

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

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In the Matter of Application 14784 by Alva A. Dinneen, Application 14787 by Sarah H. Huff, Application 14788 by George W. Nunes and Application 14846 by Herbert J. Smith to Appropriate Water from Callayomi Brook, Tributary to Putah Creek, in Lake County, for Domestic Purposes.

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Decision A 14784, 14787, 14788, 14846 D 803

Decided September 28, 1954

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In Attendance at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriations on May 14, 1953:

W. T. Dinneen	Applicants' Engineer
Lemuel D. Sanderson	Applicants' Attorney
Jack Fenner Bliss	Protestant
Edwin W. Grohs	Representing the protestant Cobb Mountain Lodge
Homer Norris)	Representing the protestant Callayomi Water Users' Association
Thomas N. Healy)	
A. S. Wheeler	Senior Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

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OPINION

General Description of the Projects

Each of the four above mentioned applicants seeks a year-round appropriation from a common point of diversion on Callayomi Brook, the water to be diverted at that common point, located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T11N R8W, MDB&M, by means of an earth and brush dam 2 $\frac{1}{2}$ feet high by 4 feet long and conveyed to the several places of use by galvanized steel pipe lines varying from 3 inches to 3/4 inch in diameter and from 150 to 1500 feet in length. Applicants Dinneen, Huff and Nunes originally applied for 0.025 cubic foot per second each and Smith for 0.0125 cubic foot per second; later the applicants reduced these amounts to the following:

<u>Applicant</u>	<u>Application</u>	<u>Gallons per day</u>
Dinneen	14784	2,500
Huff	14787	4,500
Nunes	14788	1,800
Smith	14846	1,200
Total		<u>10,000</u>

The water is wanted for domestic use on certain lots within "Whispering Pines Subdivision No. 2", said subdivision occupying portions of the NE $\frac{1}{4}$ and portions of the SE $\frac{1}{4}$ of the same Section 14. The applicants assert ownership of their respective places of use, disclaim ownership of the site of the proposed point of diversion.

Protests

The protests are three in number, each protestant protesting all of the applications.

Callayomi Water Users Association by Thomas N. Healy, its attorney, asserts in its protest against each application:

"The members of the protesting group, all of whom now take water from this source at the proposed point of diversion, and more than 20 other users of this water, will be deprived of water essential for their daily household domestic use if the proposed appropriation is effected. Said protestants also claim rights to the use of this water prior and superior to those of the applicant. . ."

"The use by several protestants ... has endured for the past 20 years; in all cases the use has been for five or more years. Save for occasional weekend exceptions, it has been confined to the months between May to September of each year. The average daily usage of each member is estimated to be less than 250 gallons. The use in each instance except that of Cobb Mountain Lodge is domestic and mainly for household purposes."

"This protest may be disregarded and dismissed if the application is withdrawn (or rejected) and the applicant contracts with protestants and all property owners affected by the application for such joint development and use of the water source in question, with reasonable and equal rights for all users, as may be practicable"

The protestant association states that its claimed rights to use of water from the source filed upon are based upon "riparian claim in some instances; prescription and both express and implied appurtenant easements or profits, in other cases". It describes its points of diversion as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T11N R3W, MDB&M. In elaboration of its protest it states further:

"With few exceptions ... members of the protestant's association have rights to the use of the subject water which are superior to the claim of applicant

"Aside from their rights to the water, those members who are not riparian owners have obtained easements, both express and implied, from the owners or the predecessors in interest of the owners of the land which contains the point or points of diversion

"The applicant has no arrangements for right of access with the proprietors of Cobb Mountain Lodge, owners of the land at the proposed point of diversion Said owners in fact are members of this protesting association.

"The 16,000 gallons of water per day requested herein could not be put to beneficial or reasonable use on applicant's property . . . Neither past, present, or reasonable foreseeable future daily water usage ... exceeds 250 gallons (per family) on the average.

"The allowance of right of water usage to any property owner ... in an amount exceeding the average daily use of other users in that area very conceivably could result in depriving any number of persons of water for cooking, washing or drinking. Inconsiderate use by some has resulted in such conditions upon occasion in the past.

