

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

In The Matter of Application 8999 of Riverside Grove Water Company  
To Appropriate From San Lorenzo River in Santa Cruz  
County For Domestic Purposes

Decision A 8999 B 438

Decided *January 16, 1939*

Appearances at Hearing Held in Santa Cruz on November 29, 1937

Leonard A. Worthington, of Clarence

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Attorneys at Law, for , Applicant

John Gardner, of Wyckoff, Gardner

& Parker, Attorneys at Law, for Protestants Mary A. Morehouse,  
Mary V. McKibbin, George C. Williams, Elsie J.  
Hessler, John Matison, C. F. Longe, Margaret Woehl, Wilhelmina  
Jackson, Jesse A. Harmon, Mignon E. Harmon, J. A. Mattrass,  
Frank S. Dolley, G. W. Brinsblecom

John Gardner, of Wyckoff, Gardner

& Parker, in association with  
Cushing & Cushing and Keyes & Briskine, Attorneys at Law for Protestant  
Estate of Henry L. Middleton, deceased

John Gardner, of Wyckoff, Gardner

and Parker, in association with  
Brooks Tomkins, Attorneys at Law, for Protestant  
San Jose Elks Building Company

John Gardner, of Wyckoff and Gardner,

in association with Bennett, Hill,  
Cottrell & Boccardo, Attorneys at Law, for Protestant San Jose, Y.M.C.A.

Francis B. Hall, City Attorney, for Protestant City of Santa Cruz

Wainard G. Herrick, Attorney at Law, for Protestants E. F. Cheney and  
Wildwood Country Home Club, Inc.

Examiners:

Harold Conkling, Deputy in Charge of Water Rights

## O P I N I O N

### Description of Project

Application 8999 is to appropriate 0.10 cubic foot per second, or roughly 65000 gallons per day, throughout the year for domestic purposes. Diversion would be made from San Lorenzo River, in Santa Cruz County, approximately 3 miles upstream from the Town of Boulder Creek, and use would be made upon Riverside Grove Subdivision and contiguous areas embracing a total of some 720 acres of summer home sites.

At the present time applicant, which is a public utility, is serving 50 to 60 residential consumers and it was the view of applicants engineer that this consumption would be increased to a total of some 60000 gallons per day when the subdivision was fully sold and occupied.

### Description of Protests

A large number of protests were filed against the application. The grounds of objection fall into six general classifications as follows:

- (1) Fear of interference with some present use by protestant.
- (2) Fear of infringement of a riparian right claimed by protestant, which right may or may not be now exercised.
- (3) Fear that the diversion proposed would impair or destroy the recreational values of the stream.
- (4) Fear of mosquito menace created by stagnant water.
- (5) Fear of loss of an available water supply for fire protection.
- (6) Fear on the part of those to be served that the supply is unsanitary in itself or will create unsanitary conditions along the stream below.

There follows a tabular list of the protests received, the basis or bases of protests being indicated in each case opposite the name in columns bearing appropriate reference to the various bases of protest just stated:

Grounds of Protest

<u>Name of Protestant</u>	<u>Present Use</u>	<u>Riparian</u>	<u>Recreation</u>	<u>Mosquitos</u>	<u>Fire Hazard</u>	<u>Unsanitary</u>
Carter G. Williamson						X
E. W. Guild						X
City of Santa Cruz	X					
Chas. W. Blakeston			X			X
Lawrence G. Beckett			X			X
Mary A. Morehouse		X	X			
H. Hau de Bourck						X
Mary V. McKibben		X	X			
Orchard Park Co.		X	X			
Geo. C. Williams et al			X			X
John Matison et al		X				X
Wildwood Home Club		X				X
Margaret Weehl		X	X		X	
Patrick J. Noonan			X			X
San Jose Elks Bldg. Co.	X	X	X			
Laura Burkard et al		X	X			X
J. L. Cunningham	?	?	?			
Y. M. C. A. of San Jose	X	X	X			
Guy W. Schattner			X			X
James McEachern						X
G. W. Brimblecom		X	X			
Mrs. Wilhelmina Jackson etal	X	X	X		X	
Arthur H. Breed			X	X	X	
Frank S. Dolley	X	X	X			
J. A. Mattrass		X	X			
E. S. Cheney	X	X	X			
Wildwood Country Home Club	X		X			

