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# HALLETT CREEK ADJUDICATION

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LASSEN

**DECREE NO.** 16291

Hallett Creek Stream System
in Lassen County
California

July 1984





STATE OF CALIFORNIA George Deukmejian, Governor STATE WATER RESOURCES CONTROL BOARD

Carole A. Onorato, Chairwoman Warren D. Noteware, Vice Chairman Kenneth W. Willis, Member Darlene E. Ruiz, Member

Michael A. Campos, Executive Director

HALLETT CREEK ADJUDICATION ENDORSED JUL 3 1 1984

DECREE

NO. 16291

JACQUELYN FULLER LASSEN COUNTY CLERK

BY RPUCE D. DYER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LASSEN

> Hallett Creek Stream System in Lassen County California

> > July 1984

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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## SUPERIOR COURT OF CALIFORNIA

COUNTY OF LASSEN 9

In the Matter of the Determination of the Rights of the Various Claimants to the Waters of

No. 16291

HALLETT CREEK STREAM SYSTEM.

Lassen County, California.

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The above-entitled cause having come on regularly for hearing, trial and determination on January 30, 1984, before this Court sitting without a jury; all parties in interest in said preceeding having been duly and regularly notified of said hearing, trial, and determination; the State Water Resources Control Board (hereinafter referred to as the "Board") having filed with the clerk of this court a certified copy of the Order of Determination together with the original evidence filed with or taken before the Board and certified by it; the United States Forest Service having filed an exception and the Sierra Club having filed a motion to intervene; the Court having entered a tentative decision and proposed statement of decision on June 4, 1984 granting the motion of Sierra Club to intervene in this proceeding and sustaining the United States' claim of a riparian right on its reserved lands in

the Hallett Creek Stream System; the Court now affirms said Order of Determination, except to the extent that it is modified herein, and renders this decree determining the rights of all parties involved in this proceeding as follows:

IT IS ORDERED ADJUDGED AND DECREED that the several rights of all existing claimants in and to the use of water of Hallett Creek Stream System, in Lassen County, California, are determined and established to be as hereinafter set forth:

## 1. Intervention by Sierra Club

The motion of Sierra Club to intervene in this proceeding is granted.

#### DEFINITIONS

#### 2. Water Code

"Water Code" means the State of California Water Code.

#### 3. Stream System

"Stream System" means the Hallett Creek Stream System.

It includes Hallett Creek and its tributaries from their headwaters to the outflow into Honey Lake in Lassen County, California, and water in subterranean streams which flow in known and definite channels and which contribute to the Hallett Creek Stream System.

#### 4. Claimant

"Claimant" means a party who has filed a proof of claim of water right in and to the use of water of Hallett Creek Stream System, or who, having failed or refused to file such a proof of claim properly, has had his right determined pursuant to provisions of Water Code Section 2577.

## Directly Apply to Beneficial Use

"Directly apply to beneficial use" means the direct

1 conveyance and application of water diverted to beneficial use without intermediate storage, except such reasonable regulatory storage as may be practiced for the purpose of creating a convenient head for irrigation or other beneficial use allowed herein.

#### Natur<u>al</u> Flow 6.

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"Natural flow" means such flow as will occur at the point in a stream from the runoff of the watershed which it drains, from springs and seepage which naturally contribute to the stream, and from waste and return flow from dams, conduits, and irrigated lands, as distinguished from water released directly from storage for rediversion and use, or water imported from another watershed which is released directly to the natural channel for conveyance to the place of beneficial use.

#### 7. Watershed

"Watershed" means the drainage area or region which contributes to the water supply of a stream or lake.

## State Water Resources Control Board Map

The State Water Resources Control Board map (hereinafter referred to as "SWRCB map") was prepared by the Board from surveys made in 1978 and 1979. It is entitled "Hallett Creek System, Showing Properties and Irrigated Lands, Lassen County, California, dated 1983" and is on file in this proceeding. The SWRCB map, comprising one sheet, is incorporated herein and attached hereto as a part of this decree.