"More for reasons of explanation than protest, the members of this group wish to point out that the diversion works mentioned in the application already have been installed as have those of protestants; that the instant proceedings invite a race for water rights in the subject area; that the application listed only 11 names representing persons affected whereas more than 50 landowners are involved, and that many of them remain unaware of these proceedings because their actual resident addresses were not listed"

Attached to each protest is a list captioned "Callayomi Water Users Association: Property Owners ... who use water from Callayami Brook" Following that caption is a list containing 24 names.

Jack Fenner Bliss asserts in his protest, which is directed against the four applications:

"The above applications total 64,000 gallons per day, a quantity which may be far in excess of the total stream flow during drought years; if applications are approved they would deprive me of my rightful domestic requirements."

"The extent of present and past use ...: ... Diverted from May 20, 1935 and continuously thereafter ... approximately 2,000 gallons per day throughout the year for domestic use in four homes. An additional 1,000 gallons per day for Mr. Kozlowski a downstream abutting neighbor ... possessing riparian rights whose service pipe takes off my diverting pipe line."

"There is little doubt that in drought years the springs feeding Callayomi Brook will not produce 64,000 gallons per day; nor is there any need for water beyond minimum household use as not one of the petitioners requires water for irrigation purposes."

"As there are now many innocent but albeit now illegal diverters of Callayomi Brook who have advised me they will seek water appropriations plus the builders of new cabins on now vacant lots in the watershed area, it is my opinion that a well conceived plan of water storage, distribution and allocation of quantities is mandatory if all are to receive a reasonable quantity of water without jeopardizing my prior riparian claim in years of low spring flow."

"In fairness to all, I believe all requests for water appropriations should be rejected until a comprehensive plan of water conservation and use is either prepared by your Division or by the residents of the watershed area in accordance with your recommendations."

Protestant Bliss claims a riparian right and states that his diversion heads approximately 1,000 feet downstream from the point where the applicants propose to divert.

Cobb Mountain Lodge protests the four applications by letter dated July 16, 1952, the body of that letter reading:

"Our protest is predicated upon the following:

1. As indicated on the project maps accompanying the above applications all proposed diversions of Callayomi Brook are shown as a point encroaching approximately 80 feet upon private property owned by Cobb Mt. Lodge.

2. Permission to trespass upon our private property has never been granted to any one of the applicants nor have they solicited us for said permission to trespass.

3. Failure to secure said permissions to trespass are in violation of the California State Water Code . . .

4. Applicants may lay claim to the right to encroach by virtue of tenure of prior trespass. However, said prior trespasses constituted illegal trespasses . . . ; as illegal trespass they have no legal status irrespective of tenure of use.

"We wish to advise the Division of Water Resources that Cobb Mt. Lodge has no desire to deprive any of the above or future applicants in the watershed area of reasonable quantities of water. However, as Callayomi Brook is the only evident source of water for any existing and future cabins in a heavily populated area, it is our contention that no domestic permits should be issued until the owners of said cabin tracts present a coordinated and intelligently engineered plan of water diversion and distribution predicated upon their absolute minimum needs and the minimum brook flow during the critical month of September. We also believe said plan should be accompanied by an agreement signed by all tract owners providing for:

1. Sharing of all construction costs on equitable basis.
2. Continuous maintenance and repair of the water system.
3. Sharing of said maintenance and repair costs.

4. Policing to prevent wanton waste, conserve and thereby insure sufficient water for all.

"It is our firm belief that unless an intelligent water conservation scheme is planned, constructed, maintained and policed against waste, ultimate chaos and bickering will result. We are, therefore, indisposed to granting access to any applicant or groups of applicants except on a well-planned basis embracing the entire upper watershed area including our properties.

"The problems inherent to such planning are necessarily complex and probably beyond the scope of the residents of the area. Therefore, we respectfully suggest the Division of Water Resources institute a complete investigation of the area and make such recommendations and rulings as may be pertinent to the solution of the water problems."