<u>Name of Protestant</u>	<u>Present Use</u>	<u>Riparian</u>	<u>Recreation</u>	<u>Mosquitoes</u>	<u>Fire Hazard</u>	<u>Unsanitary</u>
Est. Henry L. Middleton	x	x	x	x	x	x
Holcomb & Adams		x	x			x

It is deemed sufficient for present purposes to consider these separate grounds of protest in their general relation to the project rather than their particular application in connection with each protest. It will therefore be unnecessary to elaborate further upon the details of the separate protests.

Full Compliance With Law and Rules & Regulations of Division

Application 5999 having been duly completed in accordance with the requirements of the Water Commission Act and the rules and regulations of the Division of Water Resources was regularly noticed. Protests were received and thereafter the matter was scheduled for hearing of which applicant and protestants received due notice.

A Famous Recreational Area Is Involved

San Lorenzo River flows through one of the choicest recreational areas on the Pacific Coast. The river rises at an elevation of 2700 feet near the crest of the Coast Range Mountains and flows in a southerly direction for some 25 miles into Monterey Bay at the City of Santa Cruz. Along its course are the famed vacation resorts of Boulder, Ben Lomond, Felton, Big Trees, Brookdale and Santa Cruz, in addition to many of lesser note and many private summer places. The grove of giant redwoods (*Sequoia Sempervirens*) at Big Trees has been world famous for many years.

At one time the San Lorenzo was an important trout stream but its ready accessibility and the density of summer population along its banks have changed this. Now the banks and the adjacent mountain slopes are dotted with individual summer homes and vacation resorts populated by those lured to this area by the delightful climate, the beautiful redwoods and other coast flora, and by the attractive opportunities for bathing along the stream or

hiking in the mountains. Less than two hours of easy driving over State Highways makes the area readily accessible to all people of the San Francisco Bay region, Santa Clara Valley, Salinas Valley, San Benito Valley, Pajaro Valley and Santa Cruz.

#### The Flow of San Lorenzo River

We have no continuous record of the flow of San Lorenzo River at or near the point of diversion proposed by applicant. Such information as we have in this connection is based upon either spot measurements or estimates, or deductions from statements by non-technical observers. Applicant's engineer, Mr. Cooper, was of the opinion that the minimum flow occurring in the year 1937 was near the end of August when he estimated 2½ to 3 second feet were flowing at a point a short distance below applicant's diversion. His testimony, however, is unconvincing because of his evident lack of familiarity with water measurements, and uncertainty as to the relation of the flow at that particular time to the normal flow as of that time.

Mr. Cooper's testimony is discounted by that of Arnold Baldwin, Registered Civil Engineer, called as a witness by protestants, who made careful measurements at two different places on the stream near applicants point of diversion on November 25th and 28th, 1937. He found 560000 to 635000 gallons per day flowing. There had recently been considerable rainfall and the flow was doubtless much increased over that at the time of Mr. Cooper's estimate in August.

Mr. Cooper's testimony is discounted also by reason of measurements reported by D. W. Day, a witness for protestants, who measured the flow at River Heights Tract, some two miles downstream, with a weir on September 26, 1937. He found a surface flow of 25 gallons per minute or 36000 gallons per day.

His testimony is further discounted by reason of the affidavit of one Wm. C. Farrell, recently Technical Office Agricultural Aide of the U. S. Soil Conservation Service but from 1929 to 1935 in charge of the Bernstein property which forms a part of the place of use intended under this application. Mr. Farrell made affidavit that (1) the flow of San Lorenzo River is not uniform, (2) that it increases rapidly immediately following a storm and then recedes, (3) that at least on one occasion the flow ceased entirely at the point during the summer season leaving stagnant pools along the stream bed, and (4) that on many occasions at this point the flow fell below 0.1 second foot (the amount sought to be appropriated) during the summer months, at times remaining at this low stage for weeks and perhaps for months. Affiant represents himself as having had much experience in the service of the U. S. Bureau of Reclamation with the measurement of water which leads one to give credence to his testimony.