#### GENERAL ENTITLEMENT

#### Diversion and Use of Water

The claimants in this proceeding are entitled to divert

water from the Hallett Creek Stream System from points of diversion described in Schedule 1 for use on their lands described under their respective names in Schedule 2. The parcels and the diversion points are also shown on the SWRCB map. The amounts allotted for each use by each claimant are set forth with their respective priorities in Schedule 3. The paragraph entitled "Seasons of Use" sets forth the periods of time during which each use of water may be exercised. Amounts allotted to irrigation are set forth in Schedule 3 in gallons per minute. The points of measurement of the amounts of water allotted shall be at the points of diversion from the stream system unless otherwise specified. Nothing herein contained shall, or shall be construed to, allocate to any claimant a right to divert from Hallett Creek Stream System, at any time, a quantity of water in excess of an amount reasonably necessary for his beneficial use, nor to permit him to exercise his right in such a manner as to unreasonably impair quality of the natural flow.

## 10. Priority Classes

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The term "priority class" when used herein means a class of rights each of which is equal in priority and correlative in rights with all other rights of the same class appearing within the schedule, so that if sufficient water is available to supply only part of the entitlement of any specific priority class, said available supply shall be prorated in accordance with allotments in that priority class. No priority class is entitled to the use of any water until all rights of all priority classes with lower numbers have been fully satisfied. Thus, within the same schedule, all rights of the Second Priority Class are inferior in priority

and subordinate to all rights of the First Priority Class, but are superior in priority and entitled to full satisfaction ahead of the Third Priority Class. Subject to compliance with Paragraph 19 hereof, claimants of rights for dormant riparian land are entitled to divert allotments under an appropriate priority class junior to previously defined rights, to their places of use through such points of diversion as may be specified in the future. No change in or addition of a point of diversion shall interfere with superior rights.

## 11. Pre-1914 Appropriations

George L. Bailey, Sr., and George L. Bailey, Jr., claim rights to water from Bootsole and Thompson Creeks, tributaries to the Feather River drainage, under a pre-1914 appropriation. Water is diverted by check dams and ditches (Diversion Points 5a and 5b, SWRCB map) into the head of Hallett Creek (Measurement Point 5). The Hallett Creek channel serves as the conveyance system to a point about 800 feet upstream from the U.S. Highway 395 crossing at Diversion Point 5c where a weir diverts the flow which originates in Thompson and Bootsole Creeks into a ditch for irrigation of 200 acres. George L. Bailey, Sr., and George L. Bailey, Jr., are entitled to use all of the water from Bootsole and Thompson Creek which enters Hallett Creek, less the conveyance losses. This does not constitute a determination of the validity of the right of George L. Bailey, Sr., and George L. Bailey, Jr., to divert water from Bootsole and Thompson Creeks.

George L. Bailey, Sr., and George L. Bailey, Jr., shall install and maintain a measuring device at the head of Hallett Creek where the imported water is discharged into the Hallett Creek

Stream System at approximately the same location as Measuring
Point 5 which is shown on the SWRCB Map. They shall also install a
measuring device at Diversion Point 5c to measure water diverted
from the Hallett Creek channel. The amount of water diverted at
Diversion Point 5c should not exceed the amount passing through the
upper measuring device.

#### 12. Season of Use

Allotments for all purposes shall be for continuous use throughout the year.

#### 13. Domestic Use

Domestic use is limited to water applied exclusively for household purposes, watering of domestic animals and irrigation of up to one-half acre of yard, garden and/or family orchard. All allotments in First Priority Class in Schedule 3 are solely for domestic purposes.

#### 13. Irrigation and Stockwatering Use

Irrigation use is limited to the application of water for the purpose of meeting moisture requirements of growing crops. Use for stockwatering is limited to water required by commercial livestock. All allotments for present irrigation of riparian lands, or for irrigation of riparian lands where diversion facilities have been installed for such irrigation, and allotments for non-domestic (commercial) stockwatering are in Second Priority Class. Allotments for dormant riparian lands have not been quantified at this time; however, paragraph 19 provides for future allocation. Stockwatering shall be accomplished by the livestock drinking directly from the stream except that watering troughs may be used if they are equipped with conduits to allow any surplus

water diverted to return to the stream or if pumping installations are equipped with automatic turn-off devices.

