

IN THE MATTER OF APPLICATIONS 16473,)
16474, 16475, 16906, 16907 AND 16791)
FILED BY THE PLACERVILLE LUMBER COMPANY)
TO CHANGE THE POINT OF DIVERSION OF)
PROOF 02388, SMALL'S (EDGEWOOD) CREEK)
DECREE AND APPLICATION 16908 FILED BY)
THE PLACERVILLE LUMBER COMPANY TO)
APPROPRIATE WATER FROM SMALL'S)
(EDGEWOOD) CREEK FOR QUASI-MUNICIPAL)
PURPOSES IN DOUGLAS COUNTY, NEVADA)

R U L I N G

Applications 16473, 16474, 16475, 16906, 16907 and 16791 were filed by the Placerville Lumber Company to change the point of diversion and manner of use of Proof 02388 of the Small's (Edgewood) Creek Decree. Application 16908 was filed by the Placerville Lumber Company to appropriate 2.0 c.f.s. from Small's (Edgewood) Creek.

Applications 16473, 16474, 16475 and 16906 and 16907 are to change the point of diversion of Proof 02388 from the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ Section 26, T. 13 N., R. 18 E., M.D.B. & M., to five different points of diversion.

Application 16908 is to appropriate 2.0 c.f.s. from Small's (Edgewood Creek--the point of diversion to be in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, T. 13 N., R. 18 E., M.D.B. & M.

Application 16791 is to change the point of diversion of Proof 02388 from the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T. 13 N., R. 18 E., M.D.B. & M.

Proof 02388 decreed .36 c.f.s. from Small's (Edgewood) Creek to the Placerville Lumber Company and Lloyd Shellabarger with the point of diversion in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T. 13 N., R. 18 E., M.D.B. & M.

PROTESTS

Applications 16473, 16474 and 16475 were protested by D. W. Park and Lloyd Shellabarger on the grounds, to wit:

"That the amount of water applied for is an excessive claim which, if granted, would deny this protestant waters to which he is entitled by virtue of a vested right as set forth in proof of appropriation No. 02388.

Further, that the protestant, as well as others, are or may be entitled to the use of the waters of Small's (Edgewood) Creek, and until such rights are determined by adjudication, it would be impossible to determine the amount of water to which Placerville Lumber Company is entitled."

(Parks):

"Protestant claims that the proof of appropriation upon which this application is based is invalid, not in accordance with the facts, and is an excessive claim.

"Protestant claims that he is the sole water user on said Small's (Edgewood) Creek who has made continuous beneficial use of the waters thereof during each irrigation season during the past 57 years, and furthermore, claims that the applicant has made little or no use of the waters he claims during the past 57 years and that during the current year he has used no water whatsoever.

"Furthermore, protestant claims that his predecessor was the first party to file on the waters of said Smalls (Edgewood) Creek, that his filing, construction of diversion dams and ditches, and use of water, were prior to applicants filings, construction of structures, and use of water.

"Furthermore, protestant claims that his water requirement for irrigation, stock watering and domestic use requires the full flow of Smalls (Edgewood) Creek except during the early part of the irrigation season, this exception occurring only in years of above average annual precipitation and that during the current year when applicant made no diversion of water from said Smalls (Edgewood) Creek, that the protestant used beneficially all of the water flowing in said creek from the first day of May until the date of this protest.

"Furthermore, protestant claims that the changing of the point of diversion, place of manner and use of any water to which the applicant may be entitled to would decrease the return flow to the stream, which results from the present place and manner of use of said water, and would, therefore, reduce the amount of water available for diversion and use by protestant and would therefore create much damage to protestant's right.

"Furthermore, protestant denies that 14.4 acres of land are or ever were irrigated by applicant from his diversion of water from Smalls (Edgewood) Creek as claimed in proof of appropriation No. 02388 and also denies that 100 miner's inches of water is or was diverted by said ditch.

" Furthermore, protestant claims that 100 miner's inches of water set forth in applicant's filing and proof of appropriation No. 02388 for the irrigation of 14.4 acres (not 14.5) or such smaller area as may have been or is irrigated, is an excessive claim and invalid.

"Furthermore, protestant claims that all the waters flowing in Smalls (Edgewood) Creek during the months of May to September, inclusive, are fully appropriated and put to beneficial use by protestant."

Applications 16906 and 16907 were protested by Lloyd A. Shellabarger on the grounds, to wit: "That the waters of Smalls (Edgewood) Creek are presently being adjudicated and until such adjudication is made, this protestant cannot determine whether or not the granting of the above application will adversely affect his rights in and to the waters.

"This protestant reserves the right to protest upon specific grounds after adjudication of the waters of Small's (Edgewood) Creek."

Application 16791 was not protested.

Application 16908 was protested by Lloyd A. Shellabarger on the grounds, to wit: "That there is no unappropriated water in Small's (Edgewood) Creek.

"That the amount of water applied for is an excessive claim which, if granted, would deny this protestant waters to which he is entitled by virtue of a vested right as set forth in proof of appropriation No. 02388.

"That the protestant, as well as others, are or may be entitled to the use of the waters of Small's (Edgewood) Creek and such rights are now under an adjudication which is pending before the State Engineer. Until such adjudication has been made, it would be impossible to determine whether there is any water or the amount of water in Small's (Edgewood) Creek which are subject to appropriation pursuant to the above."