But doubtless more persuasive than this and the other testimony previously referred to is the testimony of many laymen having years of familiarity with this stream and its flow during the summer months. This testimony is all to the effect and stands uncontroverted, that during the late spring, summer and fall months the flow of San Lorenzo River throughout the general area above the Town of Boulder Creek is so low that it frequently ceases entirely, is such that one may readily step across it where it is at all confined, and never exceeds what is seriously needed to serve the varied recreational purposes of the area.

Support for this view will be found in such records as are available of the flow of San Lorenzo River at or near Big Trees. This record covers the vacation seasons of 1937 and 1938. In the year 1937 the monthly average discharge from the first of June to about December 10th was always less than 40 second feet. The flow fell to the 40 secondfoot stage about July 12th, 1938 and continued below that until September 30th which is the latest date for

which records are available. The average monthly flow in second feet for months in 1937 and 1938 was as follows:

<u>Month</u>	<u>1937</u>	<u>1938</u>
June	39.3	60.9
July	24.3	36.8
August	17.2	25.1
September	16.2	21.3
October	17.8	(?)

It will be observed that the flow during the months of June, July and August in 1938 was practically 50 percent greater than in 1937, which is explained by the fact that precipitation during the 1937-38 season was some 60 percent above normal whereas during the 1936-37 season it was some 30 percent above normal at Santa Cruz and 10 percent above normal at Wrights Station. In normal years we may therefore expect the late spring, summer and fall flow to average well below 40 second feet at Big Trees and during some months to average probably not more than 10 second feet.

Inasmuch as there is only some 10 square miles of watershed area above applicant's point of diversion as compared with 110 square miles above the Big Trees gauging station it would appear probable that the flow might well cease at times during a dry year at the upper point and in a normal year would probably not exceed  $1\frac{1}{2}$  to  $2\frac{1}{2}$  second feet during the period June 1st to October 31st. During the remaining portions of the year there is doubtless normally a flow considerably in excess of this at most times.

#### Present Utilization of the Flow of San Lorenzo River.

The City of Santa Cruz pumps from San Lorenzo River for its municipal water supply at a point opposite the City. It was the testimony of the City Engineer, Roy W. Fowler, that during the months of August and September, and sometimes in July there was no waste past the City's diversion works in many years. This testimony was supported by affidavits by Alvin L. Weymouth, Commissioner of Public Works, and Louis Silva, Chief Engineer of the City's pumping plant. In order to supplement the City's supply derived from surface

flow, wells have been drilled and are pumped during the summer months.

There are some minor diversions from the river above Boulder Creek for stock purposes, domestic use, fire protection, and irrigation, and the flow supports numerous swimming pools which are much used by the vacationists and summer home owners. The most beneficial purpose served, however, is doubtless that of a mountain brook to delight the eyes and ears of the summer home owners and visitors who spend from a few minutes to several months each during the vacation period in this vacation land. The testimony was that lots along the river bank, because of the pleasant outlook upon this flow and its ready availability for swimming, sold for as much as \$3000 per acre whereas lots at a small distance from the river sold as low as \$200 per acre.

It was the testimony of the owner of Wildwood Subdivision at a point half way between Riverside Grove Subdivision and Boulder Creek that further depletion of the summer flow would destroy the salability of his lots; of the Y.M.C.A. officials whose resort is only 0.6 mile downstream that their property would hardly be usable, of a resort owner upon the banks of the river that the flow in the stream "made" his place; and of many others that the flow in the stream was one of the chief attractions to this area. The Division is disposed to take notice of the great asset which a living stream constitutes in a recreational area such as this, and of the fact that to exhaust the flow during vacation months for any purpose, unless it be to meet an emergency, would be to grievously impair, if not destroy recreational values.

#### Right to Divert During Vacation Months Should Be Denied

This is strictly a recreational area and the value of the various uses of water from the standpoint of public interest must be gauged accordingly. We are not impressed that the diversion proposed by applicant would



seriously interfere with any beneficial uses of the flow now being made by diversions below although it would probably decrease by some small amount the supply available to the City of Santa Cruz under its earlier appropriations.