#### 15. <u>Industrial Use</u>

Industrial use is limited to the application of water in the culture and harvesting of timber including incidental domestic use, the building and maintenance of roads, sprinkling to allay dust, fire protection, operation of portable or semi-portable sawmills including operation and maintenance of appurtenant logging ponds, chippers and debarkers and the initial irrigation of timber plantings including Christmas tree stock. Holding ponds should be designed and constructed to prevent waste. The ponds should not collect water except during those periods when water is required for actual use.

#### SPECIAL PROVISIONS

#### 16. Priority of Domestic Uses

In Schedule 3 all uses of water for domestic purposes are allotted first priority rights in accordance with Water Code Section 106.

#### 17. Place of Use of Water Diverted at Point 8

George Bailey, Sr., and George Bailey, Jr., are entitled to divert the entire natural flow of Hallett Creek at Diversion Point 8. When the amount diverted exceeds 409 gallons per minute all flow in excess of 409 gallons per minute shall be used on lands which readily drain toward Blickenstaff's Diversion Point 9.

#### 18. Reasonable Use of Water

Section 2, Article X of the California Constitution prohibits unreasonable use, unreasonable method of use or unreasonable method of diversion of water. Future use of water

under unexercised riparian rights is unreasonable when supply is inadequate to satisfy the rights set forth in this decree and in any supplemental decree, and use shall be allowed only when water is surplus to the decreed rights. The use of unnecessarily large regulation ponds is an unreasonable method of diversion, and is prohibited.

## 19. Unexercised Riparian Rights

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- (a) All claimants and other persons not named in this decree owning land riparian to streams in the Hallett Creek Stream System upon which they do not presently exercise riparian rights to the use of water, or upon which they do not exercise riparian rights to the extent planned for the future, have unexercised riparian rights to the use of water. However, any right that is not defined in this decree shall be defined and exercised only in accordance with the provisions of this paragraph.
- (b) Any person identified in subparagraph (a) above may apply to the court under paragraph 22 or to the Board under paragraph 20 for definition of a riparian right which is not defined in this decree or in any supplemental decree. If the court finds that such person proposes to exercise such right diligently, reasonably and beneficially, the court shall define the right in terms consistent with such proposed reasonable beneficial use. Any riparian right defined pursuant to this paragraph shall be the subject of a supplemental decree and shall possess a priority as of the date of application to the court or to the Board, as the case may be.
  - (c) Riparian rights defined pursuant to this paragraph shall be subject (1) to all rights which are defined in this

1 decree, including any supplemental decree, as said decree exists on the date of application to the court or to the Board by a riparian claimant, and (2) to any appropriative right initiated by application, in accordance with Part 2 (commencing with Section 1200) of Division 2 of Water Code, prior to the date of application to the court or to the Board by a riparian claimant. 20. Changes in the Exercise of Rights

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Any party who wishes to change or modify the exercise of his rights set forth in the decree may request the Board to investigate said change or modification. If the Board investigates a change or modification it shall notify all affected parties of its investigation and give them an opportunity to object to the proposed change. If any affected party objects to the proposed change or modification, the Board shall hold a hearing or other proceedings in lieu of hearing. After investigating, the Board shall file its report. The report shall determine whether the proposed change or modification is in accordance with applicable law and shall make a recommendation regarding change or modifications of the decree. The court shall, after reviewing and approving any changes or modifications of the decree recommended by the Board, enter such changes or modifications as a supplement to its decree. The Board shall be reimbursed for its expenses of such investigation. Proceedings on the apportionment of the expense shall closely conform with the provisions of Article 13, Chapter 3, Part 3, Division 2 of the Water Code, commencing with Section 2850. Nothing in this paragraph shall restrict any right which any person may have under any statute or common law to change or modify the exercise of his rights set forth in the decree.

