

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

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In the Matter of Application 5809 of Otto G. Wilhelm and
Application 5881 of John H. Dunshee to Appropriate
from Santa Ana Creek, Tributary of Ventura River
via Coyote Creek in Ventura County for
Agricultural and Domestic Purposes

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DECISION A 5809, 5881 D 244

Decided

November 8, 1929

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APPEARANCES AT HEARING HELD June 11, 1929.

For Applicants.

Otto G. Wilhelm
John H. Dunshee

Charles H. Mattingly
H. F. Orr

For Protestants.

John H. Dunshee)
W. S. Dunshee)
Nick Peirano)
J. M. Boranda
Maude M. Coker
City of Ventura

H. F. Orr
W. H. Barnes
Don G. Bowker
M. A. Robinson

EXAMINER: Harold Conkling, Chief of Division of Water Rights,
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATIONS

Application 5809 was filed January 27, 1928, by Otto G. Wilhelm.

It proposes an appropriation of 0.5 cubic foot per second throughout the entire year from Santa Ana Creek tributary to the Ventura River in Ventura County for agricultural and domestic purposes upon 170 acres of land within projected Sections 7 and 18, T 4 N, R 23 W and Section 13, T 4 N, R 24 W, S.B.B. & M. The irrigation season is stated as being from about April 1st

to about November 1st of each season. The application was protested by Mrs. Maud M. Coker, John H. Dunshee, W. S. Dunshee, Nick Peirano and J. M. Boranda prior to the hearing and by the City of Buena Ventura at the hearing.

Application 5881 was filed April 18, 1928, by John H. Dunshee. It proposed an appropriation of 0.25 cubic foot per second throughout the entire year from Santa Ana Creek tributary to the Ventura River in Ventura County for irrigation and domestic purposes on 20 acres of land within projected Sections 24 and 25, T 4 N, R 24 W, S.B.B. & M. The irrigation season was stated as being from about February 1st to about November 30th of each season. The application was protested by Nick Peirano prior to the hearing and by the City of San Buena Ventura at the hearing.

At the hearing Nick Peirano's protest was withdrawn on condition that the use of water for irrigation purposes under Application 5881 be confined to 6 acres of land only. John H. Dunshee agreed to this change and Application 5881 has been amended by reducing the amount named therein to 0.075 cubic foot per second for use upon 6 acres of land only. Application 5881 therefore may be considered as being protested by the City of San Buena Ventura only.

PROTESTS

Mrs. Maude M. Coker under Application 5751, Permit 3135 has the privilege of diverting 0.50 cubic foot per second of the waters of Santa Ana Creek from about May 1st to about September 15th of each season and 40 acre feet per annum for storage to be collected from about October 15th to about May 1st for irrigation purposes on 250 acres of land. She also claims riparian rights and alleges in effect that she has used water from Santa Ana Creek for the last 40 years and the irrigation of her lands is limited by the low flow of the stream which in dry years is inadequate to irrigate ten acres.

Nick Peirano claims appropriative rights and alleges in effect that if Application 5809 were approved it would deprive him of sufficient water to supply his irrigation and domestic and fire protection needs.

W. S. Dunshee claims riparian and appropriative rights and alleges in effect that the approval of Application 5809 would deprive him of water for his domestic, irrigation and stock watering needs.

John H. Dunshee claims riparian ownership and alleges in effect that if Application 5809 were approved it would deprive him of water for his domestic and irrigation use. He has pending before this office Application 5881 which is described above.

J. M. Boranda claims riparian rights and rights acquired by 40 or more years of use and alleges in effect that if Application 5809 were approved it would deprive him of water for domestic, irrigation and fire protection purposes.

The City of Buena Ventura although not a record protestant claims that any diversions from Santa Ana Creek would interfere with its proposed future development of the water resources on the Ventura River and its tributaries.