If the proposed diversion merely interfered with rightful diversions to be made later by riparian owners they have the benefit of the courts to preserve their rights.

The Division lacks authority, even if it were so disposed, to deny the application on the ground that the supply is unfit for use for the purpose for which it is sought to be appropriated.

Likewise it is not within the jurisdiction of the Division to deny the application because another and a more potable supply is available through the existing facilities of another utility whose delivery lines reach to within 0.6 mile of the place of use proposed.

Neither can we find as a matter of common knowledge, or upon the showing made by applicant that there would be such a large percentage of return from the water used that there would be no appreciable effect upon the stream below although it is probable a considerable percentage of diversion would be returned to the stream.

As was indicated above, however, the flow in this stretch of the river during the period from about June 1st to about October 31st doubtless falls frequently as low as  $1\frac{1}{2}$  to  $2\frac{1}{2}$  second feet, seldom averages more than 4 second feet, and on occasion entirely ceases. Any further depletion of this flow will seriously interfere with the extensive use which is made in swimming pools; will increase the number and duration of periods when there is no flow thereby creating a health menace through stagnant pools and increase in the annoyance by mosquitos; and above all will grievously impair the healthful enjoyment which abutting land owners and all visitors to this area share as a result of the natural summer flowage of water in San Lorenzo River.

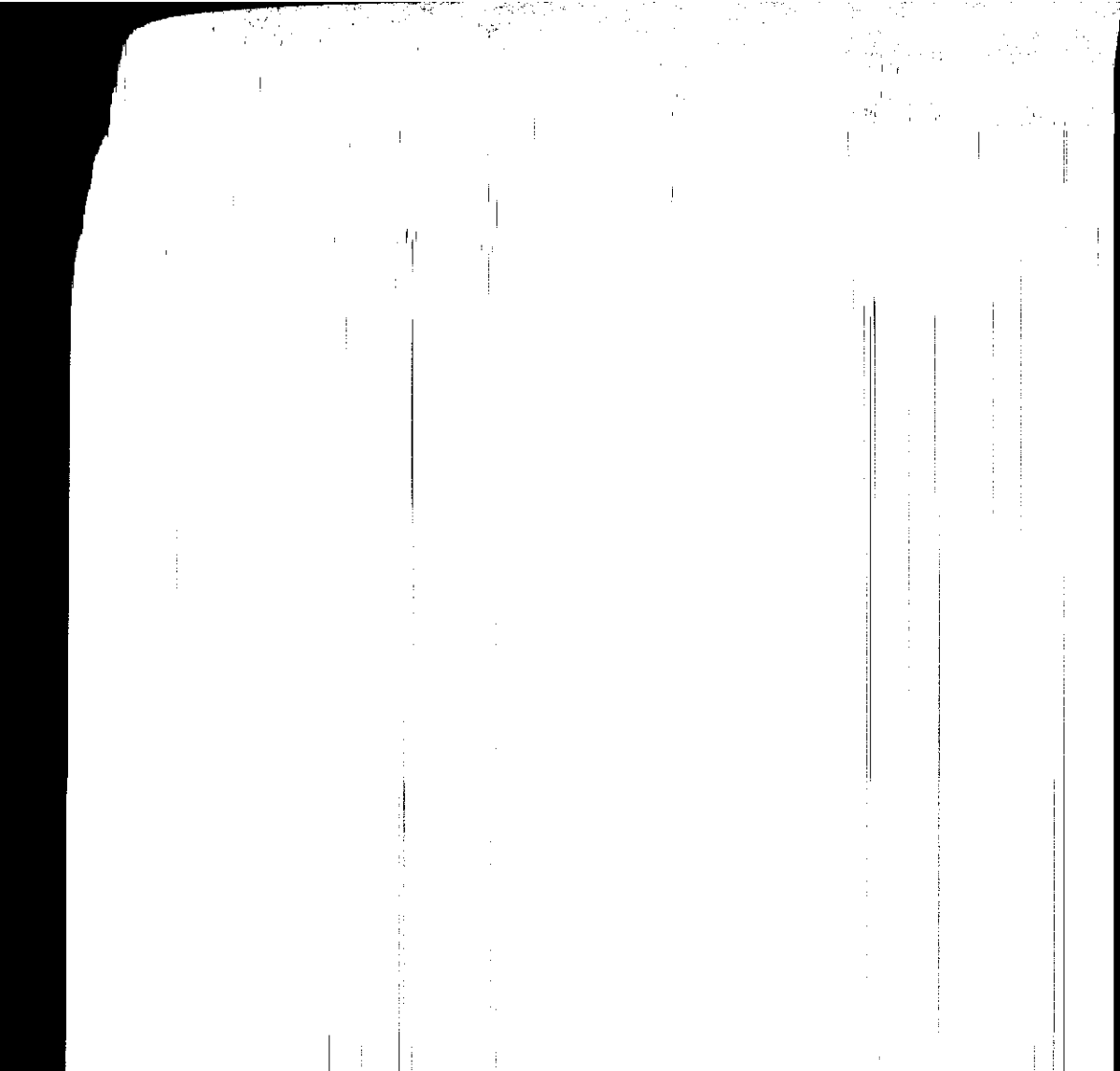
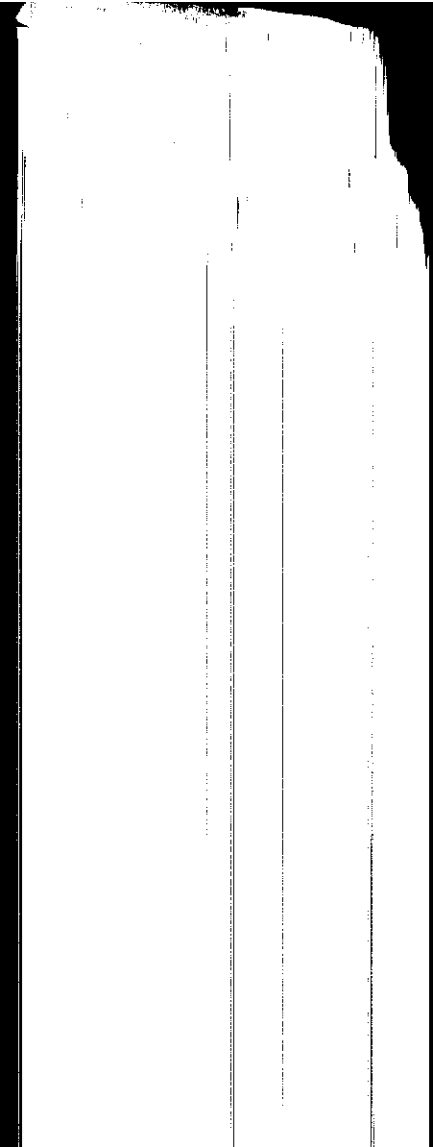
We are of the opinion that such a diversion as that proposed by