## 21. Water Rights Disputes in Watermaster Service Area

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When a watermaster service area is created in accordance with applicable laws, the watermaster shall distribute the water in accordance with the decree. If a water right dispute arises between users, the watermaster shall regulate those diversions as set forth in the decree and as necessary to settle the dispute. Any party who alleges that the watermaster is not regulating his water right in accordance with the decree may apply to the Board to investigate said allegations. The Board shall notify all affected parties of its investigation and give them an opportunity to respond to the allegations. If any affected party requests a hearing or other proceedings in lieu of hearing, the Board shall duly notice and schedule a hearing or other proceedings in lieu of hearing. Following its investigation, the Board shall file a report with the court. The report shall explain whether the watermaster has regulated the water right in accordance with the decree and shall set forth the Board's recommendation to the court for any change, modification, or clarification of the decree. change, modification, or clarification of the decree recommended by the Board shall be entered subject to court review and approval, as a supplemental decree. The Board shall be reimbursed for its expenses in connection with this paragraph. Proceedings on the apportionment of expenses shall closely conform with the provisions of Article 13, Chapter 3, Part 3, Division 2 of the Water Code commencing with Section 2850. Nothing in this paragraph shall restrict any right which any person may have under any statute or common law to seek enforcement of this decree or to seek any other relief.

## 22. Reserved Jurisdiction

This court reserves continuing jurisdiction to review its decree and to change or modify the same as the interests of justice may require. The court, in its discretion, shall exercise its continuing jurisdiction upon application of any party hereto, or successor in interest thereto, or upon its own motion or the motion of the State Water Resources Control Board.

## 23. Effect of the Decree

Each and every claimant, his or her agents, successors, grantees and assigns, are hereby perpetually enjoined and restrained from doing anything in violation of the terms or provisions of this decree, and from diverting any water from the Hallett Creek Stream System as defined herein at any time in excess of a quantity reasonably necessary for, and actually applied to, reasonable beneficial use, under and by reasonable methods of diversion and use, and from doing anything, directly or indirectly, that will obstruct or interfere with any right of another adjudged and decreed herein.

This decree is conclusive and determines all existing rights in the Hallett Creek Stream System as defined herein.

This decree supersedes and modifies all inconsistent former judgments and decrees as to the rights to the flow of the Hallett Creek Stream System. However, this decree does not supersede rotation or ditch agreements consistent herewith.

Permits or licenses to use water in the Hallett Creek
Stream System initiated by application under provisions of the
Water Commission Act or the Water Code shall continue to be
administered by the Board as in other cases. If the Board revokes

or approves changes in any permit or license pursuant to Chapter 10 (commencing with Section 1700), Part 2, of Division 2 of the Water Code and court review of such action is sought, the court shall in its discretion upon motion of any party to the Board's proceeding, enter a supplemental decree confirming the Board's action.

Any claimant who has failed to appear and submit proof of his claim as provided in Chapter 3, Part 3, Division 2 of the Water Code, shall be barred and estopped from subsequently asserting any rights heretofore acquired upon the Hallett Creek Stream System as defined herein, and has forfeited all rights to water heretofore claimed by him on said stream system other than as provided in the decree, unless entitled to relief under the laws of this State.

## 24. Statements of Water Diversion and Use

Unless excepted, all persons diverting water under water rights other than appropriative water rights initiated after December 19, 1914, are required to file Statements of Diversion and Use in accordance with Part 5.1 of Division 2 of the Water Code commencing with Section 5100. Exceptions include springs that do not flow off the property and stream systems which are regulated by a watermaster who files reports which meet the description set forth in Water Code Section 5100(g).

## 25. Riparian Right of the United States Forest Service

The United States Forest Service has an unexercised riparian right on its reserved lands in the watershed of the

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1	Hallett Creek Stream System. This right may be defined and
2	exercised in accordance with the provisions set forth in
3	paragraph 19 hereof.
4	Dated: JL 3 0 1881
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6	``
7	JOSEPH B. HARVEN
8	Judge of the Superior Court
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10	The foregoing instrument is a correct copy of the Original on file in this office.
11	Attest: JUL 3 1 1984 119
12	JACQUELYN FULLER
13	County Clark and Clerk of the Superior Court in and for the Superior Lassen.
14	State of California.
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SCHEDULE 1