HEARING SET IN ACCORDANCE WITH SECTION 1a OF THE
WATER COMMISSION ACT

Applications 5809 and 5881 were 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 were set for public hearing in accordance with Section 1a of the Water Commission Act on June 11, 1929, at 10:00 o'clock A.M. in the Justice Court Room of the Court House, Ventura, California. Of this hearing applicants and record protestants were duly notified.

PHYSICAL CHARACTERISTICS

Santa Ana Creek rises on the southerly slopes of the Santa Ynez Mountains in the Santa Barbara National Forest and flows southerly through the Santa Ana Valley to its junction with Coyote Creek about two miles above its junction with the Ventura River.

Above the point of diversion of Otto G. Wilhelm the watershed has an area of approximately 8 square miles. The slopes are quite pronounced and of such character that the water runs off very rapidly. During the summer months the water does not flow as a continuous surface stream in Santa Ana Creek but only appears in places where the bedrock forces it to the surface.

PRIOR RIGHTS

It appears that for eighteen years prior to October 4, 1923, Mr. Wilhelm and his predecessors in interest had diverted water from Santa Ana Creek under alleged riparian rights. On October 4, 1923, Mr. Wilhelm initiated an appropriative right for irrigation and domestic purposes by the filing of Application 3660 which was approved on February 19, 1924, by the issuance of Permit 1641 allowing him the privilege of diverting an amount not to exceed 30.5 acre feet per annum for storage to be collected from about November 1st to about April 1st of each season and 1.5 cubic feet per second for direct diversion from about April 1st to about November 1st of each season and throughout the remainder of the year as required for domestic purposes.

Under date of November 7, 1927, Mrs. Maude M. Coker initiated an appropriative right which was approved on October 23, 1928, by the issuance of Permit 3135 allowing her the privilege of diverting an amount not to exceed 0.5 cubic foot per second from about May 1st to about September 15th

of each season for direct diversion and 40 acre feet per annum for storage to be collected from about October 15th to about May 1st of each season. Mrs. Maude M. Coker also claims riparian rights to the extent of 102 gallons per minute through use extending over a period of ten years. It also appears from testimony presented at the hearing that W. S. Dunshee claims a riparian right for the irrigation of 6 acres of land and M. Boranda a riparian right for the use of water on 10 to 12 acres of land. Others, including protestant Peirano, have acquired rights for domestic and stock watering purposes.

Without venturing to definitely determine the several rights upon Santa Ana Creek it may be stated that roughly speaking rights have probably been initiated and/or acquired to approximately $2\frac{1}{2}$ cubic feet per second direct diversion during the summer months.

AVAILABLE SUPPLY

Messrs. Reaburn and Bowen, consulting engineers of Los Angeles, submitted a report on the available supply of Santa Ana Creek which is based upon the runoff of the Ventura River near Nordhoff as measured by the U. S. Geological Survey. The engineers conclude that a diversion of 2 cubic feet per second may be effected during the months of May and June following seasons of normal rainfall but that amount will only be available during the months of July, August and September following excessively wet seasons.

We would hesitate however to limit the prior rights either initiated or acquired to 2 cubic feet per second and believe that an allowance should be made for no less a quantity than 2.5 cubic feet per second which amount, according to the data submitted by the applicant's engineers would not be available in normal seasons of runoff during the month of June.

Mr. W. S. Dunshee testified that during the 43 years that he had

been a resident of Ventura County he believed that the flow in Santa Ana Creek had never been as much as 2 second feet from May 1st to November. He stated however that during the rainy season during years of excessive runoff the flow exceeded that amount. Mr. W. S. Dunshee also testified that the flow in Santa Ana Creek after May 1st seldom exceed 20 or 25 inches even in normal years.

Applicant Wilhelm in his opening brief admits that the normal summer flow of the stream is less than the amount heretofore appropriated by him.

It also appears from information on file in this office that although construction work was completed under Mr. Wilhelm's prior application, 3660, in 1925 he has not been able to irrigate more than 70 acres of land during any one irrigation season on account of the lack of available water.