Answer

The applicants answer the several protests collectively as follows:

"COMES NOW applicants above named and answering the protests of protestants above named, admit, allege and deny as follows:

"Allege that Frank L. Elliott and Florence Elliott, his wife, were the original owners of all of the property surrounding the Callayomi Creek at the points of diversion, and the rights of access thereto; and were at the same time the owners of the Whispering Pines Subdivision, from which subdivision your applicants hold their title and their rights to the use of the said water, and also the Elliotts were at that time, owners of the Cobb Mountain Lodge.

"That on or about March 1938, said Elliotts built the original rock dam, and thereafter sold off the said lots in the said Whispering Pines Subdivision; that among those who purchased them and who now hold the same in fee simple from the Elliotts are the applicants above named.

"That as these lots were so sold, the Elliotts did grant each lot owner a domestic use of the water, provided by a 2 $\frac{1}{4}$ inch pipe, along with the same use to the Cobb Mountain Lodge which they then owned.

"That on or about March 1951 the said Cobb Mountain Lodge, now owned by the Montmarquets and Grohs, the successors in title to the original Elliotts, did build another and new concrete dam above the original rock dam which their predecessors in title so built, and so granted the water rights as hereinabove set forth, and by which action of the Elliotts, the said present owners of the Cobb Mountain Lodge were legally bound, both at law and in equity.

"That on or about March 1951 Cobb Mountain Lodge did grant to certain of the protestants the right of access to and permitted them to build a second new concrete dam on the Callayomi Creek at a point above the applicants original rock dam, and below the dam mentioned in

"That the agreement made by the said Elliotts when they sold the lots in the subdivision to the applicants, was that if and when a bigger concrete dam would be necessary by their increased water users, the Cobb Mountain Lodge, along with all the owners of the lots in the subdivision, would join in the said cost of the new dam in an equitable and proportionate share of the costs thereof.

"That the said new dam of Cobb Mountain Lodge did divert a 2 inch pipe of water therefrom and from the said Callayomi Creek for commercial purposes to Cobb Mountain Lodge and trespassed on the property of Alva A. Dinneen.

"It is estimated that, including the applicants, there are about 20 water users in said Subdivision holding their rights from the original Elliotts.

"That the Cobb Mountain Lodge did in 1938, and ever since has and does now run its said pipes across and over the lands of Alva A. Dinneen, applicant, without any right-of-way or easement therefore, whatsoever.

"That your applicants did, for some time prior to the filing of these applications, endeavor in good faith to join together with all said protestants in the building of a new concrete dam to take care of all of their domestic needs, and pay for the same equitably, but that the protestants did refuse.

"That all of your applicants desire only an adequate domestic use; that they or their attorney are unversed in hydraulic engineering, and for that reason they did apply for somewhat more than they needed, rather than underestimate their needs, and with the understanding that the engineers of the Division of Water Resources would adjust their needs and the needs of all the other applicants and protestants equitably, and adequately.

"That applicants are not hostile to any other users, but only want to have their use and that of the other users made a matter of right and not of uncertainty as now exists.

"WHEREFORE, applicants pray that the Division of Water Resources have a hearing and make its own independent investigation, and thereafter make its order granting to all of the persons who are long time users of these waters, their just and adequate rights to and water from the Callayomi Creek.

"That applicants live in a different county from where their attorney has his office, and for this reason, beg that their attorney may make and sign this answer for them on their behalf.

"That as the applicants are identical in their facts and in the law applicable thereto, they pray that this Division of Water Resources accept this answer as and for each and everyone of them, so as to save a multiplicity of suits."

Field Investigation

The applicants and the protestants with the approval of the Department having stipulated to the submittal of the applications and protests upon the official records of the Department, a field investigation was conducted on May 14, 1953, by an engineer of the Division. The applicants and the protestants were all represented during the investigation.

Records Relied Upon

Applications 11198, 11199, 12578, 12716, 14784, 14787, 14788, 14846 and all information on file therewith; Water Supply Paper 1215 and "Lower Lake" and "Capay" quadrangles, United States Geological Survey.

Information Secured by Field Investigation

The report of the field investigation contains among other passages the following:

"The source under these applications is Callayomi Brook which heads in a cienega on the eastern slope of Cobb Mountain and flows easterly to Putah Creek.