DESCRIPTION OF PLACES OF USE OF WATER FROM HALLETT CREEK STREAM SYSTEM

Owner	Use	Acres	Subdivision	Section T28N, R13E, MD8&M
Bailey, George L., Jr. & Sr.	Irrigation "	12.1 1.3 66.1 72.5	SWS SES NWS NES	13 14 24 23
Blickenstaff, A. G. & B. C.	Irrigation	100	NW%, NE% & SE%	24
Clement, M. A.	Domestic		SW's of NW's	23
Marino, Frank	Irrigation	0.75	NWA OF SWA	23
Tramutolo, Richard & Alice	Irrigation	3.5	NW <sup>3</sup>	23
USDA Forest Service	Industria] Firefighting		E½ of SW\$ S½ NE¾ N%	27 28 33 34
West, George G. & N. R.	Stockwatering		NW% OF NE%	23
Bailey, J. C.	Domestic		Portions of NE4	23
DESCRIPTION OF PLACES OF U	USE OF WATER FROM BOOTSOLE AND THOMPSON CREEK STREAM SYSTEM	OLE AND THOMP	SON CREEK STREAM SYST	Ē
Bailey, George L., Jr. & Sr.		103 97	SW\square SE\square SE\square S	13 14

SCHEDULE 2
LOCATION OF POINTS OF DIVERSION

	Diversion Number on State	LOCATION OF POI	NT OF DIVERSION Reference	WITHIN T28N Bearing	, R13E, MDB&M Distance From
	er Resources ntrol Board Map	sion in Which Diversion Occurs	Corner for Distance and Bearing	from Reference Corner	Reference Corner (In Feet)
J. S. Forest Service, spring	; s,	E½ of SW¼ Section 27, & portions of Sections 28,33, & 34	SE Corner Section 27	N20 <sup>0</sup> E	2000
Marino, wood check dam	2	NE% of SE% Section 22	SE Corner Section 22	N22 <sup>0</sup> W	1800
Clement, diver- sion	3	SW¼ of NW¼ Section 23	NW Corner Section 23	\$22 <sup>0</sup>	2250
Tramutolo, eart check dam	:h 4	SE¼ of NW¼ Section 23	NW Corner Section 23	\$45 <sup>0</sup> E	. 2350
Bailey, earth check dam	5 <b>a</b>	SE¼ of SE¼ Section 32	SE Corner Section 32	N40 <sup>0</sup> W	800
Bailey, earth check dam	5 <b>b</b>	NEW of SWW Section 33	SW Corner Section 33	N45 <sup>0</sup> E	2750
Bailey, concret box check dam	te 5c	SE¼ of NW₄ Section 23	NW Corner Section 23	S57 <sup>0</sup> E	2400
Bailey, J. C. diversion	6	NW4 of NE4 Section 23	NW Corner Section 23	508 <sup>0</sup> E	3500
West diversion	7	NW¼ of NE¼ Section 23	NW Corner Section 23	S73 <sup>0</sup> E	3800
Bail <b>ey,</b> check dam	8	NE¼ of NE¼ Section 23	NE Corner Section 23	S38 <sup>0</sup> W	1200
Blickenstaff, sump portable pump	9	NWa of NWa Section 24	NW Corner Section 24	S68 <sup>0</sup> E	2800

SCHEDULE 3
ALLOTMENTS TO VARIOUS CLAIMANTS
FROM HALLETT CREEK STREAM SYSTEM

Name of Claiman	Diversion Number on SWRCB t Map		Area Irrigatéd in Acres	FIRST Priority (Gal/Day)	SECOND Priority (Gal/Min.)	THIRD Priority (Gal/Min.)
United States Forest Service	1	Industrial Firefighting			95,000 gal/annum	
Marino	2	Irrigation	0.75		3	
Clement	3	Domestic		30	·	
Tramutolo	. 7	Irrigation	3.5		10	
*Bailey, G. L.	5a,b,c	Stockwatering Irrigation	200			
Bailey, J. C.	6	Domestic		30	•	
West	7	Stockwatering			0.5	
Bailey, G. L.	8	Irrigation	152		409	
Blickenstaff	9	Irrigation	100		:	371

<sup>\*</sup>All available water from Bootsole and Thompson Creeks from pre-1914 appropriation.