GENERAL

Applications 16473, 16474, 16475 and 16791 were filed prior to the Order Granting Petition of Small's (Edgewood) Creek Decree, which was filed February 6, 1956. Applications 16906, 16907 and 16908 were filed prior to the signing of the decree on Small's (Edgewood) Creek dated May 19, 1958. The Small's (Edgewood) Creek Decree decreed Lloyd A. Shellabarger and the Placerville Lumber Company, under Proof 02388, a maximum diversion of .36 c.f.s. and a total duty of water of 64.8 acre-feet per annum from Small's Creek.

D. W. Park source, Small's Creek, under Proof 02420, was granted a maximum diversion of 2.64 c.f.s. and a total duty of water of 476.48 acre-feet per annum, and D. W. Park source South Fork of Small's Creek (also known as Lapham) was granted under Proof 02421 a maximum diversion of 3.10 c.f.s. and a total duty of water of 558.15 acre-feet per annum.

The points of diversion of Proof 02388 are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 26, T. 13 N., R. 18 E., M.D.B.& M.; Proof 02420 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T. 13 N., R. 18 E., M.D.B.& M.; and Proof 02421, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T. 13 N., R. 18 E., M.D.B.& M.

A portion of Applications 16473, 16791, 16906, 16907 and 16908 were assigned, to wit: On August 6, 1957, a portion of each by Placerville Lumber Company to John Palady and Mary Palady, husband and wife, deed filed October 27, 1959, wherein the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 13 N., R. 18 E., M.D.B.& M., land only. Then again assigned on November 7, 1958, a portion of each by Mary Palady, wife of John Palady, deceased, to Peter S. Ansaldo, deed filed October 27, 1959, wherein the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, T. 13 N., R. 18 E., M.D.B.& M., land only.

On October 14, 1955, a field investigation of Small's (Edgewood) Creek and tributaries was made by Elmo J. DeRicco. At the time of his investigation, he found 0.9 c.f.s. in Small's (Edgewood) Creek. At the same time, he checked Applications 16473, 16474, 16475 and 16791, which were filed by the Placerville Lumber Company to change the point of diversion, manner and place of use of claim of vested rights as set forth in Proof of Appropriation 02388, and he recommended that all pending applications on this source be held without action until such time as the relative rights had been determined on this stream system.

The Small's (Edgewood) Creek Decree that was signed by the District Judge on May 19, 1958, makes no mention of Edgewood Creek being fully appropriated.

Mr. Herbert E. Winchester, Chief of the Ground Water Section of the Division of Water Resources, in his report of June 7, 1963, states that there is a little unappropriated water available. He also states there is only about so much water available from the ground water sources. If this is removed from wells, it will not be available to the water rights lower down the slope.

In Mr. DeRicco's report of investigation on October 14, 1955, there was approximately .9 c.f.s. flowing in Small's (Edgewood) Creek. Eagle Rock Creek was not measured, due to the impassability of its access road. Mr. Tom Humphrey orally verified Mr. Winchester's report.

The Lake Tahoe Basin Report prepared by the Lake Tahoe Area Council, reported that there is an estimated 5,450 acre-feet annual runoff from the Edgewood Creek water shed.

RULING

Applications 16473, 16474, 16475, 16906 and 16907 are herewith denied on the grounds that they were filed before the Small's (Edgewood) Creek Decree became final; and that the five applications were to change the point of diversion of Proof 02388 in the amount of 1.25 c.f.s. (.25 c.f.s. each) to five different points of diversion; whereas that the actual amount of water decreed to the Placerville Lumber Company by Proof 02388 was .18 c.f.s. maximum diversion, 32.4 acre-feet per annum; that the applications at the present time are ambiguous in that it is impossible to determine to which application it is desired to have the .18 c.f.s. apply.

Application 16791 is herewith denied on the grounds that it was filed prior to the time that the Small's (Edgewood) Creek Decree became final and that the application was to change the point of diversion of Proof 02388 from the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T. 13 N., R. 18 E., M.D.B. & M., in the amount of .25 c.f.s. to a different location; that the application does not show the true point of diversion of Proof 02388, whereas the Small's (Edgewood) Creek Decree did not allow a point of diversion for the Placerville Lumber Company in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T. 13 N., R. 18 E., M.D.B. & M.; that the true point of diversion for the Placerville Lumber Company in the Small's (Edgewood) Creek Decree under Proof 02388 is the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T. 13 N., R. 18 E., M.D.B. & M.

Application 16908 applied for water to be used for Quasi-Municipal (Subdivision); that a Quasi-Municipal (Subdivision) requires a firm supply of water for a twelve-month period of time; that Small's (Edgewood) Creek is a flash flow stream that has a sudden flash or flush flow for a comparatively brief period fed by melting snows, then diminishes to a point insufficient to serve decreed rights. Therefore,

Application 16908 is herewith denied on grounds that there is not a firm supply of water at the point of diversion and that its granting would be detrimental to the public welfare.

Respectfully submitted,

ELMO J. DeRICCO
State Engineer



BY: GEORGE W. HENNEN
Assistant State Engineer

Dated this 12th day of
August, 1963