"The cienega is about 100 feet in diameter with several outcroppings of water therein which join at one point to form the brook.

"Flow from the cienega, at the time of this inspection was about 1.0 cfs and the low flow was said to be about 25% thereof.

"About 50 feet north of Callayomi Cienega, on the other side of a low ridge, is located Parnassus Spring which is also a cienega with 4 major outcroppings of water which forms Parnassus Creek which is tributary to Callayomi Brook below all diversions from the brook except one. Flow is about 50% of that of Callayomi Cienega.

"It appeared that unquestionably both cienegas were fed by the same underground water course.

"About 400' to 500' north of Callayomi Brook there is another source of supply to protestants known as Dogwood Creek which has a flow about equal to that of the brook.

"Only about 50% of the water users in the water association secure water from Callayomi Brook and about 25% of the other water users, other than Protestants Bliss and Cobb Mountain Lodge and applicants.

"Other than use by the applicants, and that used in the swimming pool at Cobb Mountain Lodge, the present maximum use from Callayomi Brook is about 36,450 gpd indicating that, in the low flow period, around 123,550 gpd is available for use by applicants and for the swimming pool, with an additional approximately 80,000 gpd being available for the swimming pool (150,000 gallons capacity) from Parnassus Creek.

"Those present agreed that there was at all times flow from Callayomi Brook into Putah Creek.

"There are five diversion dams on the brook as follows:

1. At the point where the surface flows from the cienega join to form the brook. This dam is owned by Protestant Cobb Mountain Lodge and a 2" pipeline leads from the dam to the lodge. Since the dam is upstream from applicants' proposed diversion point, use by applicants will not affect the protestant's use from this point.

2. About 5' below dam (1). From this dam there are 4 pipelines, a 1½" line to Applicant Nunes' place, a 2½" line used by a Mr. Symmons and some other users and 2 lines of 1" pipe to other users. This is the proposed point of diversion under the applications.

3. This dam is about 75' below (1) and there are 6 pipelines from the dam. One of the lines is of 2½" pipe and serves Applicants Dinneen, Huff and Smith. This line is proposed to be extended to point (2). The other 5 lines serve shareholders in the water association.

4. This dam is about 25' below (3) and there are 2 pipelines leading from it. One of these lines leads to a ram used to pump water to eleven users who are shareholders in the water association. The other line goes to Applicant Huff's place.

5. This dam is about 100' below (4) and a 2½" pipeline leads from it to the swimming pool of Cobb Mountain Lodge. The dam is below the junction of Parnassus Creek with Callayomi Brook.

"At the point where the flows from the cienega join to form the creek a concrete dam has been constructed which forms a small regulating reservoir from which 7 pipelines of various sizes lead to 10 cabins most of the owners of which are members of the water association.

"These are the only diversions from the creek* and they serve about 40 people.

"Diversions from (Dogwood Creek) were not checked but there are several which serve 30 cabins most of the owners of which are members of the water association. About 130 people are served from these diversions."

As to use of water by the applicants the investigator states:

"Dinneen:... has a fully plumbed house and proposes to build two more which will result in use by 14 people. An area of about 6,000 square feet will be under irrigation and there will be a small amount used for miscellaneous purposes. Customary normal allowances indicate an ultimate maximum use ... of 2,500 gpd.

"Huff: Ultimate use ... is expected to be for 14 people in a fully plumbed house, irrigation of about 0.5 acre and some small miscellaneous uses. Normal allowances ... 4,500 gpd.

"Nunes: ... proposes use by a maximum of 12 people in a fully plumbed house, irrigation of about 6,000 square feet and a small use for miscellaneous purposes ... Indicated ultimate maximum use will be about 1,800 gpd.

"Smith: ... ultimate use is expected to be for 7 people in a fully plumbed house, irrigation of an area of about 4,000 square feet and for some miscellaneous purposes. Indicated maximum use ... 1,200 gpd.

"In connection with the foregoing described uses it was pointed out to applicants ... that all had applied for considerably more water than their ultimate use would be and it was suggested that reductions be made. After some discussion the applicants agreed to reduce the amount sought under each application to whatever amount the

*Parnassus Creek

Division ... determined was reasonable. In consequence the amount sought under each application was in each case reduced to the estimated ultimate use amount shown in the foregoing descriptions of ultimate use."