applicant would, during the period from about November 1st to about June 1st have no appreciable effect upon the flow below. Consumptive use will then be at a minimum and stream flow much increased. There appears no reason to insert any special limitation or condition in the permit to be issued to applicant which would purport to restrict his diversions during this period to the quantity reasonably necessary. Diversions are so limited by the general terms of the permit and by the provisions of Section 3, Article XIV of the State Constitution which prescribe that there can be no right in California to waste water or to a wasteful or uneconomical use of water or method of diversion. Application 8999 is for a beneficial use and the amount sought to be appropriated appears reasonable. It is in order to approve said application allowing diversion from about November 1st to about June 1st only, denying the right to divert during other months, and without other special limitations or conditions.

#### ORDER

Application 8999 to appropriate 0.10 second foot from San Lorenzo River for domestic use having been completed and duly noticed in accordance with the requirements of the Water Commission Act and the rules and regulations of the Division of Water Resources; said application having been protested and a hearing having been held upon the protests with due notice to all parties in interest; and the Division being now fully advised in the premises,

IT IS HEREBY ORDERED that said Application 8999 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 special term or condition that diversions thereunder shall be limited to the period from about November 1st to about June 1st of each season.



WITNESS my hand and the seal of the Department of Public Works  
this 16<sup>th</sup> day of *January* 1939.

EDWARD HEATH, CHIEF ENGINEER

(Seal)

BY HAROLD CONKLING  
Deputy