It is the contention of the engineers representing Otto G. Wilhelm that the water diverted by the protestants undoubtedly accrues during the summer months from rising ground water below the point of diversion named in Application 5809 and that the greater portion thereof is return water from lands irrigated by Mr. Wilhelm, that the practice of irrigation on the Wilhelm property virtually effects a conservation of the water supply, and that an increase in irrigation use by Mr. Wilhelm will augment the supply available to the protestants.

While it is undoubtedly true that a portion of the protestants supply is derived from return water, and winter and early spring irrigation by Mr. Wilhelm would increase such return, it is not conceivable that increased diversions from April 1st to November 1st as proposed by Mr. Wilhelm would so increase the supply to protestants, because such return as occurs is not immediate and a considerable portion of the gross diversion in any

normal practice of irrigation must be lost by evaporation and transpiration.

THERE IS AN INSUFFICIENT AMOUNT OF WATER IN THE
SOURCE OF PROPOSED DIVERSION TO JUSTIFY
THE APPROVAL OF APPLICATION 5809

The season of diversion for irrigation purposes named in Application 5809 is from about April 1st to about November 1st and while it may be possible that at times there would be water flowing in Santa Ana River during the month of April it is the opinion of this office that during the remainder of the irrigation season there is not a sufficient amount of unappropriated water in the stream during a year of normal runoff to justify the approval of the application and as the applicant already has acquired the privilege of diverting water throughout the year for domestic purposes under Application 3660, Permit 1641 it is not seen wherein approval of Application 5809 for diversion throughout the period of non irrigation could serve any useful or beneficial purpose and it should therefore be denied.

DISCUSSION OF PROTEST AGAINST THE APPROVAL OF
APPLICATION 5881 OF JOHN H. DUNSHIE

Although not a record protestant, the City of Buenaventura was represented at the hearing and filed a brief subsequently thereto which was directed against the approval of Applications 5809 and 5881.

The water supply of the City of San Buenaventura is derived from the flow of the Ventura River and its tributaries one of which is Santa Ana Creek. Water is diverted at a sump on the Ventura River just below its junction with Coyote Creek. Plans are being formulated for the organization of a large water district for the purpose of increasing the water supply and it is proposed to conserve the supply through a series of dams and other works. Apparently however no rights have yet been initiated for this purpose.

It appears that during the summer months the stream bed of Santa Ana Creek is dry below the diversion point of Nick Peirano and the water for which Mr. Dunshee has applied if not put to beneficial use on the lands bordering the creek bed, would be entirely lost by evaporation, transpiration or deep percolation before reaching the City's intake. It is therefore the opinion of this office that an appropriation of so small a quantity as 0.075 cubic foot per second at Mr. Dunshee's proposed point of diversion, which is located from two to three miles above the junction of Coyote Creek and Santa Ana Creek would have no appreciable effect upon the City's present supply as the draft would be replenished by the storms of a succeeding winter before it could be felt at the City's intake. It is against the policy of this office to refuse to approve an application because of a prospective future appropriation for which no right has yet been initiated and therefore the City's objection because of interference with proposed conservation works must be overruled.

Although Application 5881 has a later priority than Application 5809 it appears that the water which Mr. Dunshee proposes to divert rises in the stream bed about one-half mile above his intake being brought to the surface by some impervious dyke and is probably derived in part from the return to the stream bed of waters used by the upper irrigators. As Nick Peirano who appears to be the only user below the applicant who could be interfered with by the appropriation has withdrawn his protest and the use to which applicant proposes to put the water is a useful and beneficial one, it is the opinion of this office that Application 5881 should be approved.

O R D E R

Applications 5809 and 5881 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 5809 be rejected and cancelled upon the records of this office, and

IT IS HEREBY FURTHER ORDERED that said Application 5881 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *8* day of *November*, 1929.

EDWARD HYATT, STATE ENGINEER

BY *Harold Conkling*
Deputy

WES:MP