As to use of water by the protestants the investigator states:

"Callayomi Water Users' Association: At the time of the investigation 50 of the summer home owners were members of the association involving use by a maximum of about 200 people in fully plumbed houses. Mr. Healy stated that there was very little irrigation on the part of the home owners but that sprinkling to allay dust was fairly heavy. It was his opinion that outside uses by home owners were about equal to household uses. This would indicate a total use by members of around 20,000 gpd of which about 10,000 gpd is from the Brook. Use by prospective members, other than the applicants and the other protestants, is about 5,000 gpd from the Brook.

"Jack Fenner Bliss: Use ... is for a maximum of 19 people at four ... houses, irrigation of about 3,500 square feet of lawns and gardens, sprinkling to allay dust on about 16,000 square feet Indicated use ... about 3,450 gpd. The protestant plans construction of 3 more fully plumbed houses to accommodate 12 people. His ultimate use will therefore be about 6,000 gpd.

"Cobb Mountain Lodge ... serves a maximum of 102 people in fully plumbed facilities consisting of a lodge and numerous cabins with additional cabins being proposed. Additional use is also made by about 200 non-guests at the lodge dining room and bar and about 9,000 square feet of lawns are irrigated and 2.5 acres sprinkled to allay dust with some miscellaneous uses. Based upon nominal allowances ... total ... uses ... 16,000 gpd.

"Water for all of the above described uses is, however, obtained from a point of diversion located above that of the applicants and diversion by applicants will consequently have no effect on such uses by protestants. However protestant has another diversion point below all other diversions which serves a swimming tank and is used between about June 1 and September 15 of each year. Diversion to the tank is continuous at a rate of around 13,000 gpd and the water diverted is from the combined flow of Callayomi Brook and Parnassus Spring."

"As previously shown in this report the normal low flow of Callayomi Brook, above the point of inflow from Parnassus Spring, is about 160,000 gpd with the total maximum use by protestants and non-protestants, prior to the date of this investigation, being about 49,450 gpd. About 110,550 gpd therefore appears to be unappropriated of which total amount sought by applicants is only 10,000 gpd.

"The Association has as yet acquired no water rights nor has it filed an application on any of the sources of supply proposed to be used by it. In consequence it has little or no grounds for protest. In filing the protest it was acting as agent for the members of the Association who all claim individual water rights. In this connection some of them may claim to be riparian but the balance appear to be diverting without any color of right. Their use commenced subsequent to December 1914 and none of them have filed applications for water nor does it appear that any of them have acquired prescriptive rights Such rights, if acquired, would not affect applicants since their diversion point is above that of protestants.

"The same conditions hold for those lot owners who did not file protests.

"Use by Cobb Mt. Lodge appears to have commenced prior to December 1914 and Protestant Bliss is riparian.

"Mr. Healy stated that every effort was being made to get all lot owners in a workable organization of some sort for the purpose of conserving water, construction of regulatory works, elimination of individual pipe lines and installation of a single distribution system. Insofar as an organization was concerned three types were being considered which are (1) expansion of the present association, (2) formation of a mutual water company and (3) formation of a county water district. In this connection Mr. Sanderson stated that his clients desired to proceed with their applications and at such time as a satisfactory organization was formed his clients would join, if costs were not prohibitive, and would transfer their rights to the organization. Mr. Healy, however, requested that action on the application be delayed since he felt that if they were approved it might lead to the filing of a number of other applications and thus cause confusion among the lot owners and interfere with completing an organization to include all of them. There are about 500 lots in the subdivision the majority of which have not as yet been sold."

Information from Other Sources

Putah Creek has been gaged by the United States Geological Survey at a point near Guenoc, at a point near Winters and, more recently, at a point near Davis. The points of measurement scale respectively about 17, 52 and 68 miles down-river from the applicants' proposed point of diversion. According to Water Supply Paper 1215 the areas of watershed tributary to the 3 points of measurement are respectively 112, 614 and 658 square miles; flow near Guenoc has averaged 182 cubic feet per second, near Winters 442 cubic feet per second, over a 21 year period.

