

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

oOo

In the Matter of Application 5405 of the United States Forest Service (San Bernardino National Forest) to appropriate from an unnamed spring, tributary of City Creek in San Bernardino County for Domestic Purposes

oOo

DECISION A 5405 D 196

Decided *June 21, 1928.*

oOo

APPEARANCES AT HEARING HELD March 8, 1928

For Applicant
U. S. Forest Service

H. P. Dechant

For Protestant
City Creek Water Company

Ralph E. Swing

EXAMINER: Harold Conkling, Chief of Division of Water Rights,
Department of Public Works, State of California,
Assisted by Gordon Zander, Hydraulic Engineer

oOo

O P I N I O N

Application 5405 was filed with the Division of Water Rights on April 5, 1927. It proposes an appropriation of 0.012 cubic feet per second throughout the entire year from an unnamed spring tributary to City Creek in San Bernardino County. It is proposed to use the water for domestic purposes on approximately 40 summer home site lots in the Kuffel Canyon Fract located in the ~~N¹~~ NW¹ Section 27, T 2 N, R 3 W, S.B.B. & M. The application was protested by the City Creek Water Company.

The City Creek Water Company claims a right to the use of water from City Creek based upon appropriation and beneficial use by protestant and its predecessors in interest for upwards of seventy years and alleges in effect that the proposed diversion of the applicant would result in diminishing the natural flow of City Creek which, during the irrigation season, is inadequate for its needs.

At the hearing the protestant objected to any further proceeding in the matter on the ground that the Division had no jurisdiction in the matter since application was made by the U. S. Forest Service and alleges in effect that since the U. S. Forest Service is neither a person, corporation, or association of persons or corporations, within the meaning of the Water Commission Act that it is not entitled to make application for appropriations of water. In other words that the U. S. Forest Service is not a legal entity within the meaning of the law.

Hearing Held in Accordance with Section 16
of the Water Commission Act

The application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing in accordance with Section 16 of the Water Commission Act at the Council Chamber of the City Hall, San Bernardino, at 2:00 o'clock P.M. on March 8, 1928. Of this hearing applicant and protestant were duly notified.

Physiography and Hydrology

The spring which is named as the source of the proposed appropriation in Application 5406 is located on the south side of the ridge which forms the northerly boundary of the City Creek drainage area. At the spring there are a few willows and a little patch of wire grass but no luxuriant growth.

Below the spring the mountain side is rather steep and covered with brush.

Testimony was presented at the hearing by the protestant to the effect that on January 4, 1928 there was a flow at the spring of about 706 gallons per day. The water as it issued from the hillside at the head of the canyon flowed southerly through a little trough or gully for a distance of about 20 or 30 feet where it disappeared into the soil for a distance of approximately 100 feet and rose again in increased quantity about 20 feet above a point where a small stream from the East entered the main gully. From the junction of the two streams the water flowed on the surface for a distance of about 300 feet and then disappeared for a distance of approximately 300 feet where it again appeared at the surface as it entered a growth of alders, and from that point on to its connection with several other branches of City Creek was a live stream flowing on the surface.

The testimony presented by the protestant also indicated that there was a well defined channel from the spring to City Creek varying from a very shallow depth to a depth of 30 to 40 feet where the stream enters the alders. At the point where the water disappeared beneath the surface the second time and at a distance of about 400 feet below the source a measurement was made and it was found that the flow at this point was about 4,000 gallons per day. At a point about 1,000 feet from the spring there is a twelve foot waterfall over which about 100 times the amount flowing at the spring was measured.

The applicant presented testimony to the effect that in November 1927, there was a flow of about 2,880 gallons a day from the spring which disappeared into the ground about 20 to 30 feet below the spring, maintaining very little vegetation in its course and that in February 1928 there was also a flow from the spring which disappeared about 50 feet from the spring after

which there was no showing of water below although there was a deep canyon about one-quarter mile east where there was water about 2,000 feet in elevation below the spring and at a distance of about 2 miles therefrom.

The preponderance of the testimony presented indicated however that although there was not a complete surface connection between the spring and City Creek, there was a surface connection with the exception of about 400 feet and the slope of the water course was so steep that undoubtedly the water which traveled underground--with the exception of a slight amount which may be lost by evaporation--found its way into the surface channel which is a direct tributary of City Creek. As there is no luxuriant vegetation about the spring itself it does not seem probable that very much water could be conserved by the proposed diversion of the applicant.

