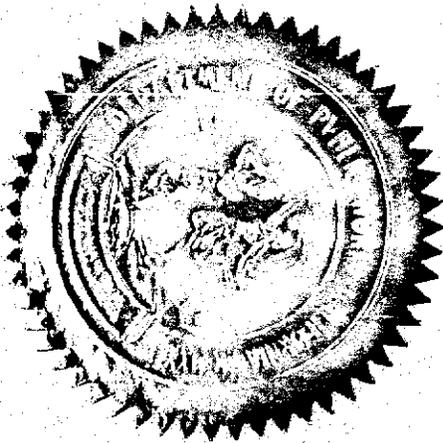
oOo

ORDER

Application 15303 having been filed with the Division of Water Resources as above stated, a protest 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 15303 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 January 13, 1955.



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