Applications to appropriate from Putah Creek include the following, by the United States - Bureau of Reclamation:

Application 11198 for 1,000,000 acre-feet per annum collected without restriction as to time, for power purposes. Point of diversion: Monticello Dam, within Section 29, T8N R2W, MDB&M.

Application 11199 for 1,000,000 acre-feet per annum, collected between November 1 and May 31, for irrigation, domestic, municipal, industrial and recreational purposes. Points of diversion: Monticello Dam and Putah Diversion Dam (within Section 31, T8N R1W, MDB&M).

Application 12578 for 900 cubic feet per second from February 1 to November 15 and 600,000 acre-feet per annum collected between November 1 and May 31, for irrigation and incidental domestic purposes. Points of diversion: Monticello Dam and Putah Diversion Dam.

Application 12716 for 116 cubic feet per second, year-round, for municipal, industrial, domestic and recreational purposes. Points of diversion: Monticello Dam and Putah Diversion Dam.

Of these four applications the first is not yet complete; the others have been completed, advertised and protested but not yet heard.

The described location of Monticello Dam scales approximately 1.5 miles upstream from the gaging station "Putah Creek near Winters".

Discussion

Since the average discharge of Putah Creek at the gaging station near Winters has been 442 cubic feet per second, equivalent to about 320,000 acre-feet per annum, over a 21-year period, it is apparent that the amounts sought by the United States - Bureau of Reclamation under applications which are all prior to the applications presently at issue, aggregate considerably more than the usual flow of that stream. However, until such time as the Federal project comes into full operation, which may be far in the future, the water sought under the applications presently at issue may be utilized in the manner proposed without interference with the Federal project. Furthermore the amounts which Applicants Dinneen, Huff, Nunes and Smith seek to appropriate are so minute in comparison with the flow of Putah Creek near Winters that any damage to the Federal project that would result from continued diversions by those applicants would be immeasurably small. The Federal Government

has not protested the approval of the applications by Dinneen et al. and it is doubtful if it will have valid reason for objection to diversions so small at points so remote, in future.

The protests insofar as they are based upon apprehension that diversions as proposed by the applicants will deny the protestants the use of water to which they (the protestants) are entitled are not supported by the report of field investigation. There is evidently sufficient water for both protestants and applicants. The objections by the protestant Callayomi Water Users' Association insofar as based upon the contention that the amounts sought by the applicants are excessive have been met by the voluntary reduction of those amounts, by the applicants, to amounts considered reasonable by the investigator. The belief expressed by Protestant Bliss and by the protestant Cobb Mountain Lodge that there should be a comprehensive plan of water utilization in the locality is not a bar to the approval of applications filed before such plan is formulated. It may be presumed that it would be as advantageous to the applicants as to other water users, present or prospective, to participate in such a plan and that they would do so after their applications are approved as readily as before. The protest by Cobb Mountain Lodge, insofar as based upon the applicants' alleged lack of right of access to the proposed point of diversion is not a bar to approval of the applications. It is of course incumbent

upon the applicants to secure right of access before proceeding with their project. If they cannot secure right of access from the owner of the land whereon they desire to effect diversion they cannot legally enter that land, whether their applications are approved or not.

Summary and Conclusion

The applicants seek to appropriate a total of 10,000 gallons per day, year-round, from Callayomi Brook, tributary to Putah Creek, in Lake County, for domestic purposes, within certain lots of "Whispering Pines Subdivision No. 2", that subdivision lying within Section 14, T11N R3W, MDB&M. The applicants originally applied for a total of 0.0875 cubic feet per second (equivalent to about 56,500 gallons per day), subsequently requested reduction of that total to the figure above named.

The applications are protested by Callayomi Water Users' Association, Jack Fenner Bliss and Cobb Mountain Lodge. Objections raised by one or another of the protestants are (1) that the diversion proposed by the applicants would at times prevent present users from diverting amounts required for their needs, (2) that the amount which the applicants seek to appropriate is excessive, (3) that all applications to appropriate should be denied until a comprehensive plan of water conservation is formulated and (4) that the applicants lack right of access to their proposed common point of diversion.

