

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

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In the matter of Application 5666 by Jesse H. Getchell
to appropriate water from Pollard Gulch in Shasta
County for irrigation and domestic purposes

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DECISION No. A. 5666 D 208

Decided: *December 22, 1928*

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APPEARANCES AT HEARING HELD September 28, 1928 at Redding.

For Applicant

Jesse H. Getchell in
propria persona

For Protestant

Roscoe Anderson, Atty.
Redding, Calif.

EXAMINER: Gordon Zander, Hydraulic Engineer, for Harold Conkling,
Chief of Division of Water Rights.

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O P I N I O N

This is an application to appropriate 0.075 second foot from Pollard
Gulch, a tributary of Sacramento River, from January 1st to December 31st, for
the irrigation of 10 acres and for general use at a resort and service station.
The application was protested by G. H. Reed who owns land riparian to Pollard
Gulch, which traverses the land of applicant making it also riparian.

The application was filed August 18, 1927, completed in accordance
with the Water Commission Act and the requirements of the Rules and Regula-
tions of the Division of Water Rights and being protested was set for hearing
in the Court Room of the City Hall at Redding, California, at 10:00 o'clock
in the morning, on Friday, September 28, 1928. Of this hearing applicant

and protestant were duly notified and appearances thereat were made by both parties.

Protestant Reed claims and introduced at the hearing on September 28, 1928, uncontroverted evidence which indicates the waters of Pollard Gulch have been used upon his property since 1858. The use appears to have been to a certain extent desultory and uncertain, because of the transmission losses in the 2600 feet of ditch which leads from the point of diversion to place of use, and the use has at times been interrupted due to slides and other difficulties in maintaining the ditch. Reed and his predecessors in interest have diverted all of the flow in Pollard Gulch after about May 1st but when the stream flow falls below four miners inches apparently the entire amount diverted is lost before it reaches the place of use.

Heretofore the Division approved Application 3946 of George H. Bonville to appropriate from this same source and overruled the protest thereto which was filed by Mr. Reed, who in the hearing upon the protest failed to introduce evidence of the riparian character of his land and further failed to controvert the evidence introduced on behalf of Applicant Bonville that there had been no use of water from Pollard Gulch upon the Reed property from 1911 to 1922. Mr. Bonville abandoned his project and this permit was subsequently revoked. Applicant Getchell now urges that there is available at the present time therefore the same water which was deemed unappropriated and allowed to Mr. Bonville in the permit issued upon his Application 3946.

The evidence submitted in the case now before us is however of a different character and supports an entirely different conclusion. Whereas in the previous case there was no evidence submitted as to the riparian character of the land of either claimant and the preponderance of evidence was that such right as Mr. Reed and his predecessors in interest might once have

had to the waters of Pollard Gulch had forfeited through non use the evidence now before us is that the land of both claimants is riparian to the stream, that there is very little surplus of flow in Pollard Gulch during the irrigation season over and above what is reasonably needed upon the lands riparian thereto, and that neither the appropriative right which Reed may claim nor the riparian right which attaches to his property is forfeited through non use.

It is noted however that when the flow of the source is 4 inches or less none of the water diverted reaches Reed's place of use on account of transmission losses and that only during the irrigation season does Reed's ditch divert the entire flow of the source. Certainly Getchell is entitled to appropriate any surplus not diverted by Reed and Reed cannot be injured by Getchell's use of water which is insufficient in amount to flow from Reed's intake to place of use. Since the hearing Getchell's attention has been directed to the paucity of supply which may be available to him under existing conditions and he has stated his willingness to accept a permit which would limit his diversions to periods when the flow is either greater than the capacity of Reed's ditch from Pollard Gulch or smaller than the amount which will create a flow from Reed's intake to place of use. The use proposed is a beneficial one and the Division of Water Rights will therefore approve the application, limiting diversions thereunder as indicated above.

O R D E R

Application 5666 for a permit to appropriate unappropriated water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 5666 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate and subject to the following special terms and conditions:

By consent of the applicant it is expressly stipulated that permittee shall not undertake to divert at any time when the water diverted by the G. H. Reed ditch is flowing through said ditch to the place of use and is there being applied to beneficial use unless there would otherwise be a surplus passing the G. H. Reed intake.

Dated at Sacramento, this 22 day of Dec , 1928

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

JCF:MP
ENB:MP