It appears that the greater portion of the water which goes to make up the summer flow of City Creek is derived from similar springs in the watershed and that the diversion as proposed would decrease still further the already inadequate flow of City Creek.

Use of Water by Protestant

It appears that the City Creek Water Company or its predecessors in interest have been diverting water continuously from City Creek since the "fifties" and since that time, during the irrigation season of each year all of the waters of City Creek have been diverted and beneficially used. The point of diversion was originally located near the mouth of the canyon and the diversion from this point continued until 1882 when it was moved upstream about a quarter of a mile, primarily for the purpose of conserving more water. In 1900 the diversion point was again moved upstream for a distance of about one-quarter of a mile and the water has been diverted since from that point.

It has been necessary for the City Creek Water Company to augment its supply beyond the normal supply flowing in City Creek and a dam was built in the bed of the stream for the purpose of forcing up the underflow and about one mile above the intake on the East side of City Creek a tunnel was completed in 1898 or 1899 about 400 feet long under what is locally known as the Gray Bench and water conducted to the main ditch.

In addition to these several developments the City Creek Water Company on April 10, 1924 filed an application with this office to appropriate 5,000 acre feet of the waters of the East Fork of City Creek to be diverted at a maximum rate of 40 cubic feet per second for the purpose of irrigating 560 acres in Sections 27, 28, 29, 32 and 33, T 1 N, R 3 W, S.B.B. & M. This water was to be diverted from about October 1st to about June 1st of each year and spread over an underground reservoir on the mountain side in Section 10 of the same township and range. This application was approved on December 16, 1924, by the issuance of Permit 1922. The progress report for the year 1927 indicated that the construction work had been completed at a cost of about \$5,500. At the time of filing this application it was stated that water was also used below the proposed point of diversion by the Highland Well Company and the Highland Domestic Water Company by means of wells near the mouth of City Creek Canyon and that the storm waters were diverted by nine other users.

No Application has been Heretofore Filed on
Applicant's Proposed Source of Diversion

At the hearing an impression prevailed that the spring which is named as the proposed source of diversion in Application 5405 had been filed on previously, was protested by the Forest Service and the City Creek Water Company and denied by the Division of Water Rights.

Search of the records of this office fails to reveal that any filing had heretofore been made on this spring but on February 9, 1926, Application 4914 was filed by Joseph E. Hinok to appropriate from a spring in the City Creek watershed located in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 26, T 2 N, R 3 W, S.B.B. & M. about 1 $\frac{1}{2}$ miles easterly of the spring named in Application 5405 for domestic and garden irrigation use on the Arrowhead Lakeview Tract Subdivision which adjoined the proposed place of use under Application 5405. The City Creek Water Company signified its desire to protest this application and the Forest Service denied right of access on the grounds that the spring was adjacent to and immediately above one from which a man by the name of Baker was obtaining water to operate his saw mill on government land and also that the water was needed for administrative purposes. The application was cancelled on December 13, 1926 at the request of the applicant before it was advertised.

Conclusion

It is the opinion of this office that the spring from which the applicant proposes to divert is one of many that contribute to the flow of water in City Creek and that the appropriation as proposed would insure to the injury of the protestant by still further decreasing the already inadequate supply in City Creek. Just what effect the diversion of water from the spring during the non-irrigation season which is from about December 1st to about April 1st, would have upon the lower users cannot be stated but inasmuch as the proposed diversion is for the purpose of supplying summer home sites it would appear that a diversion during this period would not serve the useful and beneficial purpose for which the application was filed. The place of use proposed is not on or along the course which the waters of the source would

naturally travel on their way toward the diversion point of the protestant. According to the maps which are available the place of use lies upon the summit which divides the watershed of City Creek from the watershed to the North and a portion of the place of use may even lie in the latter watershed. In a different case where the use would be such that a considerable portion of the waters diverted would be returned as waste either to the surface stream or the subsurface flow our ruling might be different but in the instant case we feel constrained to deny a permit because of the probability that the use proposed would trespass measurably upon the rights of protestant.

As the application should be denied on the above grounds there is no necessity at this time to consider or pass upon the contention advanced by protestants that this office is without jurisdiction to accept an application from the Forest Service.

O R D E R

Application 5405 for a permit to appropriate 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 be rejected and cancelled upon the records of this office.

Dated at Sacramento, California, this 21 day of *June*, 1926.

(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

WBS:MP