The parties stipulated to the submittal of the applications and protests upon the official records of the Department and a field investigation was conducted by an engineer of the Division.

According to the report covering the field investigation, Callayomi Brook heads in a cienega, the cienega was yielding about 1 cubic foot per second when visited (May 14, 1953) and is said to yield at all times at least a quarter of that amount, Parnassus Creek, tributary to Callayomi Brook, heads in Parnassus Spring, or cienega, located 50 feet north of Callayomi Cienega, Parnassus Spring yields about half as much as Callayomi Cienega, both cienegas appear to be fed by the same underground water course, the protestants are supplied also from a source known as Dogwood Creek, located 400 or 500 feet north of Callayomi Brook and about equal to that stream in yield, present maximum use from Callayomi Brook is about 36,450 gallons per day, at all times flow from Callayomi Brook enters Putah Creek, some 123,550 gallons per day are available in the low flow period for use by applicants and for the Cobb Mountain Lodge swimming pool (capacity 150,000 gallons), some 80,000 gallons per day are also available for the swimming pool from Parnassus Creek. Further, according to the report of field investigation there are at present 5 diversion dams on Callayomi Brook, the uppermost of these dams serves Cobb Mountain Lodge, the next dam (5 feet downstream from the first) serves Applicant Nunes and others and marks the point where all of the applicants propose to divert, the 3rd dam (75 feet downstream from the

first) now serves Applicants Dinneen, Huff and Smith, as well as others, the 4th dam is about 75 feet below the 3rd and serves properties belonging to Applicant Huff and 11 water association shareholders, and the 5th dam is about 100 feet below the 4th, it is below the junction of Parnassus Creek with Callayomi Brook and a pipeline leads from it to the Cobb Mountain Lodge swimming pool. As to Parnassus Creek the report states that the only diversions therefrom are those heading at a dam at its source which serves 10 cabins, owned mostly by water association members. As to Dogwood Creek the report states that there are several diversions serving a total of some 30 cabins, belonging mostly to water association members. As to the applicants' probable requirements the investigator estimates, according to the report, that Applicant Dinneen will need some 2500, Applicant Huff 4500, Applicant Nunes 1800 and Applicant Smith 1200 gallons per day. As to use of water by protestants the report states that use by members of the Callayomi Water Users' Association is or will be of the order of 25,000 gallons per day of which 15,000 gallons per day must come from Callayomi Brook, that Protestant Bliss does or may require about 6000 gallons per day and that the protestant Cobb Mountain Lodge requires some 16,000 gallons per day from the uppermost dam on the brook for domestic purposes, plus 13,000 gallons per day from the combined flow of Callayomi Brook and Parnassus Creek, for the swimming tank. The

report of investigation includes statements to the effect that a movement is in progress to get all lot owners into an organization for the purpose of conserving water, effecting better regulation, eliminating individual pipe lines and developing a single distribution system; that the applicants will join such organization if it is formed and costs are not prohibitive and transfer their rights thereto; that the proponents of the movement prefer deferment of action on the pending applications to appropriate, lest such action cause confusion and hinder completion of the desired organization; and that Applicants Dinneen et al. are opposed to such deferment.

From the information summarized it is concluded that unappropriated water exists in the source filed upon, that such water may be taken and used beneficially in the manner proposed by the applicants without encroachment upon the rights of other users, and that the protests are insufficient to bar the approval of the application. It is the opinion of this office therefore that Applications 14784, 14787, 14788 and 14846 should be approved and permits issued, subject to the usual terms and conditions. Inasmuch as the applicants lack right of access to the proposed point of diversion, any permit issued should contain a provision to the effect that the issuance thereof does not confer that right.

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ORDER

Applications 14784, 14787, 14788 and 14846 having been filed with the Division of Water Resources as above stated, protests 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 Applications 14784, 14787, 14788 and 14846 be approved and that permits be issued to the applicants, subject to such of the usual terms and conditions as may be appropriate and subject to the following special term and condition in each permit, to wit:

The issuance of this permit shall in no way be construed as conferring upon permittee a right of access to the point of diversion.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 28th of September, 1954.



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